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l'alimentation  
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Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

**INTERGOVERNMENTAL WORKING GROUP FOR THE  
ELABORATION OF A SET OF VOLUNTARY GUIDELINES TO  
SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT  
TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD  
SECURITY**

**Rome**

**Right to Food Case Study: South Africa**

**Study conducted for FAO in support of the Intergovernmental Working  
Group on the Elaboration of a set of Voluntary Guidelines for the  
Realization of the Right to Adequate Food in the context of National  
Food Security**

This Annex is available (in English only) from the Food and Agriculture Organization of the UN (FAO), on request. It can also be obtained from the FAO website at [www.fao.org/righttofood](http://www.fao.org/righttofood).

**Lead Consultant Charlotte Vuyiswa McClain-Nhlapo**

**February 2004**

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## Table of Contents

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	Pages
Executive Summary	1
<i>About the Study</i>	2
<i>List of Acronyms</i>	3
I Introduction	6
II. Survey of long-term trends of food insecurity	8
1) AVAILABILITY AND STABILITY OF FOOD SUPPLIES	8
2) ACCESS TO PRODUCTIVE RESOURCES: INCOME AND EXPENDITURE	9
3) ANTHROPOMETRICAL DATA: FOOD UTILISATION	11
4) OTHER INDICATORS	13
III. Implementation of the Right to Food	15
1) CONSTITUTIONAL FRAMEWORK	15
2) INSTITUTIONS	17
<i>a) Arms of State</i>	17
i) Cabinet	18
ii) Parliament	18
iii) Courts	18
<i>b) Main Government Departments</i>	19
<i>c) Independent Institutions</i>	20
i) The South African Human Rights Commission (SAHRC)	20
ii) The Food Price Monitoring Committee	20
iii) Commission on Restitution of Legal Rights	21
<i>d) Non-State Actors</i>	21
i) NGOs	21
ii) The Media	23
iii) Academia & Research	23
iv) The private sector	23
v) Participation of Rights Holders	24

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3) MACRO-ECONOMIC POLICIES	24
<i>a) Growth, Employment and Redistribution [GEAR].</i>	24
<i>b) Poverty Alleviation</i>	25
4) SECTORAL LAWS, PROGRAMMES AND POLICIES	26
<i>a) Land, Water and Agriculture</i>	27
i) Land Tenure, Access and Management	27
ii) Water use and irrigation development	28
iii) Agriculture	28
iv) Legislation in preparation	32
<i>b) Social Security</i>	33
<i>c) Health and Nutrition</i>	37
<i>d) Education</i>	39
<i>e) Labour</i>	40
5) ALLOCATION OF RESOURCES	41
6) BENCHMARKS, MONITORING AND RECOURSE	42
<i>a) Role of Duty Bearers</i>	42
<i>b) Benchmarks</i>	42
<i>c) Role of SAHRC</i>	43
<i>d) Judicial Recourse</i>	45
IV. Selected Vulnerable Groups	46
1) PERSONS INFECTED AND AFFECTED BY HIV/AIDS	48
2) CHILDREN	51
V. Lessons Learnt	51
ANNEXURE: ECONOMIC AND SOCIAL RIGHTS PROTOCOLS	53



## Executive Summary

This case study was conducted for FAO in support of the Intergovernmental Working Group on the Elaboration of a set of Voluntary Guidelines for the Implementation of the Right to Adequate Food in the context of National Food Security. The particular contribution of the South African experience is its strong Constitutional basis that directly makes provision for the right to food as well as its enabling legislative frameworks that elaborate the legal entitlements to the right to food. This is juxtaposed against the prevailing legacies of apartheid; inequality, oppression, poverty, food insecurity, inferior education and limited employment opportunities among the majority of South Africans. The South African struggle against apartheid was essentially a struggle for human rights, for equality, non-discrimination, human dignity and the universal fundamental freedoms.

The central point of the study is that the thinking about the right to food, while still in its infancy globally, it has begun to take shape in South Africa. The policies articulate the paradigm shift that recognizes that the failure of agriculture to produce sufficient food at national level is not the only consideration but that a more complex range of circumstances may contribute such as the failure of livelihoods to guarantee access to sufficient food. This points to the importance of enabling people to feed themselves however where this is not possible to ensure strategies, plans and programmes are in place to address food insecurity.

In an attempt to illustrate this paradigm shift the study looks at vulnerability as a broader concept that refers to the full range of factors that place people at risk of becoming food insecure. The two particularly vulnerable groups that the study examines are children and people infected or affected by HIV/AIDS.

The case study points to the importance of a constitutional framework that recognizes the right to food. It also highlights the importance of finding out who the food insecure are and why they are food insecure. It examines some of the choices for intervention that the State has chosen in addressing food insecurity.

Most significantly, the study concludes that South Africa, despite the many obstacles, has adopted a rights based approach to the right to food. This approach makes linkages between poverty alleviation programmes, the empowerment of disadvantaged groups and provides recourse in the event that the claimant's right to food is violated. The impact of this broad approach to dealing with poverty and the concomitant food insecurity should not be underestimated

The study highlights that political will and a strong civil society are important components in addressing the right to food. While challenges exist the study acknowledges that the South African government has made much progress in adopting a rights based approach with the various legislative frameworks in place and programmes to support the operationalisation of the right to food. It concludes with lessons learnt and highlights areas important for the realisation of the right to food.

Finally while this case study focuses on South Africa the recent remarks by President Thabo Mbeki at the 23<sup>rd</sup> Africa Regional Conference of the FAO in Johannesburg exemplifies the achievement of a paradigm shift in food security in the region.

“ however belatedly, we have drawn the African roadmap that signifies that we are determined to break away from the neo-colonial route that Ngugi wrote about. Accordingly, we can say that we are at one with Joe Stiglitz when he says that development is about transforming societies, improving the lives of the poor, enabling everyone to have a chance at success and access to health care and education, and extricating the rural masses from the misery of poverty and underdevelopment.”

### *About the Study*

The following study was coordinated by Charlotte McClain-Nhlapo, the lead consultant. She was assisted in the section on the survey of long term trends of food insecurity by Simphiwe Ngqangweni the main author of that section. He in turn was assisted by Kisimba Mwenge and Isidore Muleba, from the University of Pretoria, South Africa.

In addition to the main authors, this product has benefited from collective thinking and contributions. The study was circulated to key stakeholders in the area of the right to food and was workshopped. The information drawn from the workshop was invaluable and has helped to shape the study. Also I would like to acknowledge Dr Neo Morojele support in the completion of this study. Finally, the contribution of Ms Margret Vidar, Legal Officer, FAO must be acknowledged in the development of this study.

The plan of the study follows closely the terms of reference provided by FAO

## List of Acronyms

ANC	African National Congress
ARC	Agricultural Research Council
BEE	Black Economic Empowerment
BIG	Basic Income Grant
COSATU	Congress of South African Trade Unions
CASP	Comprehensive Agricultural Support Package
EU	European Union
EWA	Estimated Weight Age
FAO	Food Agricultural Organisation
FIAN	FoodFirst Information & Action Network
FIVIMS	Food Insecurity & Vulnerability Information Mapping System.
GDP	Gross Domestic Product
GEAR	Growth Employment & Redistribution
HSRC	Human Sciences Research Council
IMR	Infant Mortality Rate
IDP	Integrated Development Plans
IFSNP	Integrated Food Security and Nutrition Programme
IFSS	Integrated Food Security Strategy
IMCI	Integrated Management of Childhood Illness
INP	Integrated Nutrition Programme
ISRDP	Integrated Sustainable Rural Development Plans
ISRDS	Integrated Sustainable Rural Development Strategy
LRAD	Land Redistribution For Agricultural Development
MEC	Members of the Executive Council
NEDLAC	National Economic Development & Labour Council.
NFES	National Food Emergency Scheme
NGO	Non Government Organisations
NMCF	Nelson Mandela Children's Fund
ORT	Oral Re-hydration
PSNP	Primary School Nutrition Programmes
PPP	Public Private Partnerships
RDP	Reconstruction & Development Programme
SAHRC	South African Human Rights Commission
SANGOCO	South African Non Governmental Organisations Coalition.
SETA	Sector Education & Training Authorities

SLAG	Settlement Land Acquisition Grant
SMME	Small, Medium and Micro Enterprises
SPFS	Special Programme for Food Security
SSI	Self-Sufficiency Index
StatSA	Statistics South Africa
URP	Urban Renewal Programme

### List of Tables, Figures and Diagrams

<b>Figure 1 Increased allocations to enhance response to HIV, AIDS and TB .....</b>	<b>47</b>
<b>Table 1 Annual average cost of a food basket containing 23 items .....</b>	<b>10</b>
<b>Table 2 Gini coefficients of different types of South African households .....</b>	<b>11</b>
<b>Table 3 Main sources of income per household, by quintile.....</b>	<b>11</b>
<b>Table 4 Malnutrition concentration indices by province.....</b>	<b>12</b>
<b>Table 5 Access to safe water .....</b>	<b>13</b>
<b>Table 6 Access to sanitation facilities .....</b>	<b>13</b>
<b>Table 7 Key indicators for South African provinces.....</b>	<b>14</b>
<b>Table 8 Programmes aimed at facilitating access to food .....</b>	<b>26</b>
<b>Table 9 Per capita household spending per month and by groups for the National Food Emergency Scheme and Agriculture Starter Pack Programme 2002/3 .....</b>	<b>31</b>
<b>Table 10 Programmes aimed at providing access to food.....</b>	<b>33</b>
<b>Table 11 Progress with delivery of food parcels in terms of the NFES Pilot project during 2002/2003 .....</b>	<b>36</b>
<b>Table 12 Programmes aimed at enhancing nutrition.....</b>	<b>37</b>
<b>Table 13 National Budget for the Integrated Nutrition Programme .....</b>	<b>38</b>
<b>Table 14 Reporting on the number of learners reached by the PSNP at provincial level.....</b>	<b>40</b>
<b>Table 15 Share of domestic and agricultural workers earning under R1000 a month, in nominal terms.....</b>	<b>41</b>
<b>Table 16 The prevalence of under nutrition amongst young children compared to National Department of Health policy targets.....</b>	<b>43</b>
<b>Table 17 Anthropometric status of children aged 1-9 years by area of residence. ....</b>	<b>50</b>
<b>Diagram 1 Institutional Arrangements and Organisational Structures.....</b>	<b>30</b>

## I. Introduction

This study is about a fundamental right - the right to food in South Africa. The right to food is a basic human right as well as a basic human need. Food is the most basic necessity of life. It is understood at an international level that food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. Household food security is the application of this concept at the family level, with individuals within households as the focus of concern.

In everyday language we all have some understanding of poverty, and what it means to be poor. However, when it comes to the scientific measurements of poverty, what is implicit in everyday language has to be made explicit. The capability model of Amartya Sen provides an appropriate conceptual framework for such measurement.<sup>1</sup>

Chambers makes a general assertion that poor people are often disadvantaged when it comes to influencing policy, and are therefore poorly placed to influence the ways in which the State allocate rights and resources within society<sup>2</sup>.

According to FAO food insecurity exists when people are undernourished as a result of the physical unavailability of food, their lack of social or economic access to adequate food, and/or inadequate food utilization. Food-insecure people are those individuals whose food intake falls below their minimum calorie (energy) requirements, as well as those who exhibit physical symptoms caused by energy and nutrient deficiencies resulting from an inadequate or unbalanced diet or from the body's inability to use food effectively because of infection or disease. An alternative view would define the concept of food insecurity as referring only to the consequences of inadequate consumption of nutritious food, narrowing it to the domain of nutrition and health.

Amartya Sen has noted:

"Hunger relates not only to food production and agricultural expansion, but also to the functioning of the entire economy and the operation of political and social arrangements that can, directly or indirectly, influence people's ability to acquire food and to achieve health and nourishment."<sup>3</sup>

The state of realization of the right to food in South Africa must be understood within a historical and political context. This is a country where the majority of the population was systematically oppressed and exploited by the minority for a long time. Poverty and food insecurity, access to education and employment were determined to a large extent by a person's race. The South African struggle against apartheid was essentially a struggle for human rights, for equality, non-discrimination, human dignity and the universal fundamental freedoms.

This backdrop is important when considering the magnitude and the nature of food insecurity and vulnerability in South Africa, which is still struggling to rectify past discrimination. Today under a new democratic dispensation the vision and morals of the nation are captured in the Constitution<sup>4</sup>. South Africa is indeed often cited for its very progressive constitution and more

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<sup>1</sup> Sen, A (1993). " Poor, relatively speaking". Oxford Economic Papers 35

<sup>2</sup> For an important critique of this definition, see Sen (1981).

<sup>3</sup> "Development as Freedom", Amartya Sen Oxford University Press, Oxford. 1999. p162.

<sup>4</sup> <sup>4</sup> Constitution of the Republic of South Africa No.108 of 1996, as amended. Undoubtedly they most important Act passed. It was adopted on May 8,1996, after two years of public input and negotiation in the constitutional assembly.

particularly for the inclusion of economic and social rights in its Bill of Rights. Yet these rights are still far from being universally realized.

South Africa as a country has enough food for its population. Yet many go hungry. The root problem of hunger and malnutrition in South Africa is not the lack of food but rather an inability to access sufficient food, primarily because of poverty, lacking the resources to access sufficient food. It is distinguishable from other countries that experience food shortage due to political, climatic or other economic and social forces.

Poverty and past inequalities that characterised the apartheid regime continue to be a major hindrance to the right to food. Ten years after the first democratic elections in South Africa many of the necessary policy and legal instruments are in place, but challenges remain at the implementation and delivery level.

Despite South Africa being rich in resources and a middle-income fledging democracy, it still remains a highly unequal and uneven society. The disparities have a racial basis, with white South Africa's Gross Domestic Product [GDP] ranked 45<sup>th</sup> in the world while black South Africa's GDP is ranked 180<sup>th</sup><sup>5</sup>. These inequalities have led President Thabo Mbeki to observe that South Africa is a country of "two nations": one rich and largely white, and one poor and largely black<sup>6</sup>

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<sup>5</sup> Statistics South Africa, *Earning and Spending in South Africa*, 2002.

<sup>6</sup> President Thabo Mbeki, *State of the Nation Address at the Opening of Parliament*, Houses of Parliament, Cape Town, 14 February 2002.

## II. Survey of long-term trends of food insecurity

The objective of this section<sup>7</sup> is to present long-term trends in food insecurity in South Africa in a bid to assess whether there has been any progress in the realisation of the right to food in the country. The presentation will attempt to contrast, where data permits, two distinct periods in the history of South Africa namely, the period before the advent of democracy in 1994 and the post-1994 period of democratic transition. Although the country could be regarded as still being in a state of transition rendering it unfair to expect drastic improvements following the inaugural democratic elections, it would still be interesting to scrutinise any data available to gauge what direction the country seems to be going in terms of ensuring the right to food. The information on food insecurity dynamics during these two periods will be presented in terms of the four pillars of food security namely, availability, access, stability and utilisation.

Much of South Africa's policy experience pre-1994 was influenced by two main factors.<sup>8</sup> First was the general global trend whereby national food policy was directed at ensuring national food self-sufficiency, i.e. the supply-side of the food security equation. The second factor is related to the country's sanctions threat at the time, which drove policy makers to be "inward-looking". Accordingly, a general observation was that the national food self-sufficiency position looked relatively impressive during the pre-1994 period. However, in the post-1994 period, the "new" South Africa's policy makers shifted focus towards food security in its entirety.

### 1) AVAILABILITY AND STABILITY OF FOOD SUPPLIES

Current food security challenges in South Africa consist of two dimensions. The first dimension seeks to maintain and increase the ability of South Africa to meet its national food requirements. This involves meeting these needs from domestic agricultural resources, import of food items that cannot be produced efficiently nationally, and to export commodities with comparative advantage.

The second dimension seeks to eradicate the widespread inequalities and grinding poverty among the majority of households that are manifested by inadequate and unstable food supplies, lack of purchasing power, weak institutional support networks, poor nutrition, inadequate safety nets, weak food emergency management systems and unemployment.

At the national level, South Africa is food secure. It produces its main staple foods, exports its surplus food and imports what it needs to meet its food requirements. National food security indicators reveal that South Africa has been meeting its food needs of its growing population from domestic sources during the past two decades.<sup>9</sup>

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<sup>7</sup> Compiled by Simphiwe Ngqangweni, with assistance from Kisimba Mwenge and Isidore Muleba, University of Pretoria, South Africa, First Draft submitted to FAO on February 06, 2004. Views expressed are the authors' and do not represent those of the University of Pretoria.

<sup>8</sup> Van Rooyen CJ, Ngqangweni S and Frost D, 1996. Some considerations for a South African food policy. *Agrekon*, 35 (4): 301-308.

<sup>9</sup> National Department of South Africa, Abstract of Agricultural Statistics. Pretoria: NDA.

The National Department of Agriculture underwent an exercise of projecting the future food supply situation in South Africa. The projections reveal that, should current production trends hold, domestic wheat production would be outstripped by domestic consumption by nearly 60 percent in 2010, and by over 100 percent in 2020. Maize consumption is expected to exceed production by 2010, assuming that current trends continue. These warnings are reflected in the case of many other food commodities such as beef, milk, vegetables and fruits.<sup>10</sup>

## **2) ACCESS TO PRODUCTIVE RESOURCES: INCOME AND EXPENDITURE**

Statistics South Africa (StatSA) released an informative report showing how income and expenditure of households and individuals in South Africa have changed between 1995 and 2000.<sup>11</sup> They revealed that these variables are unevenly distributed by population group, sex, and urban/non-urban area of residence. They also indicate, when figures are made comparable through adjustment for inflation, that households and individuals, on average, were both earning and spending less in 2000 than 1995. This should give at least an early indication that the inability to access income has generally jeopardised households' ability to access food. The report also showed that more households have become poorer and fewer households have become richer. In 2000 a larger proportion of households fell in the lower quintiles of the 1995 inflation-adjusted quintiles than in the 1995 survey, and a smaller proportion in the higher quintiles.

The StatSA report reveals that Africans, the largest population group, live in the poorest households, and were, on average, earning and spending less in 2000 than in 1995. Indians' income and expenditure, on average, also decreased between 1995 and 2000. On the other hand, coloured and white households were better off in 2000 than in 1995.

In terms of provincial distribution of income and expenditure, the Eastern Cape and Free State, which are mainly rural provinces, had the lowest annual average household income in 1995, while Gauteng, an overwhelmingly urban province, had the highest. In 2000, the situation changed. Limpopo, also a principally rural province, had the lowest average annual household income, while Western Cape Province, the next industrial power after Gauteng, had the highest. According to StatSA some people in poorer households, particularly Africans, have moved from the more rural provinces in 1995 in search of work. These migrants are likely to live in informal dwellings or urban slums, explaining the steep downward turn in Gauteng, for example.

Looking at the distribution by other sub-groups, urban households had higher incomes in both 1995 and 2000 than non-urban dwellers. Those people living in urban slums had lower income in both years than those living in formal houses. Income and expenditure during these years also varied according to household size. As expected, households whose heads were in managerial, professional, technical or administrative positions had higher average annual income and also spent more than those whose heads were in other positions. In general, male households earned and spent more in both years than female-headed households. Also (not shown in the table), African female-headed households remain the poorest group in South Africa, while white male-headed households are the most affluent.

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<sup>10</sup> National Department of Agriculture, Abstract of Agricultural Statistics, Pretoria, NDA 2002.

<sup>11</sup> Statistics South Africa, 2002. Earning and spending in South Africa: Selected findings and comparisons from the income and expenditure surveys of October 1995 and October 2000. Pretoria: Stats SA.

**Table 1 Annual average cost of a food basket containing 23 items**

CITY	YEAR (ZAR)								
	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Cape Town</b>	136.06	139.13	143.48	149.47	159.15	164.4	175.29	226.5	215.88
<b>P.E.</b>	118.19	133.62	143.53	152.34	158.39	161.53	168.82	213.03	210.76
<b>East London</b>	123.02	135.1	147.68	149.33	161.59	162.74	169.63	221.94	209.68
<b>Kimberley</b>	123.11	134.42	142.91	148.69	158.98	162.96	175.62	220.01	216.16
<b>Durban</b>	124.98	135.82	144.57	151.45	152.22	158.92	175.03	216.5	219.03
<b>Pretoria</b>	132.42	137.16	145.88	153.46	162.27	168.09	180.21	218.99	227.24
<b>Johannesburg</b>	128.04	135.26	149.45	153.67	161.25	166.32	180.16	226.84	224.01
<b>Bloemfontein</b>	129.58	134.83	141.29	142.99	157.65	162.81	170.74	215.4	209.43
<b>King Williams Town</b>	125.07	134.87	145.35	148.98	158.97	164.32	176.67	212.37	219.39
<b>Uitenhage</b>	118.05	132.1	140.93	146.64	155.67	160.61	175.37	220.36	213.97
<b>George</b>	138.21	138.53	145.26	151.07	159.41	161.73	177.49	220.04	212.44

Source: Food Price Monitoring Committee

Notes: Prices recorded every September

Table 2 shows Gini-coefficients<sup>12</sup> for the country as a whole and for various sub-groups of households in 1995 and 2000. For South Africa as a whole, income inequality was relatively more pronounced in 2000 than in 1995. Indian and African households, though they have been shown to be getting poorer, have experienced a slightly higher degree of income inequality within population group. Whites and Coloureds, on the other hand, who have been shown to be getting more affluent during 1995-2000, have experienced a slightly lower degree of income equality. Within both male-headed and female-headed households, income equality became slightly worse during 1995-2000. However, male-headed households continue to experience more unequal income distribution than their female-headed counterparts. Urban dwellers also continue to record higher levels of income inequality than their rural counterparts. Among urban dwellers, income inequality worsened during the 1995-2000 period, while it improved slightly among rural dwellers.

<sup>12</sup> This is a measure of income inequality among individuals or groups. The closer to 1 the Gini-coefficient, the more unequal the distribution of income among individuals or groups under comparison.

**Table 2 Gini coefficients of different types of South African households**

Type of household	Gini coefficient 1995	Gini coefficient 2000
All households	0.56	0.57
<b>Population group of head of household:</b>		
African	0.50	0.49
Coloured	0.46	0.46
Indian	0.43	0.41
White	0.44	0.45
<b>Sex of head of households:</b>		
Male	0.55	0.57
Female	0.49	0.50
<b>Type of area</b>		
Urban	0.50	0.54
Non-rural	0.60	0.55

Source: Statistics South Africa (2002)

Table 2 shows the main household sources of income by quintile.

**Table 3 Main sources of income per household, by quintile**

Main income	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5
Salary/Wage	36.45	40.40	55.41	74.22	79.52
Self-employed	4.01	3.76	4.1	3.77	4.66
Capital income	1.11	1.22	1.91	3.77	4.15
Social grants	19.05	28.48	17.97	4.48	1.12
Remittances	21.66	15.33	9.34	3.55	1.07
Non-regular income	12.98	7.24	7.54	7.27	5.71
Agriculture	4.74	3.57	3.73	2.93	3.77

Source: HSRC (2004), citing Woolard and Lee (2003 and Statistics South Africa

### 3) ANTHROPOMETRICAL DATA: FOOD UTILISATION

The government's focus is shifting from prioritising self-sufficiency to making household food security a developmental goal. However, there exist many challenges in realising this new goal. Anthropometrical data clearly portray this rather difficult challenge. Approximately 1.5 million children suffer from malnutrition; 14 million people are vulnerable to food insecurity and 43 percent of South Africans suffer from food poverty<sup>1314</sup> Child malnutrition is a major contributor to child morbidity and mortality, with ten percent of children aged between one and nine years of

<sup>13</sup> Food poverty is when monthly food spending is less than the cost of nutritionally adequate very low-cost diet.

<sup>14</sup> Human Sciences Research Council, 2004. Food security in South Africa: Key policy issues for the medium term. Position Paper. Pretoria: HSRC. Citing National Treasury 2003 and Charlton and Rose 2002)

age underweight, 1.5 percent classified as severely underweight, 21.6 percent affected by stunting, 3.7 percent suffering from wasting (low weight for height).<sup>15</sup>).

**Table 4 Malnutrition concentration indices by province**

	<b>Rate (%)</b>	<b>Stunting</b>	<b>Underweight</b>	<b>Wasting</b>
Eastern Cape		31.5	9.4	3.1
Free State		25.2	19.9	11.5
Gauteng		18.2	15.4	10.8
Kwazulu-Natal		24.6	15.9	8.7
Mpumalanga		19.5	15.2	6.7
North West		23.4	27.5	13.1
Northern Province		27.2	25.8	14.7
Western Cape		16.5	10.9	4.8

Malnutrition in South Africa has been worsening over time. The results of a “subjective” assessment of food insecurity in South Africa between 1994 and 1999 show that at national level, between 25 percent and 33 percent of households were unable to purchase food to meet dietary requirements of children at any given time. This phenomenon was felt more acutely in the Eastern Cape and Mpumalanga, which are both rural provinces. A greater percentage of rural households were food insecure relative to urban households.<sup>16</sup>

According to the National Department of Agriculture a recent report finds that between 35 percent and 39 percent of South Africa’s population is vulnerable to food insecurity, but concludes that ‘compared to international ranges, protein energy malnutrition, as measured by stunting levels, is a moderate public health problem in South Africa’.<sup>17</sup> As for child malnutrition, approximately 20-25 percent of pre-school children and 20 percent of primary school children are chronically malnourished<sup>18</sup>. More recently, 166 deaths in the Eastern Cape were reported in the media after NGO involved in addressing malnutrition issues where confronted with a high number of malnutrition deaths.<sup>19</sup> According to StatSA the general pattern in causes of death from 1997 to 2001 is a major increase in HIV/AIDS deaths relative to unspecified unnatural causes (i.e. suicide,

<sup>15</sup> Human Sciences Research Council, 2004. Food security in South Africa: Key policy issues for the medium term. Position Paper. Pretoria: HSRC. Citing Labadarios 2000

<sup>16</sup> Human Sciences Research Council, 2004, Food security in South Africa: Key policy issues for the medium term. Position Paper. Pretoria, HSRC. Citing StatSA (1994/1999).

<sup>17</sup> Department: Agriculture Republic of South Africa, *The Integrated Food Security Strategy for South Africa*, Pretoria 17 July 2002. Page 23

<sup>18</sup> Nutrition- South Africa's nutritional status at <http://www.hst.org.za/update/47/policy7.htm>.

<sup>19</sup> Thabo Mkhize, *166 SA children die from starvation*, Sunday Times, 15 September 2002

drowning, motor accidents).<sup>20</sup> StatSA also finds that “Malnutrition was a significant cause of death in the age group 0-14, being the seventh leading cause among males and females, accounting for 6.5 and 6.1 percent of deaths respectively.”<sup>21</sup>

More detailed information based on the mortality profile in 2000 suggests that of the 303 081 male and 253 504 female deaths recorded for that year, protein energy malnutrition ranked lowest out of a list of 20 specific causes of death.<sup>22</sup> However, when the figures are recalculated to take account of the years of life lost, nutritional deficiencies rank 11<sup>th</sup> as a cause (at 1.6 percent) relative to HIV/AIDS which ranks highest (at 39 percent).

An estimated 5 511 people died from protein energy malnutrition in 2000, with 83 percent of deaths occurring in the 0-4 age group.

#### 4) OTHER INDICATORS

The percentages of people with access to safe water have increased between 1990 and 2000 (Table 4). More rural people and more people in general have had access to sanitation services. Slightly fewer urban people, however, had access to sanitation services. This could possibly be attributed to increasing numbers of people living in poorly serviced urban slums (Table 5).

**Table 5 Access to safe water**

<i>(a) Percentage of population with access to safe water</i>					
1990			2000		
Total	Urban	Rural	Total	Urban	Rural
49	81	37	53	81	39

Source: African Development Indicators. World African database\

**Table 6 Access to sanitation facilities**

Percentage of population with access to sanitation facilities					
1990			2000		
Total	Urban	Rural	Total	Urban	Rural
55	80	46	53	79	39

Source African Development Indicators. World African database

Table 6 shows some more indicators by regions.

<sup>20</sup> Statistics South Africa P0309.2, *Causes of death in South Africa 1997-2001*, Advance release of recorded causes of death, November 2002

<sup>21</sup> Ibid, page 9.

<sup>22</sup> Burden of Disease Research Unit, Medical Research Council, *Initial Burden of Disease Estimates for South Africa*, 2000, March 2003

**Table 7 Key indicators for South African provinces**

Key indicators	Province									
	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Mpumalanga	Northern Cape	Northern Province	North West	Western Cape	Total
Rural as % population	63.4	31.4	3.0	56.9	60.9	29.9	89.0	65.1	11.1	46.3
% population < 5 years old	12.0	9.5	8.9	11.5	11.6	10.6	13.1	11.2	9.6	10.9
Poverty rates	78.0	66.0	19.0	53.0	52.0	57.0	77.0	57.0	23.0	53.0
% population over 20 years with no schooling	20.9	16.1	9.5	22.9	29.4	21.7	36.9	22.7	6.7	19.3
% economically active population unemployed	48.5	30.0	28.2	39.1	32.9	28.5	46.0	37.9	17.9	33.9
% using electricity for cooking	23.4	42.2	73.5	46.1	35.9	52.7	19.6	34.0	77.0	47.4
% with water tap in house or yard	35.4	70.9	85.6	48.7	63.4	83.2	35.9	51.6	90.4	61.4
% with flush or chemical toilet	30.8	45.3	83.3	42.0	38.0	59.7	13.2	32.1	86.0	50.5

Sources: Int J Equity Health. 2003; 2 (1): 7 Copyright © 2003, Zere and McIntyre; licensee BioMed Central Ltd. This is an Open Access article: verbatim copying and redistribution of this article are permitted in all media for any purpose, provided this notice is preserved along with the article's original URL. (33,34)

### III. Implementation of the Right to Food

#### 1) CONSTITUTIONAL FRAMEWORK

The South African Constitution has been heralded as one of the most progressive of our times. However, it is important to note that robust debate between protagonists of civil and political rights and of economic and social rights took place in the early 1990s, during the negotiations and the writing of the new Constitution. The conclusion of these debates was that today South Africa enjoys a Constitution,<sup>23</sup> which enjoins the State to progressively realize, the economic and social rights as well as civil and political rights contained in the Bill of Rights. This Constitutional foundation serves as the basis of all other laws and policies in the country. Therefore generally sound constitutional parameters exist and in the event that policies and or laws do not ascribe to the constitutional imperatives they may be challenged in a court of law.

The South African Constitution is premised on the doctrine of the separation of powers between the legislature, the executive and the judiciary. Their respective powers are defined in the Constitution; the judicial power requires courts to interpret and uphold the Constitution, which potentially stands to give rise to tensions between the courts and the other two arms of government.

In South Africa all policies, programmes and laws are set within the framework of the Constitution, which articulates the values of human dignity, the achievement of equality and the advancement of human rights and freedoms. Section 9 prohibits discrimination on a number of grounds. The right to equality is one of the central rights of the Constitution. The equality right is not seen only as a substantive right but also as a right to be considered when any right is to be limited. The Constitution further obliges the Courts to consider equality in the interpretation of the rights in the Bill of Rights.

To bolster the equality clause in the Constitution and bring equality closer to implementation the State has enacted legislation namely the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. This Act is premised on giving effect to section 9 of the Constitution. The Act seeks to do more than prohibit certain conduct that is discriminatory and extends itself by actively seeking to promote equality by imposing duties on the State and on all persons who contract directly or indirectly the State or who exercise public power.

The basis of the rights based approach is derived from the South African Constitution itself. Section 8(2) of the Constitution ensures 'that the Bill of Rights applies to a natural or a juristic person.'<sup>24</sup> The Bill of Rights includes the following economic and social rights; the right to a basic education, the right to access social security, the right to health care services, the right to water, the right to housing, the right to a healthy environment and the right to adequate food. However, unlike the other economic and social rights the right to food is not the responsibility of one single department but rather is a cross cutting issue.

The Constitution specifically makes three explicit references to the right to food. Section 27 (1) requires the State to take reasonable legislative and other measures, within its available resources, to progressively realize everyone's right to sufficient food and water. Section 28(1) (c) provides the right for every child to basic nutrition, shelter, basic health care services and social services. Section 35 (2)(e) makes provision for every detained person and sentenced prisoner to have adequate nutrition.

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<sup>23</sup> South African Constitution, Act No. 108 of 1996.

<sup>24</sup> While this is remains a very contentious point in international politics, some scholars in South Africa have interpreted this to mean that transnational and domestic corporations could be held liable for violation of the economic and social rights entrenched in the Bill of Rights.

The obligations of the State are clearly spelt out in the South African Constitution. Section 8 (1) expressly states, “the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.” Furthermore, the Constitution in Section 7 (2) imposes four different types of obligations on the State with regard to the provision of the Bill of Rights. These are the obligations to respect, protect, promote and fulfil. The duty to respect is negative in nature. It requires the State to refrain from interfering with the enjoyment of economic, social and cultural rights enshrined in the Bill of Rights.

The obligation to protect the right to food requires the State to actively prevent violations by third parties. The failure to ensure that third parties conform with the standards set out in the Constitution by adopting relevant legislation and providing the effective remedies that seek to protect beneficiaries of the protected right would amount to a breach of the obligation to protect. This may include, amongst other things, protection against fraud, unethical behaviour in trade and contractual relations, and the marketing and dumping of hazardous or dangerous products.<sup>25</sup> The State is obliged to ensure protection against localised violations of the right to food such as denying labour tenants and farm dwellers access to grazing and crop land, inflating prices at farm stalls, denying access to water for crop production, providing sub-standard food as in-kind payments, and using food and water for the purposes of strategic evictions.<sup>26</sup> The role of protecting the right to food as a first order of action is especially important considering that violations can have multiple consequences for the State as was the case after farm evictions which demanded the provision of emergency nutrition, shelter and health care.<sup>27</sup>

The second positive obligation is to promote, which essentially enjoins the State to create an enabling environment in which the beneficiaries are able to exercise their rights. This requires the State to educate people about their rights and how to seek redress in the event that there has been a violation.

Finally, the obligation to fulfil requires of the State that appropriate legislative, administrative, budgetary, judicial and other measures towards the realization of these rights be in place. However, attention should be drawn to an over dependence on the law as the option of challenge can be lengthy and expensive and often not accessible to those most in need.

With respect to the State’s obligation to promote and fulfil the right to food, while section 28(1)(c) on children’s rights to adequate nutrition was initially seen as a provision that would serve as a reliable safety net for children experiencing deprivation, neglect, starvation or abuse, the *Grootboom* judgment<sup>28</sup> has clarified that ‘section 28(1)(c) did not create rights that are separate and independent rights for children and their parents’. Although the ruling may leave a small gap for further contestation on the matter, it has been concluded that section 28(1)(c) does not create a direct and enforceable claim upon the State by children and that:

“as regards the provision of ‘deliverables’, such as land, housing, food, and social assistance, the judgement implies that the state need only provide these on a programmatic and co-ordinated basis, subject to available resources”.<sup>29</sup>

These detailed constitutional provisions provide an enabling environment for the progressive realization of the right to food. In addition, South Africa has ratified a number of international

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<sup>25</sup> Mr. Asbjørn Eide, *The right to adequate food and to be free from hunger*, updated study on the right to food, submitted in accordance with Sub-Commission decision 1998/106, Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1999/12, 28 June 1999.

<sup>26</sup> South African Human Rights Commission, *Final Report on the Inquiry into Human Rights Violations in Farming Communities*, August 2003.

<sup>27</sup> *Ibid*, 180.

<sup>28</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000(11) BCLR 1169 (CC)

<sup>29</sup> *Ibid*.

human rights instruments, which are thus directly applicable. Amongst these are the Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child. South Africa has signed but not yet ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. South Africa also supports a number of international declarations, including the Universal Declaration of Human Rights, the Rome Declaration on World Food Security and the Declaration of the World Food Summit: *five years later*.

At a more operational level, the South African government launched the National Action Plan [NAP] for the Promotion and Protection of Human Rights on 10 December 1998. The NAP was presented to the United Nations High Commissioner for Human Rights, Ms Mary Robinson, by former President Nelson Mandela. The NAP was drawn up within the framework of the South African government's commitment to fulfilling the cornerstones of the Constitution, namely human dignity, equality, social transformation and the enjoyment of economic and social rights as well as civil and political rights. In relation to the right to food the NAP sets out challenges and highlights what already exists. An interim report for the period 1999-2001 of the NAP has been developed.

## 2) INSTITUTIONS

The right to food can only be realized by the participation of different stakeholders. South Africa has the institutional capacity to initiate and support efforts aimed at advancing access to sufficient food by everyone.

### *a) Arms of State*

As mentioned above, the right to food is binding on all organs of the State. The government consists of three arms, namely the executive [Cabinet], the legislature [Parliament] and the judiciary [Courts]. These bodies have a fundamental role to play in the realization of the right to food.

South Africa has three tiers of government; national, provincial and local. It has nine provinces<sup>30</sup>. In accordance with the Constitution, each of the nine provinces has its own legislature consisting of between 30 and 80 members. The number of members is determined by a formula set out in national legislation. The members are elected in terms of proportional representation.

There is a growing trend towards shifting resources to the provinces as these deliver the majority of social services. At provincial level a number of policies and programmes have been put in place to address the right to food, including the Community Based Nutrition Programmes and the Integrated Household Food Security Policy.

### *i) Cabinet*

The Cabinet consists of the President, the Deputy President and Ministers. The President and the Deputy President's offices are merged into one office, the Presidency. The President is the Head of State and leads the Cabinet. He or she is elected by the National Assembly from among its members and leads the country in the interest of national unity, in accordance with the Constitution and the law. The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them. The President may select any number of Ministers from among the members of the National Assembly, and may select no more than two Ministers from outside the Assembly. The President appoints a member of the Cabinet to be the leader of

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<sup>30</sup> Eastern Cape, Free State, Gauteng, Kwa Zulu Natal, Limpopo, Mpumalanga, North Cape, North West and the Western Cape.

government business in the National Assembly<sup>31</sup>. There are currently 27 Ministers and 27 Departments.

In relation to the right to food the Cabinet has exercised its power to develop national policies and make policy statements. For example, it introduced the National Food Emergency Scheme in response to the rapid food price inflation that peaked in the first half of 2002. This and other food related policy initiatives are arguably manifestations [on the part of the executive] of a political will<sup>32</sup> to address the looming food crisis primarily in relation to the drought.

#### ii) Parliament

Parliament is the legislative authority of South Africa and has the power to make laws for the country in accordance with the Constitution. It consists of the National Assembly and the National Council of Provinces [NCOP]. Parliamentary sittings are open to the public.<sup>33</sup> In addition to its legislative powers, Parliament exercises an oversight role over the executive and government departments. It has held government accountable for its action or inaction. For example, the National Food Emergency Scheme was also developed in response to Parliament's pressure for something to be done about widespread hunger and the impact of price inflation on the economic accessibility of food. In 2003, the Parliamentary Portfolio Committee on Agriculture held public hearings on food security<sup>34</sup>, and called for, amongst other things, the speedy passage of the National Food Security Bill. The Parliament nominates the Commissioners of the South African Human Rights Commission for a seven year term and then submits names to the President for appointment. In addition to the annual report made to Parliament by the Commission, a separate report is submitted on the progressive realization of the economic and social rights entrenched in the Bill of Rights. Parliament will often invite the Commission to make submissions on various Bills before it.

#### iii) Courts

The Constitutional Court is the highest Court in the land. The Court was established in 1994 in terms of South Africa's first democratic constitution - the interim Constitution of 1993. In terms of the 1996 Constitution the Court established in 1994 continues to hold office. The Court began its first sessions in February 1995. It consists of eleven judges - nine men and two women. They may serve for a non-renewable term of 12 years, but must retire at the age of 70. They are all independent. Their duty is to uphold the law and the Constitution, which they must apply impartially and without fear, favour or prejudice<sup>35</sup>. When interpreting the Constitution, the Court is required to consider international human rights law and may consider the law of other democratic countries.

The ordinary courts (notably the Small Claims Courts, the Magistrates Courts and the High Courts) deal with day-to-day disputes between citizens, and between citizens and the State. There

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<sup>31</sup> Source: [South Africa Yearbook 2002/03](#).

Editor: D Burger. Government Communication and Information System, 2002

<sup>32</sup> It is noteworthy that the notion of political commitment is critical in addressing food security, particularly because of the constant competing demands for the allocation of resources; difficulty in perceiving the immediate and tangible benefits of investing in better food security information systems; a lack of political influence on the part of the beneficiaries of better food security information; and the sensitivity of some information about national and sub-national food security situations. See, National Department of Agriculture, Strategic Plan for the Department of Agriculture 2003 - 2006, March 2003, p16.

<sup>33</sup> <http://www.parliament.gov.za>

<sup>34</sup> Report is available on Parliamentary Information and Monitoring Services, HANSARD.

<sup>35</sup> Website of the Constitutional Court of South Africa hosted by Wits Law School.

are at present 10 divisions of the High Court.<sup>36</sup> Decisions of the various divisions of the High Court of South Africa are an important source of law. Prior to the adoption of the Interim Constitution in 1994, the position was that the function of a judge was not to make new laws, but to interpret, explain and apply existing common law rules and legislation. However, in many cases a judicial decision established a new rule of law by interpretation and was thus termed a judge-made law. The new Constitution impacts on the functioning of judges in the sense that they must now interpret, apply and implement, as well as correct law, in light of the Constitution. A special court, the Land Claims Court, with powers equivalent to those of the High Court, was established under the Restitution of Land Rights Act, 1994 (Act 22 of 1994), which provided for the restitution of land rights to persons or communities dispossessed under or for the purposes of furthering the objects of racially-based discriminatory legislation after 19 June 1913. The Labour Court only adjudicates matters relating to labour disputes and appeals are made to the Labour Appeal Court<sup>37</sup>.

With respect to the judiciary there has been a concerted effort to transform the judiciary mainly by substituting the supremacy of Parliament with the supremacy of the Constitution. This shift has repositioned and redefined the independence of the judiciary<sup>38</sup>. The judiciary has played a cardinal role in the development of constitutional jurisprudence on human rights. The Constitutional Court, have greatly contributed to building the jurisprudence on the human rights, particularly socio-economic rights. For example, in 2000, the Constitutional Courts passed a landmark judgment in the case of *Government of the Republic of South Africa v Grootboom and Others*<sup>39</sup>, which involved the right to access adequate housing. Confirming its mandate to adjudicate on all human rights enshrined in the Bill of Rights, the Court went into details about the meaning and extent of state obligations in relation to social and economic rights. The case is described in the final Section of this Chapter.

Another important judgment in relation to socio-economic rights and in particular the right to health care was brought before the Constitution Court by the Treatment Action Campaign [TAC]. The appeal was directed at reversing orders made in a high court against the government because of perceived shortcomings in its response to an aspect of the HIV/AIDS challenge. The Court found that government had not reasonably addressed the need to reduce the risk of HIV- positive mothers transmitting the disease to their babies at birth. More specifically the finding was that government had acted unreasonably in (a) refusing to make an antiretroviral drug called nevirapine available in the public health sector where the attending doctor considered it medically indicated and (b) not setting out a timeframe for a national programme to prevent mother-to-child transmission of HIV.<sup>40</sup>

#### *b) Main Government Departments*

Although various government departments are responsible for the implementation of the right to food, the Department of Agriculture has the primary responsibility for providing access to food security for everyone. Other key departments include:

- The Department of Social Development, which is responsible for the delivery of social grants, poverty alleviation programmes, food emergency schemes etc.

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<sup>36</sup> Cape of Good Hope with its seat in Cape Town; Eastern Cape (Grahamstown); Northern Cape (Kimberley); Orange Free State (Bloemfontein); Natal (Pietermaritzburg); Transvaal (Pretoria); Transkei (Umtata); Ciskei (Bisho); Venda (Sibasa) and Bophuthatswana (Mmabatho).

<sup>37</sup> [Http://www.gov.za](http://www.gov.za)

<sup>38</sup> Towards a ten year review pp. 45

<sup>39</sup> 2001 1 SA 46 (CC), 2000 (11) BCLR 1169 (CC)

<sup>40</sup> 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC)

- The Department of Education, which as of 1 April 2004 is responsible for the school-based nutrition, programmes in schools, including school feeding schemes, awareness programmes etc.
- The Department of Health, which takes charge of nutrition, and health based programmes in communities, including creating awareness on nutritious foods and food safety etc. and runs school feeding until 1 April 2004.

Other departments that facilitate the implementation of the right to food include:

- The Department of Land Affairs, which coordinates access to land reform, distribution and restitution programmes for, *inter alia*, food production as well as commercial and subsistence farming.
- The Department of Water Affairs, which is responsible for ensuring physical and economic access to clean and adequate water for everyone.
- The Department of Labour, which is responsible for employment initiatives, including job creation, public works programmes, minimum wage regulation etc.
- The Department of Home Affairs, which is responsible for processing legal documents such as birth certificates, identity documents that are necessary for, *inter alia*, accessing social grants.
- The Department of Trade and Industry, which is responsible for regulating issues of trade in the food, markets, including food prices and standards.
- The Department of Finance, which allocates budgets to the departments that provide, promote and facilitate the implementation of the right to food.

### *c) Independent Institutions*

#### *i) The South African Human Rights Commission (SAHRC)*

The South African Human Rights Commission (SAHRC) is a constitutionally entrenched body mandated to promote respect for, and to monitor and assess the observance of, human rights. Its functions are spelt out in section 184 of Chapter 9 of the Constitution and further elaborated in the South African Human Rights Commission Act.<sup>41</sup> This Act makes provision for the Commission to litigate on behalf of a group or person and to advise the State on rights related legislation. The Commission also has the power of search and seizure.

The Commission has a broad mandate that covers the full range of human rights issues and recognizes the universality, interdependence, interrelatedness, and indivisibility of human rights<sup>42</sup>. It is an independent and impartial body that reports directly to Parliament, and is established in accordance with the Paris Principles<sup>43</sup>.

The functions of SAHRC are to:

- Develop an awareness of human rights among the people of South Africa;
- Make recommendations to organs of state in order to enhance the implementation of human rights;
- Undertake studies and report to Parliament on matters relating to human rights; and
- Investigate complaints of violations of human rights and to seek appropriate redress;
- Monitor the progressive realization of these economic and social rights by organs of State.

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<sup>41</sup> South African Human Rights Commission Act No 54 of 1994.

<sup>42</sup> Recognition of the World Conference in 1993 that all human rights were indivisible, universal, interdependent and interrelated.

<sup>43</sup> Commission on Human Rights resolution 1992/54 of 3 March 1992, annex : General Assembly resolution 48/134 of 20 December 1993, annex.

Stemming from its monitoring role, the SAHRC recommended, amongst other things, the development of a legislative framework on the right to food. Consequently, the Food Security Draft Bill has been formulated. This is described in the section on legislation in preparation.

### *ii) Food Price Monitoring Committee*

Established after huge hikes in food prices that negatively impacted on the majority of South Africans to purchase food, the Food Price Monitoring Committee was tasked to

- Investigate whether food prices are a result of excessive market powers.
- Investigate and map the different products' supply chains and establish the length of the supply chain against value added. The analysis of each supply chain should include the following aspects:
  - Number of producers, processors and traders and the level of concentration;
    - Extent of vertical/horizontal integration and competition/concentration in the supply chain.
    - Do a gross margin analysis at each node of the supply chain
    - Establish the magnitude of differences between urban and rural pricing structures and the causal factors thereof;
    - Identify major cost drivers in each food product's supply chain;
    - Make recommendations on an appropriate environment for optional food pricing;
    - Report on the pricing structures of specified food products' supply chains.

The Committee has conducted and commissioned work according to the above terms of reference, and has presented preliminary reports to the Minister of Agriculture and Land Affairs. It has also released several press statements. To date, the Committee has had no measurable downward impact on food prices since its inception in January 2003.

### *iii) Commission on Restitution of Land Rights*

The Commission on Restitution of Land Rights is a statutory body<sup>44</sup> established to coordinate the settlement of land claims deriving from forced dispossession of land suffered by black people under apartheid. Most of the urban claims have been settled with financial compensation, but progress has been slower in dealing with claims for restitution of farmlands.

#### *d) Non-State Actors*

##### *i) NGOs*

South Africa enjoys an overwhelming number of civil society participation or involvement in the improvement of people's lives. In 1998, various civil society organizations led by its umbrella body, the South African Non-Governmental Organisation [SANGOCO] in conjunction with the constitutionally entrenched institutions, namely SAHRC and the Commission on Gender Commission held poverty hearings. These hearings provided a forum for poor people to voice their experiences in relation to accessing economic and social rights. Lack of access to sufficient food and nutrition was often raised as one of the biggest challenges facing the poor<sup>45</sup>.

Furthermore, different civil society advocacy initiatives, directly or indirectly related to the right to food, have also emerged. Amongst the key advocacy initiatives are: the Basic Income Grant [BIG] Alliance and the fledging Right to Food Campaign. In 1998, the Congress of South African Trade Unions [COSATU] started to advocate for the introduction of the BIG. The BIG proposal is a progressive grant, aimed at giving every person access to a monthly cash grant. In July 2001 the BIG Alliance was launched (consisting of about 35 member organisations) and strengthened the

<sup>44</sup> Restitution of Land Rights Act, 1994 (Act 22 of 1994)

<sup>45</sup> Poverty Hearings Report 1997

call for the introduction of an across the board basic income grant<sup>46</sup>. Notched at R140 per month, this grant should be paid to everyone from cradle to grave. The BIG alliance argues, *inter alia*, that this grant is a solution to fighting poverty, hunger and other socio-economic evils, and to the development of the society<sup>47</sup>.

The idea of a Right to Food Campaign emerged from a Johannesburg Food Seminar organized by FIAN International and other South African NGOs in March 2003. The Campaign seeks to contribute to the effective implementation of the right to food by coordinating activities of different stakeholders working in the food related sectors. It identified the development of the Food Security Bill as the primary focus of its lobbying and advocacy work. While the Campaign's Interim Steering Committee has developed a flier to be used to gain support for the Campaign, little progress has been made to keep to this initiative's goals<sup>48</sup>.

In relation to land right issues, South Africa has witnessed a growing number of NGOs. Many South Africans expected that liberation would bring the return of land of which they had been dispossessed under colonialism and apartheid, but the terms under which the transition was negotiated constrained the parameters of how this could happen. The African National Congress [ANC] did not advocate nationalisation of land at the Convention of a Democratic South Africa [CODESA] constitutional negotiations and later adopted a willing buyer-willing-seller approach to land reform<sup>49</sup>. Section 25 of the Final Constitution of 1996, guarantees the protection of existing property rights but also places responsibilities on the State to implement land reforms. While the land redistribution programme is discretionary, restitution is a rights-based programme with eligible claimants claiming the right to compensation and or restoration of land that was dispossessed. Thousands of South Africans have benefited from the restitution but many more await action around their claims.

NGOs have also been very powerful in the human rights arena. They have challenged the constitutionality of a number of policies and programmes, and have participated in the process of developing legislation by way of making submissions to Parliament as well as actively engaging in educating people about their human rights. In relation to the right to food, there have not been too many NGOs placing the issue from a rights perspective at the top of their agenda. Most organisations have been tackling food security from a charity/welfare approach. But, there is an increasing paradigm shift in the philosophy of NGOs with more focus on a rights approach that looks at including into their programmatic plans elements on advocacy, monitoring (legislation), and forming strategic partnerships and/or coalitions that are issued based, non partisan and grassroots based. However, there is still a desperate need to get more NGOs involved in awareness raising of the right to food with information of possible recourse in the event that there is a violation.

It is important to forge partnerships with and acknowledge the role of NGOs in all aspects of ensuring that the right to adequate food is enjoyed. A challenge remains to civil society namely that those who are food insecure should be empowered to participate in decision making and on issues related to their food insecurity<sup>50</sup>.

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<sup>46</sup> Basic Income Grant Fact sheet, Nov. 2001 Gender Advocacy Programme

<sup>47</sup> For more on the BIG Campaign contact the BIG Coalition, see [www.blacksash.org.za/](http://www.blacksash.org.za/)

<sup>48</sup> For more information on the Right to Food Campaign, see [www.communitylawcentre.org.za/ser/advocacy](http://www.communitylawcentre.org.za/ser/advocacy)

<sup>49</sup> Evaluating land and agrarian reform in South Africa, An occasional paper series, 2 Rural restitution. Ruth Hall. P.1 School of Government, University of the Western Cape, September 2003.

<sup>50</sup> Fisherfolk public hearing an NGO initiative that looked into fishing licenses for fisherfolk . A lot of evidence was presented that related to the right to adequate food. Kalk Bay and Hermanus August 2004.

## *ii) The Media*

Amartya Sen, Nobel Laureate in Economics, has demonstrated the links between freedom of the media and famines, and concluded that famines are highly unlikely to take place in a free and democratic society.<sup>51</sup> This is essentially because public opinion will ensure that action is taken to respond to crises. Indeed, the South African media reported extensively on the rise in food prices, which prompted the Government to institute emergency food packages. Unfortunately, widespread and systemic under-nutrition in many free and democratic societies, including South Africa, has so far failed to rouse sufficient public outrage or media coverage to cause adequate redress.

## *iii) Academia & Research*

A number of universities and research institutions throughout the country conduct research on food insecurity and vulnerability, such as the University of Natal, which offers post-graduate courses in food security. Other research institutions include the Community Law Centre of the University of Western Cape and the Centre for Human Rights of the University of Pretoria which both have a special focus on the right to food in their academic research. The Agriculture Research Council [ARC] is an institution that seeks “to promote the agricultural and related sectors through research, technology development and transfer in order to:

- Enhance the natural resource base and environment
- Sustain a competitive agricultural economy
- Provide new economic opportunities
- Ensure high quality and safe food
- Support an informed society

and encourage the national growth and development of South Africa”<sup>52</sup>

Some of ARC’s initiatives include providing agricultural profiles for the Thirteen nodes identified by President Mbeki in 2001 as part of the Government’s integrated sustainable rural development plan [ISRDP]. The profiles form the basis for development plans for each of the nodes by providing information on natural resources (soils and terrain, climate, land capability, crop suitability, land cover) as well as agricultural production opportunities and constraints.

More specifically a food-based model has been developed to address micro-nutrient deficiencies in SA, contributing to long-term strategies to solve malnutrition, specifically Vitamin A deficiency. Baseline studies on indigenous or African leafy vegetables contributed new information on food composition and food consumption by communities. Methods for more efficient farming management will protect the food resources of rural farmers. To promote economically viable vegetable production systems, vegetable production units/nurseries have been established in communities. Subtropical fruit production systems have been established in the Eastern Cape. Improved farming systems in community gardens will provide safe and nutritious food. Water harvesting technologies have resulted in crop residues being available for animal feed during winter. The increase in soil water storage due to application of mulches in run-off area of in-field water harvesting practice will lead to better yields and improved food security.<sup>53</sup>

## *iv) The private sector*

There have been some interventions from the private sector to alleviate hunger in some provinces; however this has not been a sustained initiative. More specifically in regards to ensuring quality

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<sup>51</sup> Democracy and Famines 1997

<sup>52</sup> [www.arc.agric.za/arc.swf](http://www.arc.agric.za/arc.swf)

<sup>53</sup> [www.arc.agric.za/arc.swf](http://www.arc.agric.za/arc.swf)

standards of basic food particularly around food fortification, the direct costs and the costs of enforcement have not be borne by private sector. The government has had to allocate resources to monitor and enforce the compliance with food standards. It would further appear that there has been insignificant interest from the industry towards codes of conduct.

v) *Participation of Rights Holders*

The politics of power are an important factor in accessing food. A rights based approach requires participation and the establishment of strategic partnerships that often are critical in terms of reaching the intended beneficiaries. It is important however to view partnerships not solely as conduits to or access points into communities but rather as integral to effective development and more particularly to the progressive realization of the right to food.

Since 1994, the South African government has provided many new opportunities for ordinary people to get involved in governance ranging from ward committees, the IDP process, the chapter 9 institutions<sup>54</sup>, the National Economic Development and Labour Council [NEDLAC], and management of pension funds and workplace forums. Yet, actual participation in these structures and/or the capacity to take advantage of their existence has been limited to mainly special interest groups, and/or hindered by considerations of short-term self-interest<sup>55</sup>.

### 3) MACRO-ECONOMIC POLICIES

The Government of South Africa pursues a market-oriented policy for economic growth, coupled with fiscal prudence and a balanced budget. Economic growth has been steady over the last ten years, but the fruits have not been equally distributed.

a) *Growth, Employment and Redistribution [GEAR].*

The economic climate in South Africa was until 1996 driven in the main by the Reconstruction and Development Programme [RDP]. This policy had a clear redistributive thrust; for instance in relation to land the RDP adopted the World Bank's target of redistributing 30% of agricultural land within five years.

In 1996, the government developed the Growth, Employment and Redistribution [herein GEAR] policy, which replaced the RDP. Government saw this policy as a more comprehensive macro-economic policy. GEAR was predicated on the need for economic growth and this provided a strategic framework within which decisions on monetary, fiscal and labour market policy have been made. GEAR involves, inter alia, liberalization of the economy, privatisation of government assets, export-led growth and a reduction of State spending.

While GEAR has been recognized as the key driver of the government's trade strategy and as a sound economic framework by the private sector both nationally and internationally there has been criticism around the objectives of GEAR. Outside the government GEAR has been considered by some to diminish the redistributive thrust of the RDP and instead introduce a stronger free market framework. This has been criticised as neo-liberal and not conducive to fulfilling the constitutional provisions relating to economic and social rights. And while there is a stated commitment to roll back the frontiers of poverty it is criticized as too long term and not doing enough for those in current desperate situations.

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<sup>54</sup> Chapter nine institutions are constitutional entrenched bodies to support constitutional democracy and inculcate a culture of human rights in South Africa. They are South African Human Rights Commission, the Commission for Gender Equality, the Public Protector, the Auditor General, the Independent Broadcasting Agency, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Independent Electoral Commission.

<sup>55</sup> Towards a ten year review, pp.108

### *b) Poverty Alleviation*

The South African Government understands poverty to involve three critical dimensions: income, human capital (services and opportunity) and assets<sup>56</sup>. The redistribution thrust of government's policy is core to addressing poverty.

During the Growth and Development Summit convened by the Government in June 2003, the government, business, labour and community constituencies agreed to share a vision towards improving the country's economy. One of the key initiatives inter alia was to deepen social security programmes to provide income support to the most vulnerable.

In his 2003 mid term budget speech the Minister of Finance highlighted that the proposed framework for the 2004 Budget gives priority to reinforcing growth, creating a conducive environment for job creation while deepening social-security spending and infrastructure investment targeted to address poverty and vulnerability<sup>57</sup>. This proposed framework Budget draws on the *Ten Year Review*<sup>58</sup> and the Growth and Development Summit Agreement.

The Cabinet has focused on the critically important issue of the struggle against poverty. In this context, it observed that the country is characterised by two parallel economies, the First and the Second:

The First Economy is affluent, modern, produces the bulk of the country's wealth, and is integrated within the global economy.

The Second Economy (or the Marginalised Economy) is characterised by poverty and underdevelopment, contributes little to the GDP, contains a big percentage of the population, incorporates the poorest of the rural and urban poor, is structurally disconnected from both the First and the global economy, and is incapable of self-generated growth and development.

To respond to the challenge of this Second Economy, South Africa is examining the system of "Structural Funds" instituted by the European Union (EU) in respect of its regional policy, which is based on financial solidarity of transferring a portion of the EU's budget to the less prosperous regions and social groups within the EU.

The EU programme is premised on the reality that "the market cannot be relied upon to meet the development needs of the 'less favoured regions' within the EU, guarantee the achievement of the centrally important objective of social cohesion, and provide the means for the implementation of 'strategies for catching up'

In the same spirit, the Cabinet has resolved that the development of the Marginalised Economy requires the infusion of capital and other resources by the democratic state to ensure the integration of this economy within the developed sector. The Cabinet's decisions will necessarily involve active partnership with provincial and local governments and other social partners. The key strategies to meet the growth and development challenges of the Second Economy include:

- the Integrated and Sustainable Rural Development Programme [ISRDP];
- the Urban Renewal Programme [URP];
- the Expanded Public Works Programme;
- a major boost to infrastructure spending, with an emphasis on the underdeveloped regions and communities;

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<sup>56</sup> Joel Netshitenzhe, head of policy in the Presidency, Thisday, Monday November 10 2003.

<sup>57</sup> Speech to Parliament by Minister Trevor Manuels, 12 November 2003

<sup>58</sup> Towards A Ten-Year Review, synthesis report on implementation of government programmes. Discussion document. Policy Co-ordination and advisory services (PCAS), The Presidency October 2003.

- further support to local government's preparation and implementation of Integrated Development Plans [IDPs];
- the development of Small Medium and Micro Enterprises [SMME] and cooperatives, in both urban and rural areas;
- Black economic empowerment;[BEE]
- special programmes for women's economic development ;
- the expansion of micro-credit to enable the poorest to engage in productive economic activity;
- the incorporation of the unemployed within the Skills Development Programme, especially as implemented by the Sector Education and Training Authorities [SETAs];
- the continued restructuring of the system of education so that it gives the youth the necessary skills to engage in economic activities of benefit to them;
- agrarian reform, including a Farmers Support Programme and forestry development in the interests of communities; and, the creation of the echelon of Community Development Workers to help build social cohesion in the Second Economy, and to help to develop strategies and forge links that can transform the Second Economy.

With regard to the First Economy, government has put South Africa in a position to meet its objectives *inter alia* to reduce the numbers of those living in poverty and dependent on social grants, by engaging them in gainful economic activity and exercising their right to human dignity.

The *Ten Year Review* provides important indicators of what the country needs to do as it strives during its Second Decade of Liberation to advance the goal of pushing back the frontiers of poverty and expanding access to a better life for all.

It would appear that there are tensions between the macro economic framework that has taken on a neo-liberal thrust and the Constitutional imperatives. This tension could potentially undermine the ability of the State to deliver on its Constitutional obligations.

#### 4) SECTORAL LAWS, PROGRAMMES AND POLICIES

**Table 8 Programmes aimed at facilitating access to food**

Responsible Department	Programme title	Services offered	Targeted beneficiaries	Implementation time-frame
Agriculture	Food Security and Rural Development	Agricultural starter-packs and information packs to enable food production for own consumption	Food insecure rural households	N/A
Agriculture in partnership with Land Affairs	Land Redistribution for Agricultural Development (LRAD)	Financial support for farmers to enable them to buy land and agricultural implements	Small farmers from previously disadvantaged communities	669 000 ha of state-owned land has been disposed of (2003)
Public Works	Community-Based Public Works Programme	Job-creation through involvement of poor communities in public works projects	Poor rural households	Since 1998, 76 000 people employed temporarily, 6 300 sustainable jobs created (2002)
Social Development	Poverty Relief Programme	Rural food production clusters (food gardens, poultry houses, pig units)	Poor rural and urban households	30 000 beneficiaries reached in 2001/02. 2002/03-2004/05MTEF target: 61 200 in total over 3 years

		Urban renewal providing skills development and job opportunities to youth	Poor urban youth	3 000 beneficiaries reached in 2001/02. 2002/03-2004/05 MTEF target 6 000 in total over 3 years
		Local economic development projects for women generating income	Poor rural women	5 000 beneficiaries reached in 2001/02. 2002/03-2004/05 MTEF target: 10 400 in total over 3 years
Health	Integrated Nutrition Programme	Contribution to household food security through funding of various poverty relief projects.		N/A

Sources: Department of Health 2002; Department of Agriculture 2003a & 2001; Department of Social Development 2002a: 37-97; Department of Public Works 2001.

### *a) Land, Water and Agriculture*

Throughout the 1980s the food marketing system in South Africa was de-regulated from a form of state control into a form of private control. This resulted in food being characterised as a private commodity or goods, most of which was accessed almost exclusively through markets. This commoditisation was characterised by other factors such as unequal distribution of wealth, land and access to natural resources. In the mid-1990s government abruptly ended most backup for white farmers. The result has apparently been a classic shakeout, with weaker estates going under while larger ones increasing their market power, leading to increasing monopolization. This situation laid the groundwork for speculative maize price increases in 2002<sup>59</sup>.

#### *i) Land Tenure, Access and Management*

Access to and secure tenure of land is very important for the right to food in rural areas. Land dispossession was a key feature of apartheid and of colonialism. It has remained a critical and often contentious issue in the new democratic dispensation. Inherited from the apartheid era most people in the former homelands lack secure tenure rights or legal title to land they have inhabited<sup>60</sup> and worked on for generations. This is a direct legacy of colonial dispossession and racist legislation. The result is a vicious cycle in which rural communities remain desperately poor, partly because they cannot use their only asset as collateral, for example to finance a modest cash-crop enterprise<sup>61</sup>.

Since the establishment of democracy in South Africa, a number of laws and policies have been adopted in an attempt to re-balance land ownership and protect tenure rights. These include inter alia the:

- Restitution of Land Rights Act, 1994 (Act 22 of 1994), which provides for the restitution of land rights to persons or communities dispossessed under or for the purposes of furthering the objects of racially based discriminatory legislation after 19 June 1913. A Special Court and a Special Commission were established to settle claims under this act.
- Extension of Security of Tenure Act (Act 62 of 1997), [or ESTA], provides protection from illegal eviction for people who live on rural or peri-urban land with the permission of the owner of that land, regardless of whether they are employed by the landowner or not. However, illegal evictions remain common<sup>62</sup>. Furthermore, while ESTA could be used for furthering food security, it has not to date been implemented with such a focus.

<sup>59</sup> Business Day, Friday, September 5 2003.

<sup>60</sup> The South African Human Rights Commission last year released a report on the human rights violations in farming communities. The report is available on the SAHRC website. [www://sahrc.org.za](http://www.sahrc.org.za)

<sup>61</sup> THISDAY Thursday November 20 2003.

<sup>62</sup> See the South African Human Rights Commission Final Report on an Inquiry into Human Rights Abuses in Farming Communities, August 2003. See [www.sahrc.org](http://www.sahrc.org)

- Land Reform (Labour Tenants) Act, No. 3 of 1996, aims to protect labour tenants from eviction and gives them the right to acquire ownership of the land that they live on or use.
- Provision of Land and Assistance Act, 1993 (Act 126 of 1993) provides the legal basis for grants and assistance for market-based land redistribution, based on the principle of willing buyer-willing seller. This Bill aims at the transfer of ownership to previously underprivileged groups of commercial farms; as such, it does not have a specific focus on food security or on poverty alleviation. A particular obstacle is the size of the farmlands for sale, which are well beyond the means of poor would-be farmers. There are no facilities for State purchase of such land for selling in smaller pieces.
- Settlement/Land Acquisition Grant (SLAG) operated until 2001 and provided for a grant of R16, 000 to qualifying households with an income of less than R1, 500 per month.
- Land Redistribution for Agricultural Development (LRAD) replaced SLAG in 2001 and has the explicit aim of promoting commercially oriented agriculture. LRAD offers a single, unified grant system that beneficiaries can access along a sliding scale from R20, 000 to R100, 000. All beneficiaries must make a contribution, in cash or kind, the size of which will determine the value of the grant to which they qualify. The minimum contribution is R5, 000, with which an applicant can obtain a grant worth R20, 000. In its approach to land acquisition, LRAD retains the market-based, demand-led approach of previous policies.
- Communal Land Rights Bill has been submitted to Parliament, but is controversial in how it deals with rights of traditional leaders. The Bill, which is aimed to undo the damage of the 1913 Land Act, has been debated in Parliament. The critics of the Bill submit that the legal safeguards support the status quo and could adversely affect women's property rights in already patriarchal settings.
- The Land Care Programme is a community-based programme with an integrated approach to the use and sustainable management of agricultural resources focused on degraded and water-scarce parts of the former homeland areas.

### *ii) Water use and irrigation development*

The National Department of Agriculture supports the establishment and maintenance of infrastructure for water conservation through the drilling of boreholes for resource poor farmers who reside in the ISRDP poverty nodes. During the financial year 200/2003, 377 boreholes were drilled. Also in accordance with the Disaster Management Act of 2002 a drought management strategy was developed. A total of R170 million was transferred to the Land Bank for the purposes of flood relief during the 2002/2003 and 2003/2004 financial years. In terms of the Drought Relief Adjustments Appropriation Bill, R35 million was set aside for the health department to combat possible outbreaks of malaria and cholera and an additional R30 million for the provision of fodder to developing and established livestock farmers. An amount of 125 million will be used by the Department of Water Affairs and Forestry to supply water to drought-affected areas<sup>63</sup>.

### *iii) Agriculture*

The Department of Agriculture has developed an Integrated Food Security Strategy (IFSS). This strategy sets out the aims of the World Food Summit Resolution, the Millennium Development Goal to halve hunger by 2015 and supports the Integrated Sustainable Rural Development Strategy [ISRDS]. It was developed to address issues pertaining to food security of vulnerable groups in South Africa. It seeks to ensure that all South Africans have access to safe and healthy food on a daily basis, that household food security is improved and that there is an increase in wealth creation and sustainable employment<sup>64</sup>. By far it represents the most coherent departmental statement on food security policy in South Africa to date and a clear adoption of a rights based

<sup>63</sup> The Sunday Independent, February 22 2004.

<sup>64</sup> Department of Agriculture. Food Security Policy for South Africa, November 1997.

approach to addressing food insecurity. To this end, the IFSS calls for a cross-departmental and cross-sectoral management structure.<sup>65</sup>

The IFSS is the concerted result of a Cabinet decision during 2000 to 'launch an updated national food security strategy to streamline, harmonise and integrate diverse food security sub-programmes in South Africa'. The core principle of the IFSS is that food security should be addressed by ensuring that the target population gains access to productive resources and is empowered to have nutritious and safe food. Where a segment of the population is unable to gain access to productive resources, food security interventions will ensure access to income and job opportunities to enhance purchasing power. Finally, any segment of the target population that is still excluded as a result of disability or extreme destitution will receive relief from the State over whatever time-period is appropriate given the 'nature of the interventions'.

The IFSS examines a comprehensive set of challenges related to food security at national to household level. Five challenges are identified as having major implications for vulnerable households, namely: inadequate safety nets; weak support networks and disaster management systems; inadequate and unstable household food production; lack of purchasing power; and poor nutritional status. The IFSS also lists priority areas for action. They appear in the following order:

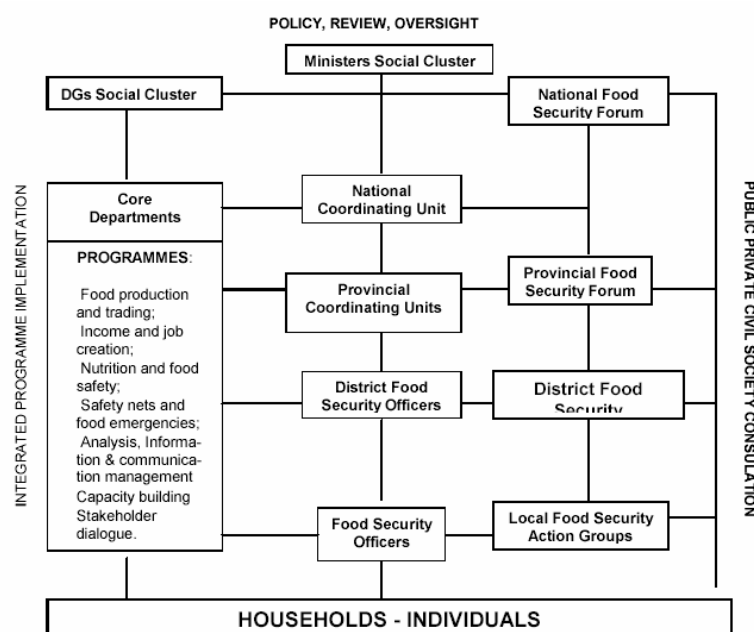
- a) Increase household food production and trading;
- b) Improve income generation and job creation opportunities;
- c) Improve nutrition and food safety;
- d) Increase safety nets and food emergency management systems;
- e) Improve analysis and information management systems;
- f) Provide capacity building;
- g) Hold stakeholder dialogue.

However, it is not apparent what measures will be instituted to realize the right and address the problems of vulnerable groups. Clear objectives and targets are so important for those involved to produce an effective food security strategy for South Africa.

It is clear that one of the fundamental problems standing in the way of targeting and effective delivery is a lack of institutional capacity, especially in rural areas. This has been identified by the IFSS and is addressed through the establishment of a special organisational structure focusing on expanding the capacity under the Ministers Social Cluster.(see Diagram 1).

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<sup>65</sup> The IFSS is headed at political level by an Inter-Ministerial Committee, chaired by the Minister of Agriculture. It is managed and implemented by a National Co-ordinating Unit, with corollaries at provincial level (Provincial Coordinating Units), which oversee the work of District Food Security Officers and, at local level, Food Security Officers. The IFSS also envisages the establishment of a National Food Security Forum (NFSF), with membership drawn from the public sector, the private sector and civil society and with corollaries at provincial level (Provincial Food Security Forums), at district level (District Food Security Forums) and local level (Local Food Security Action Groups). The role of the NFSF is to provide "strategic leadership and advisory services on food security" and to set standards and recommend policy options (Department of Agriculture 2002a:34).

**Diagram 1 Institutional Arrangements and Organisational Structures**

Using a rights based analysis of the IFSS, one sees the need for a costing exercise of the IFSS's objectives and targets. Additionally, in the planning and ongoing review participation of the relevant stakeholders should be considered. The Department has embarked on the development of operational plans. A further shortcoming of the IFSS is that it has not been widely publicized and often not accessible to those who are directly affected by hunger and malnutrition.

The Integrated Food Security and Nutrition Programme [IFSNP] was developed to operationalize the IFSS and has the following five areas of intervention:

- Food production and trade;
- Income generation and job opportunities;
- Food safety and nutrition;
- Social security nets and food emergency; and
- Food security and information management system.

The Department of Agriculture in 2001 developed a Strategic Plan for South African Agriculture. This plan seeks to, inter alia

- (i) ensure equitable access in the agriculture sector;
- (ii) reduce poverty and inequality in land ownership;
- (iii) ensure global competitive and profitability in the agricultural sector;

- (iv) ensure sustainable resource management; and
- (v) ensure efficiency and improve national and food household food security<sup>66</sup>.

The redistributive thrust of government policies is embraced by the Department of Agriculture with the recent Agribusiness Promotion and Industry Relations programme which essentially establishes a framework for BEE within the sector. This process included the identification and audit of BEE initiatives and culminated in a draft BEE strategy that includes support systems and standards.

In support of the Land Redistribution for Agricultural Development [LRAD] a Comprehensive Agriculture Support Package [CASP] was developed. Already 3,7 million Rand has been transferred to the provinces for its first phase. The CASP funds are used to train land reform claimants and 1 865 land reform claimants were trained. The target group included poor and vulnerable persons, emerging farmers, subsistence farmers and commercial farmers who can then access a number of sub-programmes, including inter alia, the Starter Pack Programme.

This particular programme was allocated R400 million from the Integrated Food Security and Nutrition Programme and targets 2,23 million people in four bands according to per capita monthly expenditure on food (see Table 9). These households are identified by the Department as the most food insecure and vulnerable households in the country.

**Table 9 Per capita household spending per month and by groups for the National Food Emergency Scheme and Agriculture Starter Pack Programme 2002/3**

<i>Band</i>	<i>Spending per month per capita</i>	<i>Households</i>	<i>Cumulative</i>
A	< R200	166,684	166,684
B	R200-R300	962,625	1,129,309
C	R300-R400	473,784	1,603,093
D	R400-R500	631,947	2,235,040

Source: National Department of Agriculture 2003

Notes: Produced by Statistics South Africa based on Statistics South Africa Census 1996 and October Household Survey, 1999.

The National Department of Agriculture has set itself the objective of supporting 900 commercial viable farmers per year this works out to 100 per province, over the medium-term. The vehicle for this is the CASP, which seeks to strengthen institutional systems, provide supportive infrastructure and develop special projects. In addition to the departmental inventory of state land, concerted efforts have been created to develop Public Private Partnerships [PPPs] with major agricultural stakeholders; i.e. Syngenta, Bayer SA and Kynoch.

The *South African Yearbook 2001*, reports that the Special Programme for Food Security [SPFS] was launched in February 2000 and was aimed at supporting 3 000 households with infrastructure and agricultural input support to the value of approximately R2 000-R3 000 per household. The SPFS was designed to increase food production and livelihoods amongst smallholders by encouraging adoption of new technology and reducing constraints to farm output. This programme aims to reach 62 000 households per annum. A more long term vision is articulated in

<sup>66</sup> Cite Strategic Plan for South African Agriculture.

the department's Strategic Plan 2003-2006, which aims to deliver production support packages and information packages to 200 000 food insecure households by March 2004.<sup>67</sup>

The Department is also involved in the promotion of co-operatives by way of providing financial services to co-operatives run by or related to previously disadvantaged groups namely women and the youth. To date, 64 financial services co-operatives have been established.

As is the case with many departments there is competence both at central and provincial government. The agriculture extension service is one such example. This service has yet to be transformed to the general policy climate in South Africa. While it seeks to provide for the needs of small and resource poor farmers it still is largely premised on apartheid policy. Finally while many of the provinces have extension officers, their services are hampered by lack of human and financial resources.

The Land Bank is a statutory body created in terms of the Land Agriculture Development Bank Act<sup>68</sup>. Its only shareholder is the State. The Bank's vision is to be a world class provider of financial services to the agricultural and related rural sector. Its mandate is to have a developmental role within the rural agricultural sector with emphasis placed on making access to finance available to those who were previously marginalized in terms of race and gender. It also provides support to commercial farmers, which still accounts for the majority of its work. The focus of the Bank is to remove the legacy of racial discrimination in the sector<sup>69</sup>.

#### *iv) Legislation in preparation*

A number of bills and laws are under review or before Parliament; of particular relevance is the Food Security Bill, which was drafted in 2001. This Bill essentially recognizes the need for proper coordination and integration and seeks to achieve more effective coordination. The Food Security Bill has been scrutinized by the NGO sector and the South African Human Rights Commission has facilitated workshops and seminars to further contribute to the Bill. While the Food Security Bill still requires input, in its current form it has taken into consideration the spirit of General Comment 12 of the Committee on Economic, Social and Cultural Rights.

Another initiative is the Agricultural Risk Insurance Bill. It seeks to provide a system of agricultural insurance in order to improve the economic stability of agriculture; enhance the income of those farmers and producers most vulnerable to losses of agricultural crops and livestock due to natural disasters; for the financial assistance in establishing the system; for the control of certain activities of agricultural insurers and intermediaries; and for other matters thereto.

Lastly, is the Sustainable Utilisation of Agricultural Resources (SUAR) Bill, which combines the Subdivision of Agricultural Land Act and the Conservation of Agricultural Resources Act whilst adding Land Care and Prime and Unique agricultural land principles.<sup>70</sup> The Bill seeks to repeal the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) and section 41 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991). The Bill provides for the sustainable utilisation of natural agricultural resources. This includes control over the subdivision and change of use of agricultural land, in support of biodiversity. It further seeks to provide for the following:

- designation and functions of an executive officer

<sup>67</sup> National Department of Agriculture, *Strategic Plan for the Department of Agriculture 2003 to 2006*, March 2003 Page 30

<sup>68</sup> Land Agriculture Development Bank Act 15 of 2002.

<sup>69</sup> The objectives of the Bank are set out in s 3 of the Land and Agricultural Development Bank Act 15 of 2002.

<sup>70</sup> According to the According to the National Department of Agriculture Strategic Plan for 2003-2006.

- the establishment of Land Care committees,
- the prescribing of standards and control measures,
- the establishment of schemes and trusts,
- and control over the spreading of weeds and invader plants<sup>71</sup>

*b) Social Security*

**Table 10 Programmes aimed at providing access to food**

Responsible department	Programme title	Services offered	Targeted beneficiaries	Implementation time-frame
Health (to be transferred to Department of Education, April 2004) <sup>72</sup>	Primary School Feeding Scheme	Early morning nutritious supplementary meal comprising not less than 25% of RDA for energy for 7-10 year olds and not less than 20% of RDA for energy for 11-14 year olds	Primary school learners from poor households. Targets schools in areas with highest poverty levels, rural schools, farm schools, schools in informal settlements.	Implemented 1 September 1994. Up to March 2002, an average of 5 million learners from 15 000 schools have drawn benefit from the scheme (47% of all primary school learners).
Health	Programme for the in-patient management of acute, severe Protein Energy Malnutrition (PEM)	Provision of in-patient primary and secondary nutritional interventions to children hospitalised for severe, acute PEM	Children suffering from acute, severe Protein-Energy Malnutrition	Guidelines developed in 2000, piloted in Eastern Cape in 2001. Mortality rates for malnourished children at pilot facilities dropping from 18% to 14%. Extended to all nine provinces in 2002.
Social Development	Child Support Grant	R160 per month per child (as at 1 April 2003)	Children under 9 years of age (to be extended to children under 14 by 2005) whose care-givers meet means test	Number of beneficiaries: April 2000 – 348 532 April 2001 – 1 078 884 April 2002 – 1 810 977 Feb 2003 – 2 517 021
Social Development	Foster Care Grant	R500 per month per child (as at 1 April 2003)	Children in foster care whose care-givers pass a means test	Number of beneficiaries: April 2000 – 49 843 April 2001 – 61 268 April 2002 – 69 423 Feb 2003 – 133 400
Social Development	Care Dependency Grant	R700 per child per month (as at 1 April 2003)	Disabled children under 18 years of age whose care-givers meet a means test	Number of beneficiaries: April 2000 – 22 789 April 2001 – 30 269 April 2002 – 36 065 Feb 2003 – 56 173
Social Development	State Old Age Pension	R700 per beneficiary per month	Men of 65 years or older, women of 60 years or older. If married, the beneficiary's spouse must meet a means test. whose spouse meets the means test	Number of beneficiaries: April 2000 – 1 848 726 April 2001 – 1 882 188 April 2002 – 1 903 085 Feb 2003 – 2 002 320

<sup>71</sup> National Department of Agriculture, Strategic Plan for the Department of Agriculture 2003 to 2006, March 2003 Page 16

Responsible department	Programme title	Services offered	Targeted beneficiaries	Implementation time-frame
Social Development	Disability Grant	R700 per beneficiary per month	Disabled persons	Number of beneficiaries: April 2000 – 607 537 April 2001 – 631 758 April 2002 – 707 920 Feb 2003 – 895 937
Social Development	War Veteran's Grant	R718 per beneficiary per month	Veterans of war	Number of beneficiaries: April 2000 – 7 908 April 2001 – 6 062 April 2002 – 5 243 Feb 2003 – 3 670
Social Development	Grant in Aid	R150 per beneficiary per month	Additional grant for those receiving Old Age/Disability/War Veteran's Grant who are unable to care for themselves	Number of beneficiaries: April 2000 – 22 789 April 2001 – 30 269 April 2002 – 36 065 Feb 2003 – 56 173
Social Development	Social Relief of Distress	Temporary assistance (of varying nature) for people in such dire need that they cannot meet the basic needs of themselves or their families	On condition that they do not receive another social assistance grant or assistance from any other organisation, this grant is targeted to persons: <ul style="list-style-type: none"> <li>▪ awaiting permanent aid;</li> <li>▪ appealing the suspension of an existing other grant;</li> <li>▪ found medically unfit to work for a period less than 6 months;</li> <li>▪ in families with breadwinners deceased, with insufficient means; or</li> <li>▪ affected by disaster where their area has not yet been declared a disaster area;</li> </ul>	N/A

Sources: Department of Social Development 2003a; Department of Social Development 2003b; Department of Social Development 2002b.

Under the Social Assistance Act (59 of 1992), a number of means-tested social assistance programmes are operational in South Africa. They can be categorized into two types of grants, income grants and special needs grants<sup>73</sup>. The latter include the Child Support Grant for children under nine years of age (the age limit will be raised to 14 by 2005) and Old Age Pension for women over 60 and men over 65. Eligibility for these grants is determined by a strict means test.

The former include the Disability Grant and the Care Dependency Grant, which depend on a medical assessment of disability and its impact on the applicant's ability to earn an income.

While these grants do provide for the needs of three highly vulnerable groups, there is no unemployment insurance to help able-bodied persons of working age who are unable to find work. Unemployment rates in South Africa are very high, ranging from 18.4% to 36.1% in different Provinces and averaging 40%<sup>74</sup>. However, the national emergency food scheme, farmer starter packs and public works programmes referred to elsewhere, seek to address the needs of

<sup>73</sup> Social assistance grants are provided for through the Social Assistance Act 59 of 1992.

<sup>74</sup> Statistics South Africa Census 2001, Census in brief P54.

such persons. There has also been a concerted effort to address the impact of high food prices by increasing the value of existing social assistance grants. The coverage of the child support grant was increased by R10 to R140 as was the old-age pension which increased by R20 to R640. Other grants that increased included the grant in aid increased by R10 to R130, the foster care grant by R10 to R460 and the care dependency grant by R20 to R640. The Department of Social Development states, that “in 2002, two increases in social grants were announced, making a total of R1, 5 billion available to the most vulnerable members of society. From April 2003, pension and disability grants increased by R60 to R70 a month while the child support grant (CSG) rose 14% to R160. In both cases these were above-inflation increases. The 2003 Budget set aside a total of almost R12 billion to facilitate the extension of this grant to more beneficiaries.”<sup>75</sup>

The Department of Social Development’s White Paper on Social Welfare<sup>76</sup> contains commitments to realizing the right to food. It undertakes to amongst other things develop “appropriate nutritional objectives and activities” with a particular focus on those who are nutritionally distressed. Further to this the Department of Social Development has included food related policies and programmes into their broader poverty relief programme. The aspect of identifying and addressing food insecurity is clearly flagged as one of the core objects of the poverty relief programme.

Research of the *Ten-Year Review* shows that grants are exceptionally well targeted. The poorest 20% of households receive the largest amount from grants, not just as a proportion of income, but also in absolute terms. Two-thirds of the income for the poorest quintile is attributable to state transfers. Simulation studies also show that, in the absence of any grants, 55.9% of the elderly would be in poverty and 38.2% would be in ultra-poverty. This falls to 22.9% and 2.5% respectively if all recipients get grants.

Although great progress has been made in registering recipients, the full impact of these grants will only be realized when all eligible people are registered. In addition, because of certain gaps between national and provincial legislation, and inadequacies in the current administration and payment of grants some eligible people do not receive assistance in a timely manner. Furthermore, there is uneven access to grants, unequal service delivery standards, budget uncertainties and significant persistent fraud in some provinces.

The Constitution enjoins the State to ensure that services are provided for in an equitable and dignified manner. Government has therefore prioritised the improvement of service delivery in these areas, and the necessary bills before Parliament that will enhance the ability of the machinery of government to fast track pushing back the frontiers of poverty.

The national food emergency scheme was introduced as a special relief package amounting to R400 million drawn from its contingency reserve. R170 million was allocated to the World Food Programme for its relief efforts in the Southern African region, the remaining R230 million was to be used for a scheme to distribute food parcels to eligible households run by the Department of Social Development. The “provision of food parcels for three months to the poorest families who do not have any income or cannot afford R200 for food per month, intensification of the registration for social grants, acceleration of the school nutrition programme provision of

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<sup>75</sup> Government Communication and Information System *Pocket Guide*, June 2003 p 169  
The Department of Social Development projected that 1 767 699 people would be added to the social assistance grant payment system between April 2002 and April 2003. The total increase would result from an expansion of the Child Support Grant by 706 044, followed by Disability Grants (188 017), Old age pensions (99 235) and Foster Care and Care Dependency Grants (84 085).

<sup>76</sup> Department of Welfare 1997 “White Paper for Social Welfare”  
[www.gov.za/whitepaper/1997/soswel97.htm](http://www.gov.za/whitepaper/1997/soswel97.htm). Sited visited on the 07/11/03.

agricultural starter packs so that households can provide food for themselves, and the development of sustainable household and community food security.”<sup>77</sup>

The number of households that were reached by the pilot programme is shown in Table 2, below.

**Table 11 Progress with delivery of food parcels in terms of the NFES Pilot project during 2002/2003**

<i>Province</i>	<i>No. of Households</i>		<i>% of Target reached by Pilot Programme</i>
	<i>Assisted with food Parcels</i>	<i>Targeted output as of 30 April 2003</i>	
Eastern Cape	3 463	35 000	10%
Free State	6 515	30 000	22%
Gauteng	1 160	5 000	23%
KwaZulu-Natal	5 865	30 390	19%
Mpumalanga	15 317	12 000	128%
Northern Cape	1190	4670	25%
Limpopo	10455	50890	21%
North West	15317	72000	21%
Western Cape	807	5000	16%
<b>Total</b>	<b>60089</b>	<b>244950</b>	<b>25%</b>

Source: Pilot programme figures from the National Department of Agriculture protocol response 2003 and Targets for 30 April 2003 from Department of Social Development, *Integrated National Business Plan for the National Food Emergency Scheme (NFES) for the 2003/04 and 2004/05 financial years*

The Department of Social Development uses the following selection criteria for the programme:

- rural and urban nodes including provincial poverty pockets;
- social status namely the expenditure level below R300 per household per month;
- vulnerable groups including HIV/AIDS affected / infected persons.<sup>78</sup>

A recent research project that looked at the social security systems in South Africa concluded that the child support grants as well as disability grants contribute to reducing poverty and further vulnerability. Most recently it was announced that the child support grant would be phased in to include children up to the age of 14 years. More generally, the uptake in disability grants as reported by State treasure has increased from 3 million in 1998 to 7 million people in 2004. This increased spending has resulted in social security spending increasing from 2% of the GDP to 4%.

In 1993 the apartheid government’s social expenditure was essentially neutral and had no effect on reducing inequality. It is the view of the ten-year review<sup>79</sup> commissioned by the Presidency that social spending under democracy, between 1997 and 2000 and government programmes over the past nine years have substantially reduced inequality among South Africans.

<sup>77</sup> Government Communication and Information System *Pocket Guide*, June 2003 pages 169-170.

<sup>78</sup> Department of Social Development, *Integrated National Business Plan for the National Food Emergency Scheme (NFES) for the 2003/04 and 2004/05 financial years*

<sup>79</sup> Research into social inequality by the Presidency contained in the Ten Year Review.

The government will soon start giving households that are hardest hit by the drought once-off cash payouts of R900 for survival. It is estimated that 100 000 people who depend on farming will benefit from the programme, which marks a departure from the current practice of handing out food parcels to poverty stricken families to cushion them against the effects of rising food prices. Treasury has put aside R60 million for the Department of Social Development to spend before the end of the financial year end of March 2004.<sup>80</sup> It is estimated that the drought could cost the government about R18 billion and its effects were being felt by those on farms. In order to address this the government has developed criteria, according to which relief will be allocated to the following categories of people:

- Vulnerable individuals and households of poverty stricken families who are destitute as a result of the drought in certain districts of the provinces affected;
- Those who live in such areas and who have no, or limited, employment and/or income – generating opportunities;
- Farm workers who have been laid off work due to the persistent drought;
- Persons in farming communities whose livelihoods have been severely affected by the drought; and
- Persons and households who rely directly and/or indirectly on farming.

*c) Health and Nutrition*

**Table 12 Programmes aimed at enhancing nutrition**

Responsible department	Programme title	Service offered	Targeted beneficiaries	Implementation time-frame
Health	Integrated Nutrition Programme: Nutrition education, promotion and advocacy	Development of educational materials and guidelines on nutrition	General public with particular focus on children	Achieved by 2003: <ul style="list-style-type: none"> <li>▪ Breastfeeding policy/guidelines for health workers</li> <li>▪ Nutritional guidelines for people with TB, HIV/Aids, other debilitating diseases</li> <li>▪ Vitamin A supplementation information for health workers and care-givers</li> <li>▪ Guidelines for intervention at health facilities to prevent/manage child malnutrition</li> <li>▪ Educational materials on iodine deficiency disorder</li> <li>▪ Communication strategy on the importance of micro-nutrients and food fortification to public</li> <li>▪ Primary school nutrition education programme</li> </ul>
Health	Integrated Nutrition Programme: micro-nutrient malnutrition control	Micronutrient fortification of staple foods; micronutrient supplementation	General public with particular focus on children	Achieved by 2003: <ul style="list-style-type: none"> <li>▪ Vitamin A supplementation programme</li> <li>▪ Fortification of maize and wheat flour with vitamin A, thiamine, niacin, pyridoxine, folate, riboflavin, iron and zinc</li> <li>▪ Salt iodation</li> </ul>

Sources: Department of Health 2002a; Department of Health 1998; Steyn & Labadarios 2002: 327,343-345.

<sup>80</sup> The Sunday Independent, February 22 2004 reports that drought had hit Kwa-Zulu Natal, Limpopo, Eastern Cape, Free State, Mpumalanga, Northern Cape, and the North West and had been declared disaster areas by President Thabo Mbeki.

The Department of Health developed an Integrated Nutrition Programme [INP] in 1995 as an intervention to respond to nutritional and food insecurity as well as responding to starvation and hunger by augmenting food in households<sup>81</sup>. The National Department of Health's budget for the INP increased by approximately R15 million from 2001/2002 to 2002/2003 (see Table 13, below).

**Table 13 National Budget for the Integrated Nutrition Programme**

	<i>Allocation for National Programme Rands</i>	<i>National Budget Expenditure Rands</i>	<i>Conditional grant allocation (transfer to Provinces) Rands</i>	<i>Conditional Grant (transferred to Provinces) Rands</i>	<i>Conditional Grant (Provincial expenditure) Rands</i>
2001/02	4 536 000	2 734 668 (60%)	582 411 000	582 411 000 (100%)	475 458 000 (82%)
2002/03	4 240 000	3 913 427 (92%)	592 411 000	592 411 000 (100%)	580 078 000 (98%)

Source: National Department of Health Protocol Response 2003

Notes: Allocation as a % of the Department's Budget was not provided because the Department's total revenue is unknown. Donor Funding was equal to zero in both years.

The INP is composed of transfers to the provincial Departments of Health. The Conditional Grant allocation to provinces is distributed from the National Department of Health according to an index comprised of three indicators:

- 1) the 1996 poverty gap (65% of the index);
- 2) the 1996 population - 0 to 15 years - living under the poverty line (30%); and
- 3) the 2000 anthropometric indicators (5%).

The National Department of Health refers to the INP as the guiding policy framework for its nutrition related interventions. The INP consists of seven strategies to improve the nutritional status of all South Africans, namely:

- 1) Disease-specific nutrition support, treatment and counselling;
- 2) Growth monitoring and promotion;
- 3) Nutrition promotion;
- 4) Micronutrient malnutrition;
- 5) Food service management;
- 6) Promotion, protection and support of breastfeeding; and
- 7) Contribution to household food security

On average, about 86% of the INP Conditional Grant Allocation is used annually to fund the Primary School Nutrition Programme [PSNP] which is elaborated in the following section. The remainder is mostly allocated to other programmes: These include the nutrition interventions at health facilities to manage and prevent child malnutrition, which is aimed at ensuring a healthy nutritional status for infants and young children, i.e. to target interventions to children 0-5 years of

<sup>81</sup> Department of Health, Integrated Nutrition Programme for South Africa: Broad Guidelines for Implementation, Document No.5, Pretoria, 1998.

age with severe malnutrition and at risk pregnant women. The programme for Vitamin A supplementation was established to reduce child Vitamin A deficiency from 33.3% to 19% by 2007. This programme targets all women; post partum 6 to 8 weeks, non-breastfed infants (0 – 5 months), all infants 6 – 11 months, and all children 12 - 60 months. Finally, it funds the Food Service Management Standards, which ensures that hospitalised patients attain healthy nutritional status. Food service management includes the activities of planning, development, control implementation and evaluation of and guidance in respect of suitable food service systems (procurement, storage, preparation and service of foods and beverages) for the provision of balanced nutrition to groups in the community and in public institutions for healthy and/or ill persons.

Food safety legislation includes the Marketing of Agricultural Products Act (No. 47 of 1996) and the Foodstuffs, Cosmetics and Disinfectants Act (No. 54 of 1972) and ensuing regulations, which will not be further discussed here.

#### *d) Education*

The Primary School Feeding Scheme [PSFS] was introduced in September 1994 as part of the Primary School Nutrition Programme [PSNP], one of former State President Nelson Mandela's Presidential Lead Projects. The PSNP was intended to be a comprehensive nutritional enhancement programme involving, apart from school feeding, also nutritional education projects, parasite control and micro-nutrient supplementation programmes in primary schools<sup>82</sup> In 1997 the PSNP was incorporated into and subsumed by the Integrated Nutrition Programme [INP].<sup>1</sup> Since then the PSFS has been a sub-programme of the INP, located within its focus area of *Contribution to Household Food Security*. The PSFS provides an early morning meal to primary school learners at targeted schools every school day. This meal is meant to be sufficiently nutritious to provide not less than 25% of the RDA for energy for 7 to 10 year olds and not less than 20% of the RDA for energy for 11 to 14 year olds. It essentially aims to minimise the impact of malnutrition and short-term hunger on primary school learners' ability to participate in and derive benefit from education.

The PSNP was originally developed to respond to nutritional and food insecurity as well as to respond to starvation and hunger by augmenting food in households<sup>83</sup>. However more recent reports claim that the PSNP is reaching far less children than in the previous years. In 2002/2003, despite the fact that 4,8 million learners were targeted, 4 548 385 learners were reached through the programme as compared to 4,7 million in 2001/2002. A lack of up-to-date statistics on the number of learners in Grade 1 to 7 from the National Department of Education makes it difficult to provide a clear indication of the coverage of the primary school nutrition programme. However, assuming that the number of learners must have increased since 2001 it does appear that there may be some deficiencies in the reach of the school-feeding programme relative to actual need.

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<sup>82</sup> Kloka 2003

<sup>83</sup> Department of Health, Integrated Nutrition Programme for South Africa: Broad Guidelines for Implementation, Document No.5, Pretoria, 1998.

**Table 14 Reporting on the number of learners reached by the PSNP at provincial level**

Province	No. of Grade 1 to 7 Learners in 2001*	No. of Learners Reached by the PSNP, 2003
KwaZulu-Natal	1 685 113	1 222 225
Limpopo	1 063 960	1 170 000
Mpumalanga	564 205	440 000
Gauteng	963 633	293 457
Western Cape	585 361	158 000
Free State	433 142	145 103
North-West	567 973	?
Eastern Cape	1 421 752	?
Northern Cape	128 277	111 362

\* These are the latest statistics available from the National Department of Education

Source: Grade 1-7 learners, *Education Statistics in South Africa at a Glance in 2001*, Published June 2003 and PSNP data.

The National Department of Health reported on Cabinet recommendations regarding the Primary School Nutrition Programme. Cabinet approved recommendations regarding the frequency of feeding (a minimum of 156 days a year, by 10 am every feeding day), standardisation of menus, and the inclusion of Grade 1 pupils. The recommendations were based on a review of the programme completed in 2002<sup>84</sup>, the realization of the impact of escalating food prices, and a more general focus on mechanisms to impact on poverty in the context of HIV/AIDS. The oversight of the programme is due to pass over from the Department of Health to the Department of Education on 1 April 2004.

#### *e) Labour*

The 2001 StatSA census reflects the figures from the Labour Force Survey [LFS], which are the official market figures. According to LFS, the unemployment rate was up 29.5% for the country as a whole in September 2001. These calculations do not include the not economically active, hence the larger proportions of unemployed. StatSA census data point to 41.6 % of South Africans being unemployed. The March 2003 LFS showed that two million new jobs were created in the previous seven and a half years, bringing the total of those employed to 11.6 million. This represents an employment growth rate of over 2.5 percent a year.

However a shocking small percentage of South Africans make up the agricultural work force. It is estimated that less than 4% of the workforce works in agriculture and that up to 41.6 % of the population is unemployed. However, as indicated in the Ten Year Review, the numbers of those joining the labour market has grown at a faster rate. Demographic changes, such as more women entering the labour market, have also intensified the need for the South African economy and society to create more jobs.

In 2000 the National Department of Labour launched the sectoral determination for domestic workers and farm workers. The minimum wages determined by the Minister of Labour as per the Basic Conditions of Employment Act 75 of 1997 are seen as an addition to the existing social security safety nets.

<sup>84</sup> National Department of Health, Diane Kloka, *Integrated Nutrition Programme - School Feeding*, September 2002.

**Table 15 Share of domestic and agricultural workers earning under R1000 a month, in nominal terms**

Sector	2001	2003
Domestic workers	92%	94%
Skilled agriculture & fishing workers	74%	82%

Source: StatSA, Labour Force Survey, February 2001 and March 2003.

However as the table points out in both cases domestic workers and agricultural workers earned under R1000 a month and this remains the case with amounts still well under R1000 a month with rural domestic workers getting on average R400 a month, and urban workers, on average R600. Farm workers, received from R650 to R800 a month, depending on the area<sup>85</sup>.

The Public Works Programme is run by the Department of Public Works and seeks to improve access to social security measures, with better vehicles to improve service delivery while reducing the number of citizens dependent on grants. The community-based public works programme seeks to create jobs through involvement of poor rural communities in public work programmes. The Minister of Agriculture and Land Affairs, Ms Thoko Didiza, to the National Assembly on the occasion of the budget vote of the Presidency said:

“ we have seen the impact of the Community-based Public Works Programme, where local infrastructure, that supports both social development and economic growth, has been undertaken. This programme, which remains one of the important job creators of government, has seen to date the creation of 106 000 job opportunities in rural communities, some of which are temporary in nature, while others have created possibilities for long-term employment, in maintenance in particular<sup>86</sup>.

This quote points to the progress that has been made in building synergy between the various departments towards addressing food security. The Integrated Food and Nutrition Programme is another example of how within the social sector cluster government ( see diagram 1) was able to respond to the crisis of food prices in October 2003.

## 5) ALLOCATION OF RESOURCES

The Government set aside R1.2 billion for an Integrated Food Security and Nutrition Programme over the next three years from 2003. The details of how many and how well people benefited from the extraordinary budgetary measures outlined above are not available. The timelines and effectiveness of the measures will need to be complemented by other possible courses of action in the short term, namely: reducing the pensionable age, better regulation of the food industry and the phased introduction of a universal Basic Income Grant.

R230 million was allocated to provide food parcels and agricultural starter packs once a month for three months during 2003 to 240 000 poor households across South Africa. Food parcels and starter packs were distributed to 249 000 households during the first period. Another R 800

<sup>85</sup> Department of Labour, 2003.

<sup>86</sup> Source: Department of Agriculture, Title: Didiza: Debate during Presidency  
Dept Budget Vote 2003/2004  
Cape Town, 18 June 2003

million has been allocated to continue the programme through 2004 and into 2005. Early this year (January 2004) cabinet allocated 250 million for drought relief.<sup>87</sup>

## 6) BENCHMARKS, MONITORING AND RECOURSE

### *a) Role of Duty Bearers*

Monitoring the right to food is an essential part of the progressive realization of the right to food in South Africa. A rights based approach to monitoring would demand also that not only would the information serve independent monitoring bodies, duty bearers and policy makers, but also rights holders and rights activists. The information collected therefore needs to be relevant to rights holders, and collected with their participation in some way.

StatsSA is responsible for overall coordination of information about social and economic issues. Each National Department collects information related to their sector. There is an abundance of information, indicators and statistics available from these Departments and from StatsSA. In addition, the Department of Agriculture has been working with the Food and Agriculture Organisation [FAO] to establish a national Food Insecurity and Vulnerability Information Mapping System [FIVIMS], in order to improve information collection and analysis, leading to better policy decisions.

Since the introduction of the Reconstruction and Development Programme [RDP] in 1994, an emphasis has been placed on nutritional monitoring of children. Growth monitoring provides one way to identify malnutrition problems early enough for action to be taken. However, in the period from 1994 to 1999, there was no improvement in the prevalence rate of under nutrition amongst young children in South Africa.

The most effective way to ascertain whether the State has delivered is to review the impact of its policies and programmes. However, this is much easier than it appears. The recent *Ten Year Review* makes the point and goes at length to explain the development of indicators but still points to the difficulties around agreed measures for impact.<sup>88</sup>

### *b) Benchmarks*

Another requirement of the obligation of progressive realization of the right to food is the setting of targets and benchmarks which policies and programmes should achieve, and the timeframe for their achievement.<sup>89</sup> The Department of Agriculture's Integrated Food Security Policy does not yet have any such benchmarks. The Integrated Nutrition Programme of the Department of Health, however, does contain targets. It should be noted that the causes of under nutrition amongst young children are extremely complex and should not be limited to the Departments of Health.

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<sup>87</sup> Sowetan Friday January 30, 2004.

<sup>88</sup> Towards A Ten-Year Review, synthesis report on implementation of government programmes. Discussion document. Policy Co-ordination and advisory services (PCAS), The Presidency October 2003.

<sup>89</sup> See General Comment 12, UN Document E/C.12/19995/5,

**Table 16 The prevalence of under nutrition amongst young children compared to National Department of Health policy targets**

	<i>Survey 1994</i> <i>Age 6-71</i> <i>months<sup>90</sup></i>	<i>Survey 1999</i> <i>Age 12-71</i> <i>months<sup>91</sup></i>	<i>Target 2000</i> <i>Age under 60</i> <i>months<sup>92</sup></i>	<i>Target 2005</i> <i>Age under 60</i> <i>months<sup>93</sup></i>
Stunted	22.9%	23.8%	20%	20%
Underweight	9.3%	11.1%	10%	10%
Wasting	2.6%	3.6%	1% <sup>a</sup>	2%

Source: Survey results published by the Health Systems Trust on [new.hst.org.za/indic](http://new.hst.org.za/indic)

### *c) Role of SAHRC*

Section 184 (3) of the Constitution requires the South African Human Rights Commission (SAHRC) to monitor the progressive realization of these economic and social rights by organs of State and to report to Parliament annually. In order to meet this constitutional obligation the SAHRC collaborated with academics in the human rights field and developed a set of questionnaires commonly referred to as the protocols.<sup>94</sup>

In essence, the protocols are a set of questions prepared for each of the economic and social rights. They seek to extract the necessary information from organs of State on how they have progressive realized the rights entrenched in the Bill of Rights, by requesting information on; new legislative measures, programmes, budgetary allocations made, monitoring, outcomes and any other relevant information that is not covered by the protocols.

Included in the protocols are questions on measures that were instituted towards the realization of economic and social rights for socially and economically vulnerable groups, such as:

- Persons living in informal settlements
- Homeless persons
- Female-headed households
- Women
- Children
- Persons with disabilities
- Older persons
- Persons living with HIV/AIDS
- Previously disadvantaged racial groups including indigenous groups.
- Persons living in rural areas

<sup>90</sup> The South African Vitamin A Consulting Group (SAVACG), Children aged 6-71 months in South Africa 1994: their anthropometric, vitamin A, iron and immunisation coverage and status 1995

<sup>91</sup> Labadarios, D (ed). The National Food Consumption Survey (NFCS): Children aged 1-9 years, South Africa, 1999. Pretoria: Department of Health; 2000

<sup>92</sup> Department of Health, White Paper for the Transformation of the Health System In South Africa, 1997 Section 21.3

<sup>93</sup> Department of Health Republic of South Africa Health Goals, Objectives and Indicators 2001-2005 (undated)

<sup>94</sup> A sample protocol is attached as annexure.

This information is then analysed by the Commission's research department. On the basis of this information and supplementary information a report is compiled and submitted to Parliament. This report has been very useful as it reflects on what and how government is meeting progressively their constitutional obligations. Over the years it is clear that the value added by the monitoring role of the SAHRC has been:

- Analysis of how government is delivering on the progressive realization of the entrenched economic and social rights;
- Identification of the cross cutting nature of the rights;
- Highlighting the Constitutional responsibilities of relevant government departments.
- Highlighting the vulnerability of certain groups and whether they are being provided for;
- Provision of an analysis from a rights based perspective;
- Identification of gaps in State obligations;
- Recommendations made to Parliament;
- Provision of benchmarks for the progressive realization of these rights.

Stemming from the monitoring role the SAHRC recommended to the National Department of Agriculture in 2000 the need to develop framework law on the right to food. In addition to this function the Commission has undertaken workshops and hosted the first conference on the child right to nutrition in 1999.

The Commissioner responsible for the Limpopo province held a workshop in the province and facilitated the establishment of a provincial food committee, which is made up on relevant government departments, NGOs, faith based organisations and members of the SAHRC. This committee has at a local level attempted to assist in identifying community members who are food insecure as well as to monitor and facilitate the delivery of food parcels.

More recently the Commission intervened following press reports that the National Food Emergency Scheme was not being implemented in parts of KwaZulu-Natal province. On 24 January 2003, the Commissioner for KwaZulu-Natal wrote to the Minister of Social Development and the Members of the Executive Council [MEC] requesting that the matter be resolved with an assurance that food distribution would begin in early February 2003. Towards the end of January 2003, a meeting between the National and Provincial sphere was held to resolve questions of mandates, guidelines and logistics. Following the Commission's intervention an NGO appears to have been identified to deliver food parcels.

The Commission carries a watching brief as to whether the current right to food programmes are reasonable in conception and their implementation. This is being brought into sharper focus by actions brought against the State and the implementation of its National Food Emergency Scheme in terms of the Social Assistance Act.<sup>95</sup>

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<sup>95</sup> Based on a case in the North-West province, the Legal Resources Centre secured agreement from the National Department of Social Development to introduce binding national regulations on the implementation of the National Food Emergency Scheme by April 2004. The National Food Emergency Scheme was announced on 29 October 2002 in response to rapid food price inflation that peaked in the first half of 2002.

#### d) *Judicial Recourse*

In addition to monitoring the progressive realization of the right to food and programme delivery, the SAHRC may hear individual complaints on violations of the right to food. The SAHRC may also seek judicial recourse in such cases. Judicial recourse is also available to individuals and groups whose rights have been violated, as described in section 1) of this Chapter. To date, there is no jurisprudence concerning violations of the right to food in South Africa. However, there have been cases on other social and economic rights, one of which is described here for the purpose of drawing interpretative conclusions for the right to food under the Constitution.

In the case of *Government of the Republic of South Africa v Grootboom and Others*<sup>96</sup> [Grootboom] the Constitutional Court acknowledges that the State has a margin of discretion to adopt measures it deems appropriate to fulfil its obligations<sup>97</sup>. The Court elaborated on the housing rights of adults and children with ‘no access to land, no roof over their heads, and who were living in intolerable conditions or crisis situations’. It reasoned that the State should ‘devise, fund, implement and supervise measures to provide relief to those in desperate need’ within its available resources. In terms of the judgment, a reasonable programme would be one that resulted in progressive realization of the right within available resources whilst being balanced and flexible as well as making appropriate provision for attention to crises and to short, medium and long term needs. In addition, ‘a reasonable programme had clearly to allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources were available’.<sup>98</sup>

Thus, the Grootboom judgment held that reasonableness would be used as a test to assess the appropriateness of the measures adopted by the State. According to the Court, the extent of the State’s obligation is based on three elements, namely, the obligation to “take reasonable legislative and other measures”; to “achieve the progressive realization”; of the particular right and that it must happen “within available resources”. These three elements will be applied to State actions in order to determine whether the action has been reasonable and if they in fact pass constitutional muster.

Existing interpretations of the right to food in light of the *Grootboom* judgment have placed an emphasis on;

- a) the extent to which a policy should respond to the immediate consumption needs of people in desperate situations as opposed to focusing on longer term production objectives; and
- b) the requirement that a policy is only reasonable when it is coherent and co-ordinated. In terms of the right to food, policy co-ordination between the National Departments of Agriculture, Health and Social Development at a national level has been seen as key.<sup>99</sup>

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<sup>96</sup> 2001 1 SA 46 (CC), 2000 (11) BCLR 1169 (CC)

<sup>97</sup> Ibid., para 41.

<sup>98</sup> Ibid, para 39.

<sup>99</sup> See for example, Danie Brand, *Between availability and entitlement: The constitution, Grootboom, and the right to food*, Executive Summary of paper presented at a colloquium 17 - 19 March 2002 Socio-Economic Rights Project, CLC, UWC and Danie Brand, *Food security, social security and Grootboom*, Community Law Centre ESR Review, Vol 3, No. 1 July 2002

## IV. Selected Vulnerable Groups

Many of the programmes and laws described in the preceding Chapter have a special focus on vulnerable individuals, households and groups. For instance, income grants are provided for poor children and poor elderly persons, and special needs grants cater for the needs of those unable to work, including HIV/AIDS infected individuals. This Chapter looks in more detail at two extremely vulnerable groups and assesses how their right to food is protected and fulfilled. This is in no way meant to imply that these are the only vulnerable groups in South Africa.

Clearly any attempt to ensure that vulnerable groups are considered and catered for in terms of accessing adequate food requires a sound understanding of who is hungry.

It is important that any measure that is put in place by the State to alleviate poverty and more particularly to ensure access to adequate food must make specific provision for the vulnerable and marginalized groups in order to pass the test of reasonableness as set out in *Grootboom*<sup>100</sup>.

### 1) PERSONS INFECTED AND AFFECTED BY HIV/AIDS

Good nutrition is extremely important to seropositive persons, as it helps slow the progress of the disease. The disease changes the nutritional requirements of the affected persons, who need more nutritious food than healthy persons. At the same time, the ability to access food among those who are HIV (+) may be seriously impaired, especially at the advanced stages of the disease. The Social Assistance Act No. 59 of 1992 provides for a disability grant to persons having specified a cell count, which should facilitate access to sufficient nutritious food. However, in the earlier stages a person may be food insecure, leading to malnutrition and the earlier onset of AIDS. It should also not be forgotten that persons other than the seropositive person may also be very vulnerable and affected by HIV/AIDS. The extra medical expenses and loss of work through caring for the patient leads many families to destitution.

The provision of good nutrition to people living with HIV/AIDS was not the main subject of the Court case between the Minister of Health and Others v Treatment Action Campaign and Others (1) 2002. However, the application did refer to breast milk substitutes and remains an important case for the right to food. Its significance lies in the Constitutional Court order to government which instructs them to act *without delay* in rolling out Nevirapine with a view towards reducing the risk of mother-to-child transmission.<sup>101</sup> It is also important to reflect on the implications of the Constitutional Court's finding that:

“The magnitude of the HIV/AIDS challenge facing the country calls for a concerted, co-ordinated and co-operative national effort in which government in each of its three spheres and the panoply of resources and skills of civil society are marshalled, inspired and led. This can be achieved only if there is *proper communication*, especially by government. In order for it to be implemented optimally, a public health programme must be made known effectively to all concerned, down to the district nurse and patients. Indeed, for a public programme such as this to meet the constitutional requirement of reasonableness, its contents must be made accessible and appropriate to the claimants. The need to acknowledge the special nutritional needs of people living with HIV/AIDS and communities in which many people are unaware of their status has required a new approach to composition of rations and calculations of family size. There is a clear understanding that good nutrition helps slow the progression from HIV to AIDS. This has logistical implications related to increased food rations and greater variety in commodities”.

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<sup>100</sup> Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR (cc).

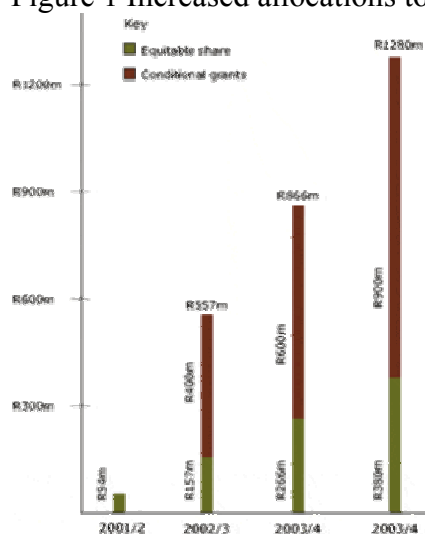
<sup>101</sup> Ibid, (135)

The South African Cabinet approved a national drug treatment programme on 19 November 2003. Activists who have been calling on government to face up to the epidemic that kills an estimated 600 South Africans each day hailed the move. The government has long resisted calls for free anti-retroviral drugs for HIV-positive people, but in the face of enormous pressure the Department of Health was requested to draw up a national treatment plan in August 2003. Shortly after that the Finance Minister, Trevor Manuel announced that South Africa would spend R12,1 billion over the next three years on HIV/AIDS, with R1,9 billion earmarked for the roll-out of anti-retroviral drugs.

The Department has produced a policy paper that underscores the importance of an enhanced response to HIV/AIDS, other STIs and tuberculosis as well as the necessary strategies and resource needs. This subsequently resulted in a substantial allocation being made for the first time to provinces, as part of their equitable share, for use to offset the impact of treating AIDS related conditions at provincial health facilities. As a more long term approach, annual phased-in allocations were identified which include *inter alia*, Voluntary Counseling and Testing, the Prevention of Mother-to-Child Transmission and Home- and Community Based Care.

Figures for these additional medium term allocations to provinces are reflected in the Figure 1. While the conditional grants are earmarked for particular health projects, the allocation to the equitable share is channeled to health at the discretion of the provincial treasuries. The figures reflect a pro-active approach by Government to the epidemic, investing progressively more resources to deal with the treatment and care aspects, but recognizing that expansion cannot exceed the carrying power of health system infrastructure. The strategy must be to reinforce health facilities and support services at the same time as expanding HIV and AIDS programmes. There is little point in overwhelming limited infrastructure with funding it cannot absorb and use productively.

Figure 1 Increased allocations to enhance response to HIV, AIDS and TB



Source National Department of Health 2003.

During 2003/2004, the National Department achieved 99% spending on its HIV/AIDS budget. This result reflects a strengthening of capacity to manage funds efficiently and an understanding of the dynamics of the programmes for which the funds are needed.

Conditional grants were disbursed to the provinces as required by law. Most provinces utilized funds as intended– but there were isolated instances of underspending<sup>102</sup>.

<sup>102</sup> <http://www.doh.gov.za/docs/reports/annual/2001-02>

## 2) CHILDREN

In South Africa, one in every 22 children dies before her or his first birthday. The national infant mortality rate (IMR) is 45 per 1000 live births. The 1998 Demographic and Health Survey reports a national under-5 mortality rate of 59 per 1000 live births, while the WHO has indicated more recently that South Africa's under-5 mortality rate is 67 per 1000 live births for girls and 85 per 1000 live births for boys. The increase is probably due to the impact of HIV/AIDS. Under-5 mortality in non-urban areas is 71 per 1000 live births. In urban areas it is significantly lower, at 43 per 1000 live births<sup>103</sup>. According to the recently released rapid assessment of the situation of children in South Africa, morbidity rates are less easily obtained and it is apparent that poverty is the greatest threat to child survival<sup>104</sup>. Malnutrition in children remains a primary contributor to morbidity and mortality, although it is seldom reported as the cause of death<sup>105</sup>.

Section 28 of the Constitution has been interpreted by child right advocates to mean that there is a basic package of services to which all children are entitled, and that the government must prioritise the provision of these services. However, competing priorities facing Government, and a lack of understanding of how to put the principle of "children first" into practice, have resulted in many children's basic needs not being provided for<sup>106</sup>.

South Africa's National Strategic Framework for Children Infected and Affected by HIV/AIDS highlights a concern with the growing numbers of orphans<sup>107</sup> in the country<sup>108</sup>. An estimated 3.2 million women of childbearing age were living with HIV/AIDS in July 2002. As a result, between 1 January -31 December 2002, 89 000 children (around 7% of the total number of children born during this period) were infected with HIV, either at birth or through breastfeeding, and 150 000 children lost their mother to AIDS. As of July 2002, an estimated total of 885 000 children in South Africa had lost a mother, and, without effective implementation of any major new health care interventions, this figure is expected to double by 2010<sup>109</sup>.

Children orphaned by AIDS and child headed households use a variety of strategies to survive and overcome the generic problems of poverty, discrimination, stunting and hunger, pressure to work, early marriage, difficulties accessing education, poor housing, exploitation, psychological problems, lack of adequate medical care, lack of supervision and care, disruption of normal childhood and adolescence, loss of financial support, lack of parental guidance, harassment, vulnerability to physical and sexual abuse and poor health status<sup>110</sup>.

<sup>103</sup> Department of Health, 1998. South African Demographic and Health Survey, In: Shung King, M., et al 2000.

<sup>104</sup> Rapid assessment: the situation of children in South Africa. Children's Institute University of Cape Town. November 2003. pp.20.

<sup>105</sup> Ibid.

<sup>106</sup> Children's Institute Annual Report 2002-2003, pp 9, 14, Web: [web.uct.ac.za/depts/ci](http://web.uct.ac.za/depts/ci),

<sup>107</sup> Note that the definition of orphan hood takes on a variety of forms in international policy and programming practice: maternal, paternal, and double (with both parents deceased). The age of children defined as orphans also differ in various definitions, with most policy makers and international organisations defining "orphans" as children under the age of 15 who have lost either their mother or both parents.

<sup>108</sup> A Draft National Strategic Framework for Children Infected and Affected by HIV/AIDS. <http://www.welfare.gov.za/Documents/2002/December/chaid.pdf>

<sup>109</sup> Also: see Dorrington, R. Bradshaw, D. Budlender, D. (2002) HIV/AIDS Profile In the Provinces Of South Africa: Indicators For 2002. Cape Town: Centre for Actuarial Research, University of Cape Town.

<sup>110</sup> Nelson Mandela's Children's Fund [NMCF] Report p.5-6, 2001. <http://www.mandela-children.com/english/worddoc/Report.doc>

They may work, get support from relatives and non-relatives and perform various tasks and favours in exchange for support. One of the unique problems experienced by child headed households is the inability to access financial support from the State in the form of social grants due to the lack of an adult primary care giver who is able to apply on behalf of the child for the grant. The Nelson Mandela Children's Fund [NMCF] report also found that many children were not aware that they could apply for the grants, and those who were aware were mainly resident in urban areas and would seek the assistance of a social worker.<sup>111</sup> This situation applies similarly to children living on the streets. It is estimated that there are 10 000 – 12 000 homeless children, the majority of whom live on the streets of major cities.<sup>112</sup> Most of the children living and working on the streets in South Africa, cannot directly access social assistance except through an adult caregiver or third party.<sup>113</sup>

The inability of the most vulnerable children to access social assistance is associated with child malnutrition. Child malnutrition remains a serious problem in South Africa, despite a number of interventions, including supplementary feeding for young children and their mothers, growth monitoring and mapping, school feeding and the child support grant.

Notwithstanding all the shortcomings it is fair to say that the National Department of Health has increasingly adopted a rights based approach and significantly made strides towards reaching some of the most vulnerable children. According to the National Department of Health's Annual Report this was achieved by the Integrated Management of Childhood Illness (IMCI). This programme was bolstered by training and empowerment of service providers with the training of almost 5 000 health care workers. Also in some provinces Supplementary Feeding Scheme for child-headed households, AIDS orphans and children living with or affected by HIV/AIDS, as well as other groups were established. The aim of the programme was to monitor 433 000 children for supplementary feeding in terms of the guidelines on nutrition interventions.

According to the Health Systems Trust the impact of new measures to address child malnutrition is evident in statistics from health facilities across the country (see Table 21). From 2001/2002 to 2002/2003, there was a 256% increase in the average number of children under 5 whose growth was monitored each month using the Road to Health card. Growth monitoring is not well reported by facilities in the North West province. There was also a major expansion in the number of children under 5 and new mothers who received a Vitamin A supplement.

However, in the context of more children under 5 being monitored, there was also a substantial increase in the number of children under 5 who did not gain weight or who were defined as severely malnourished. The prevalence of children under 5 who did not gain weight appears to have increased from 1.1% to 1.4% from 2001/2002 to 2002/2003. According to the Health Information System definition, the number of children who did not gain weight is a sensitive early warning indicator of looming malnutrition in a community.

From 2001/2002 to 2002/2003, the monthly number of cases of children under 5 who were affected by severe malnutrition increased by 154%. Severe malnutrition appears to be well monitored and reported in all provinces and most health facilities.<sup>114</sup>

The National Food Consumption Survey undertaken in 2000 measured the nutritional status of children living on commercial farms. The anthropometric status of South African children between 1-9 years is shown in the table below. The prevalence of moderate to severe stunting, underweight and wasting was measured as being greater than-2 standard deviations from the median measurements of the reference population. As can be seen from the table below, children

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<sup>111</sup> NMCF Report, p.6 2001

<sup>112</sup> Rapid assessment: the situation of children in South Africa. Children's Institute University of Cape Town. November 2003.pp.38.

<sup>113</sup> ChildrenFirst. April/May 2001. p.12

<sup>114</sup> National Health Information System V1.3.0.42A.

living on commercial farms in South Africa are most likely to be stunted and underweight, while only children in the former homeland areas had a higher prevalence of wasting. Almost one in three children on commercial farms is stunted; one in five is underweight and one in 25 display symptoms of wasting.

**Table 17 Anthropometric status of children aged 1-9 years by area of residence.**

			Stunting	Wasting
	% of sample	Height/Age	Weight/age	Weight/height
		<-2 Standard	Deviations	
Commercial Farms	11	30,6	18,1	4,2
Formal Urban Areas	39	16,0	7,8	2,6
Informal Urban Areas	11	19,3	7,6	2,1
Former homeland areas	39	25,3	11,3	5,1
South Africa	100	21,6	10,3	3,7

Only one in four children on commercial farms are food secure, and almost a third is at risk of hunger. Nevertheless, by these measures children on commercial farms are better off than children from other rural and informal sector households. While fewer farm children experience hunger than the national average, the difference is small: more than half (52%) of South Africa's children experience hunger, and 48% of those on farms share this tragedy<sup>115</sup>.

Ironically, childhood obesity among South African children is increasing. This increase is part of a worldwide trend towards children becoming overweight. It is often children in urban areas that are confronted with unhealthy food and lack of physical activities. This unhealthy trend is in line with worldwide trends. According to a recent expose of childhood obesity, there are no government programmes dealing with childhood obesity. Perhaps this is because the other side of the coin- childhood poverty and hunger is a more pressing issue.<sup>116</sup>

<sup>115</sup> Livelihoods of Farm Workers in South African Agriculture report commissioned by the National Department of Labour

<sup>116</sup> The Sunday Independent , Lifestyle, Issue No 86, February 22 2004.

## V. Lessons Learnt

It is clear that a rights based approach allows for the empowerment of the rights holders and enables them to become active participants in realizing the right to food. The rights based approach also fundamentally requires greater accountability from all actors in the process of realizing the right to food. This may be done by way of legal, administrative, or political mechanisms. The individuals are right holders and can make claims of conduct of individual and of collective agents, which include states as the duty bearers.

A rights based approach to food requires that food is accessible to all, that those who are most vulnerable are identified and plans or programmes are put in place to address their inability to access adequate food.

The State allocates tasks and responsibilities to different spheres and levels of government; allocation of roles and responsibilities must be clear and provide adequate guidance on how to deal with the variety of sectors in society.

In order to better implement the right to food, perhaps the starting point is for a national audit on all policies, programmes and other initiatives geared towards the realization of the right to access adequate food. This review would allow for identification of what is working, why and where and the converse.

The ultimate purpose of the right to adequate food is to ensure nutritional well-being and dignity for everyone. There is no doubt that those who do not have access to food are denied their fundamental human rights, human dignity and basic freedoms, which are the basic tenets of the South African Constitution and are denied one of their basic rights, the right to adequate food. However “without systematically addressing the land question, skills, inputs, extension services, credit, food prices, and non-agricultural livelihoods, the food security of the South African urban and rural poor will remain elusive.”<sup>117</sup> While this case study has not interrogated the aspect of corruption it is important to see it as an element that almost always prejudices the attainment of equality and enjoyment of economic and social rights.

Positive lessons that can be drawn from the example of South Africa include the importance of a strong constitutional framework with clearly justiciable right to food and the important role that national human rights institutions can play in the monitoring and promoting the right to food.

Also worth mentioning are the important achievements of the National Department of Health in training of health care workers to assist in the identification of malnutrition and to empower them to manage the illness. Also there have been clear efforts to promote awareness and better access to services.

*Accountability* for the right to food is well on its way to being established in South Africa. There clearly has been political will in addressing the issue of the right to food in South Africa. Parliament, the overall oversight body, held hearings on food security and the South African Human Rights Commission continues to facilitate debate on the right to food as well monitor the progressive realization of the right to food. There is increasing engagement on the right to food by NGOs. Accountability also requires voice that allows for people’s participation, where more efforts are still needed.

The case study also concludes that implementing the right to food is a difficult task and that the difference between the rights protected by the Constitution and the level of enjoyment of these rights reflects a fundamental dualism in South Africa, of society itself, but also between policies

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<sup>117</sup> David Fig, *Corporate Social and Environmental Responsibility in The South African Food And Drink Industries*, Sociology of Work Programme, University of the Witwatersrand, August 2003.

and their implementation. A number of steps need to be taken to implement the constitutional framework, including:

1. *Capacity development.* There is still a lack of capacity amongst duty bearers and rights holders to make good on and use the instruments. A definition of capacity is the ability to accept responsibility, to have authority and resources to act. Capacity development using the rights framework requires targeting both the rights holders and duty bearers. It should cascade to communities, households as well as to those in the public and private spheres. There is a critical need to build capacity to ensure that policies are implemented.
2. *Progress indicators.* Whilst the Courts have provided invaluable guidance on what progressive realization of some of the economic and social rights entail, there needs to be commonly understood indicators of progress in service delivery and the State needs to set clearer goals and objectives. The setting of targets with clear deliverables is key and should be done in consultation with the vulnerable groups.
3. *Coordination.* In order to give effect to the right to adequate food it is quite clear that government programmes, projects and any other related measures should be integrated and well co-ordinated. The nation's priorities need to be distilled into a comprehensive, coherent and coordinated framework to monitor progress. There is also a need for better coordination of departmental efforts and programmes.
4. *Costing.* The need to cost the Food Security Bill before it is submitted to Parliament.
5. *Allocation of responsibility.* The executive and the legislative powers need to take decisions on allocation of roles and responsibilities of the different duty bearers. All three spheres of government should be clear as to their obligations to respect, protect and fulfil the right to adequate food. .
6. *Vulnerability.* There is a need to address HIV/AIDS and other emerging diseases by reducing the incidence of infection among high-risk groups and provide treatment for those who are infected, providing support for carers and look to strengthen home based care. Furthermore, a holistic plan on food and nutrition should be developed for and with people living with HIV/AIDS. Social Assistance for child headed households must be resolved, with the principle of the best interest of the child as paramount.
7. *Public awareness.* Government should continue to seek new ways of encouraging ordinary people to utilize their freedoms.
8. *Poverty eradication.* More long-term approaches would be to ensure that job creation and employment are addressed as a means of securing food security.
9. *Food prices.* Incentives should be introduced to reduce food prices to ensure that everyone is better able to access sufficient food.
10. *Nutrition education.* Educating communities about nutrition is essential and can go a long way towards improving food nutrition security in communities. Targeted programmes on the right to food and nutrition especially for vulnerable groups need to be rolled out.
11. *Interrelatedness of all human rights.* It is critical to see the right to adequate food within a continuum of rights. Human rights are often interpreted in a manner that gives primacy to civil and political rights and less focus on the interdependence and interconnectedness to economic, social and cultural rights<sup>118</sup>.

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<sup>118</sup> The Vienna Declaration of the World Conference on Human Rights of 1993, states that all human rights are indivisible, interdependent and interconnected.

## ANNEXURE: ECONOMIC AND SOCIAL RIGHTS PROTOCOLS

### Annexure 1: Extract from the 5th Economic and Social Rights Protocols

#### The Right to Sufficient Food.

For Period: 1 April 2002 to 31 March 2003

Everyone has the right to have access to sufficient food. The State is obliged to respect, protect, promote and fulfil this right and should in this regard take reasonable legislative and other measures within its available resources to achieve its progressive realization.

#### 1. POLICY AND LEGISLATIVE MEASURES

##### 1.1 New Policies and Legislation

- 1.1.1 List and briefly describe all new policies instituted during the reporting period in order to realize the right to have access to sufficient food.
- 1.1.2 List and briefly describe all new legislative developments<sup>119</sup> which took place during the reporting period in order to realize the right to sufficient food.

##### 1.2 Programmes and Projects

- 1.2.1 Provide information according to the table below on programmes and/or projects instituted during the reporting period.<sup>120</sup>

Programme/ projects	Policy/legislation on which programme/ project is based*	Objectives	Beneficiaries	Achievements or Goals attained

\*Be specific as to whether the above is a policy or legislation and state the date when such policy or legislation was instituted.

##### 1.3 Vulnerable Groups

<sup>119</sup> Legislative developments referred to here include new legislation, reviews and amendments to legislation and Bills, but exclude technical amendments such as amendments to grammar.

<sup>120</sup> Include ongoing programmes and projects

- 1.3.1 Indicate which of the following vulnerable groups were catered for by each of the above instituted measures and in what manner:
- a) Women
  - b) Female-headed households
  - c) Children
  - d) Child-headed households
  - e) Girl-children
  - f) Children with disabilities (physical and mental)
  - g) Homeless Person (children and adults)
  - h) Persons with disabilities (excluding children) (physical and mental)
  - i) Persons living in rural areas
  - j) Persons living in informal settlements
  - k) Persons living with and/or affected by HIV/AIDS
  - l) AIDS orphans
  - m) Non-nationals (refugees, asylum-seekers, permanent residents and other groups)
  - n) Unemployed persons
  - o) Low-income groups and poverty stricken groups<sup>121</sup>
  - p) Historically disadvantaged racial groups (Africans, Coloureds and Indians)
  - q) Prisoners

#### 1.4 Outcomes of Instituted Measures

- 1.4.1 Kindly tabulate the outcome(s) of each instituted measure (policy, programme, project and legislation) based on indicators utilised by your Department.<sup>122</sup>  
(See Question 6 for guidance)

#### 1.5 Constitutional Obligations

- 1.5.1 How did each of the above instituted measures meet the constitutional obligation to
- Respect<sup>123</sup>
  - Protect<sup>124</sup>
  - Promote<sup>125</sup> and
  - Fulfil<sup>126</sup> the right to have access to sufficient food?

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<sup>121</sup> The Department should indicate what low income means and what constitutes the poverty line.

<sup>122</sup> "Department" denotes office/institution dealing with this right.

<sup>123</sup> Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights.

<sup>124</sup> Protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party or the State.

<sup>125</sup> Promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

<sup>126</sup> Fulfil places a positive obligation on the State to institute active measures that enable each

## 2. BUDGETARY MEASURES

### 2.1 Total Budgetary Allocation

2.1.1 Provide information on the budget of the department as per table below:

#### TOTAL BUDGETARY ALLOCATION

Year	Total Departmental Allocation in Rand(s) <sup>127</sup>	Allocation as a % of the National Budget <sup>128</sup>	Total Conditional Grants Allocation in Rand( s)	Total Donor Funding in Rand(s)	Projected expenditure in Rand (s)	Actual expenditure in Rand(s)
2001/2002						
2002/2003						

Note: Please provide all figures in full. For example R10 000; R10 000 000; R10 000 000 000. This is applicable to all tables on budgets.

2.1.2 Account for variances in the department's budget for the periods indicated in the table above.

2.1.3 Was the budget adequate? If not, what impact did this have on the realization

of the right to have access to sufficient food?

2.1.4 What measures were instituted to address budget inadequacy?

2.1.5 Was there any over or under-spending of the total revenue? If so, explain and state the procedures that were followed in the case of overspending.<sup>129</sup>

2.1.6 What impact did over or under-spending have on the realization of the right?

2.1.7 What measures has the department put in place to address this over or under-spending?

### 2.2 Budgetary Allocation Towards Programmes and/or Projects

2.2.1 List all the programmers and/or projects for which your department has allocated a budget for the period under review and use the format given below for each of the programmes and/or projects listed.

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individual to access entitlements to the right and which cannot be secured through exclusively

<sup>127</sup> This amount should exclude grants, donor funding, personnel and personnel and related monies.

<sup>128</sup> As per the vertical division of revenue.

<sup>129</sup> Section 39 (2) (b) (iii) of the Public Finance Management Act provides that an accounting officer of a department is responsible for ensuring that any impending overspending of the department's vote or a main division within the vote is reported to the executive authority and that relevant treasury. This applies to question 2.2.5 as well.

**BUDGETARY ALLOCATION TOWARDS PROGRAMMES AND/OR PROJECTS** e.g. Special Programme for Food Security

Year	Allocation for Programmes/ projects in Rand(s) <sup>130</sup>	Allocation as a % of the Department's budget	Conditional Grants Allocation in Rands	Donor Funding in Rand(s)	Actual expenditure
2001/2002					
2002/2003					

- 2.2.2 Account for variances in the department's budget for the periods indicated in the table above.
- 2.2.3 Was the budget adequate for the above-mentioned programme and/or projects? If not, what impact did budget inadequacy have on the realization of the right?
- 2.2.4 What measures were instituted to address budget inadequacy?
- 2.2.5 Was there any over or under-spending for the programme/project? Explain and state the procedures that were followed in the case of overspending.
- 2.2.6 What impact did over or under-spending have on the realization of the right?
- 2.2.7 What measures has the department put in place to address this over or under-spending?

2.3 Vulnerable Groups

- 2.3.1 In making the allocations what considerations were given to the needs of:
- Women
  - Female-headed households
  - Children
  - Child-headed households
  - Girl-children
  - Children with disabilities (physical and mental)
  - Homeless persons (children and adults)
  - Persons (excluding children) with disabilities (physical and mental)
  - Persons living in rural areas
  - Persons living in informal settlements
  - Persons living with and/or affected by HIV/AIDS
  - AIDS orphans
  - Refugees and asylum-seekers
  - Unemployed persons

<sup>130</sup> This amount should only include the total allocated to implementation of a programme or project and should exclude personnel, capital, infrastructure and related expenditures

- o) Low-income and poverty stricken groups <sup>131</sup>
- p) Historically disadvantaged racial groups (Africans, Coloureds and Indians)
- q) Prisoners

### 3. IMPLEMENTATION DIFFICULTIES

- 3.1 What were the difficulties experienced, if any, in the implementation of these policies, programmes, projects and legislative measures? <sup>132</sup>
- 3.2 What measures has the department put in place to address these difficulties?

### 4. ADMINISTRATIVE ACTION

- 4.1 Were there any administrative action(s) taken by the department, which resulted in the violation(s) of the right? If yes, elaborate on the nature of the administrative action(s) and the violation(s).
  - 4.1.1 How did the administrative action(s) result in the violation(s) of the right in question?
  - 4.1.2 Identify and describe any measures that the department introduced to address and prevent the recurrence of mal-administration and/or corruption.
  - 4.1.3 How effective were these measures?

### 5. MALADMINISTRATION AND/ OR CORRUPTION

- 5.1 Were there any official complaints of mal-administration and/ or corruption against the department relating to the realization of the right during the reporting period? If yes, explain.
- 5.2 Identify and describe any measures that the department introduced to address and prevent mal-administration and/ or corruption.
  - 5.2.1 How effective were these measures?
- 5.3 As a result of administrative action(s), mal-administration, corruption and failure to discharge constitutional obligations in relation to the right in question, were there any legal actions instituted against your department? If so, kindly provide the following information: basis of litigation, outcome of litigation and measures instituted to prevent further litigation where the outcome was not favourable to your department.

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<sup>131</sup> See footnote 3 above.

<sup>132</sup> National departments should also respond to national policies implemented by provincial departments.

## 6. GENERAL INDICATORS AND THE NATIONAL ACTION PLAN FOR HUMAN RIGHTS

6.1 Please provide appropriate information according to the tables below for this reporting period.<sup>133</sup>

### INDICATORS

	TOTAL	RECOMMENDED
Give the national level of maize and rice sufficiency		
Total proportion of imported food stuff that cannot be produced locally.		
Provide the proportion of food products used for seeds, animal feed and other food for non-human consumption.		
Provide the proportion of land damaged due to unsound farming practices.		
Total proportion of cultivated land.		
Total proportion of irrigated land.		
Proportion of land suitable for cultivation but is not presently used for cultivation.		
Provide the proportion of State land used for agricultural purposes.		
Indicate geographical food insecure areas		

### FOOD SECURITY INDICATORS

	Province	Total	Urban	Rural	African	Coloured		White
No of hectares utilised by LRAD this reporting period								
No of households that are food insecure								
Provide the number of households assisted to								

<sup>133</sup> Where information cannot be provided, please state this and give reasons thereof.

grow their own food								
Provide the number of households assisted with food parcels								
Predict the number of households who will be food insecure for the next reporting period.								

6.2 Describe your department's initiatives relating to regulation of food prices, effective geographic food distribution and storage.

6.3 Provide information on measures taken by the department to improve the rights in terms of indicators referred to above or by those utilised by your department. What progress has been achieved by the department?

**NB** If there are any questions which you did not answer, provide reasons for not having done so.

## 7. MONITORING

7.1 Describe any internal mechanisms used by the department to monitor and assess the realization of the right to access to sufficient food.

7.2 Describe the nature of the statistics and the manner in which they are collected by the department to facilitate the monitoring and assessment of the right.

7.3 Were there any difficulties experienced by the department in monitoring and assessing the realization of the right? If yes, explain.

7.4 Provide the name(s), and designation(s) of the official(s) who compile the department's response.

The Protocol on the right of the child to basic nutrition is not reproduced here; however, the table below shows which information is requested for nutrition indicators.

	Total	Urban	Rural	African	Coloured		
Percentage of live births in health facilities with birth weights <2, 5kg (low birth weight)							
Percentage of children under five years of age below two standard deviations from median weight for age (underweight)							
Percentage of children under five years of age below two standard deviations from median height for age (stunted)							
Percentage of children under five years of age below two standard deviations from median weight for height (wasted)							
Number of children benefiting from the Health Facility Based Nutrition Programme							
Number of children benefiting from the Primary School Nutrition Programme							
Number of children with parasitic diseases.							
Number of children consuming less than the minimum required calories per day.							
Percentage of children with kwashiorkor							
Percentage of children with mirasmus							
Percentage of children aged 6- 7 months with iron deficiency anaemia							
Percentage of primary school children with some degree of dietary iodine or other deficiencies							
Number of primary school children assisted by the Primary School Nutrition Programme							
Number of children who die due to lack of food/starvation							
Number of children relying on shelters for nutritional assistance							

