



UGANDA HUMAN RIGHTS COMMISSION

Comments on the Uganda Draft Framework law on the Right to Food.

Presented by

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Day 1: Putting the Right to Food into Practice.

1. What are the concrete provisions on the right to food and corresponding obligations in the forthcoming food and nutrition bill?
2. What are their likely effects
3. How has the Commission played a catalytic, lobbying and advisory role in the promotion of the right to food

1. The concrete provisions on the right to food and corresponding obligations in the forthcoming Food and Nutrition Bill and the likely effects.

In an effort to domesticate the right to food provided under the ICESCR, Uganda is drafting a Food and Nutrition law as an effort to implement the Food and Nutrition Policy 2003. Some of the causes of food insecurity in Uganda include poverty, increase in population, civil wars, unemployment, floods, long droughts, climatic changes, earthquakes, and poor land policies. Under this bill, there has been attempts to focus on groups in the population who are vulnerable to food and nutrition insecurity.

Object of the bill

The objects of this bill are to;-(a) recognize, promote and protect the right to food as a fundamental human right, -(b) to use a rights based approach in planning, budgeting and implementing the Uganda Food and Nutrition Policy -(c) to ensure that food is treated as a national strategic resource, -(d) to promote the policies on food and nutrition as part and parcel of the overall national development policy -(e) to emphasize the cross cutting nature of food security and nutrition issues as they affect the population -(f) to provide a legal basis for implementing the Uganda Food and Nutrition Policy -(g) to ensure the integration of the needs of the vulnerable in food and nutrition issues -(h) to promote education and information services with regard to nutrition.

The objects of the bill as outlined in the Bill are laudable. Recognizing and legalizing the right to food in national law will for the first time provide a clear legal basis for fighting food and nutrition insecurity in Uganda. The objects are comprehensive enough to cover the very key elements of the right to food. The question which remains and is being debated is if the actual content of the bill has sufficiently provided for the achievement of these objects.

CONTENT

The Bill is basically made up of three important parts; (a) the first part is about the Right to food, (b) the section the obligations of duty holders, and (c) the Institutional framework.

The Right to food under the bill

Clause 5 (1): Every person has a right to food and to be free from hunger and under nutrition

Clause 5(2): The right to food shall be enjoyed without discrimination, exclusion or restriction on the basis of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political or other opinion, property, disability or other status.

Clause.5(3): Notwithstanding this section, the state is only responsible for making provision of a minimum amount of food to a person who is identified as vulnerable under this Act, where that person is suffering or is at risk of suffering from hunger or under nutrition.

The bill acknowledges that food and nutrition is a fundamental right, stipulating entitlements regarding the right to food to be accorded to everyone without discrimination. This means that the bill confers some meaningful legal right to food for all Ugandans, and it can be used as an instrument for achieving substantive equality especially for the grossly disadvantaged groups in Uganda. The bill translates, the National Objectives and Directive Principles of State Policy of the Constitution on the right to food into concrete legal claims. Importantly the definition of the right to food in the bill satisfies the definition as contained in the UN General Comment Number 11.

.Vulnerability to food and nutrition insecurity has always been the concern of promoters of the right to food. The bill tries to answer this by identifying those whose right to food is at risk. Clause 2 of the bill defines the vulnerable as including the elderly, infants, children school going children, refugees, internally displaced persons, pregnant and nursing mothers, people with disabilities, sick persons with chronic diseases such as HIV/AIDS, victims of conflict, rural people in precarious livelihood situations, marginalized populations in urban areas, groups at risk of social marginalization and discrimination and any other group identified from time to time.

For the first time in Uganda the bill if enacted will provide the legal basis which Ugandans will use to claim for their right to food, and legally hold government accountable for failure to meet the needs of such individuals or groups.

The constitution of Uganda places primary responsibility on parents to look after children and those under their charges. The bill spells out the duties of the head of a household to endeavor to feed those under their charges. There is an attempt by the proposed law to deal with the principle that the right to food is not necessarily the right to be fed. The bill carries this principle as far as making it an offence to neglect to provide food to the members of a household. It is also an offence to deliberately starve a person, a phenomenon which is fairly common with some parents who do so as a punishment especially to children.

The bill further provides a standard of scrutiny (i.e. equality and non discrimination) which the state is required to meet in respecting, protecting, promoting and fulfilling the right to food in the country. This criterion is to set a bench mark, within which the state must work, in providing food to the vulnerable and taking steps to ensure that the right to food is protected in the country. Equality and protection against discrimination are aspects clearly promoted and emphasized in this proposed law.

One problem area on the right to food has been the quality of school feeding. Many if not the majority of pupils in primary schools go on without breakfast and lunch with serious consequences on their health and education. The bill offers for a solution by making it compulsory under section 8(1) for parents to ^{provide} food for their children attending primary school. Many children in Uganda drop out of school due to hunger because they are sent to school for the whole day without food. A case in point is that of one Kayebe, a former brilliant pupil who was in year 6 of primary education. When asked why he abandoned school he said: "*My grandmother could not afford two meals a day. I always ate food once a day at 5:00pm," adding. "I tried to stay at school for the afternoon but because of hunger, I would always sleep through the lessons."* Kayebe dropped out of school and now cleans shoes on one of Kampala's streets.

School feeding in Uganda has remained controversial in spite of the very clear opinion of the Education officials blaming school drop out partly on the lack of school meals, calling on head-teachers to charge fees in order to provide school lunch. President Yoweri Museveni on his part has barred schools from charging the fees, fearing that many pupils would be locked out for failure to pay. All this has led to confusion about school feeding in primary schools. Through this bill the Government want to pin the responsibility on parents which is reasonable except that the bill ignores the obvious fact that large number of parents may not be in a position to provide the much needed school meals for their children.

The Bill recognizes the obligation of the state to provide food for those who for reasons beyond themselves are unable to access food. This obligation is defined in the bill as the obligation to provide the minimum amount of food to the person identified as vulnerable under the bill. The state can only be held accountable where it fails to provide a minimum amount of food to a person described as vulnerable. A minimum amount of food is defined as *“the minimum nutritional needs of an individual according to age, sex, occupation and health status provided in kind, or in equivalent monetary value, vouchers or other prescribed form.”*

Limitation

The right to food under the bill is not absolute. The bill provides a disturbing limitation to the right. Under the bill, *“interference with or limitation of the exercise of the right to food may be allowed where it is provided by law or where it is necessary for the purpose of a compelling public interest or for promoting the general welfare of the country and is compatible with the nature of the right to food.”* This if passed is a serious claw back provision especially where it is provided that limitation can be by law giving parliament a blank check to limit the enjoyment of this very fundamental right.. It is not very clear from the language of the clause whether such a law or governmental action must not violate the right to food.

Obligations of duty bearers

The bill identifies parents, the state, and the individual as duty holders for the purpose of the bill. It charges the State with The duty to *respect, protect promote and*

fulfill: it is required ^{to} provide food to the vulnerable as well as ^{to} formulate policies to access the right to food.

The bill compels heads of homesteads or households under Section 8 of the bill, to provide food for the members of the household especially the vulnerable, to provide feeding for their children in primary school during school days, to ensure that the homestead or household has a food reserve, to engage in gainful work for the good of the family, to participate in the maintenance of water sources of the community including springs and wells, and to participate in the formulation and implementation of development plans and programmes which affect his or her community exception whatsoever. It is an offence for a head of a household to fail to meet these obligations and from the language of the bill there seems to be no exceptions to the rule that a head of a household is always responsible for the obligation to take care of the vulnerable in the household.

Institutional Framework

The bill establishes a Food and Nutrition Council charged with the fulfillment of several objectives including ensuring the availability, accessibility and affordability of food in Uganda, promotion of good nutrition, and coordination of food security issues. Its functions include the coordination of the efforts of all stakeholders. Specifically it has the duty to coordinate, monitor and evaluate the implementation of the Food and Nutrition Policy and any strategies for its implementation, and the harmonization and integration of food and nutrition concerns at all levels of government. It is also responsible for the food and nutrition needs of all vulnerable persons including ensuring that they are provided with the minimum amount of food. Education, advocacy and campaigns about the right to food are also the responsibility of the Council.

Challenges of the bill

The proposed bill has weaknesses and challenges: First and foremost it is yet to be gazetted meaning that it is yet to be accepted by the Cabinet. What has so far been produced is the work of a committee set up by the government to draft the bill. The committee which is composed of civil servants, legal drafts people and human rights

practitioners are having trouble agreeing on important provisions that should find its way into the bill. For example provisions that would have stipulate clear recourse mechanism had to abandon on the grounds that Government would not approve it and therefore would stand on the way of the bill being adopted by the Cabinet. Secondly there is resistance to the inclusion of any clauses that would directly commit government to spending money to meet some of the obligations taken on in the bill. For example the Council is given several responsibilities without sources of funding except for its administrative expenses.

The proposed ^{law} criminalizes poverty. Why for example should the head of a household incur criminal responsibility if he she is not in a position to meet his responsibility. The HIV/AIDS scourge has left many orphans under the care of elderly grand parents and children heading families due to the death of parents. In most situations these elderly and infant heads of homesteads are unemployed and can not therefore provide for members of their families since they are also vulnerable yet the bill makes them all liable in the event they fail to make good their household responsibilities. Some parts of Uganda like Karamoja in the north-eastern region are affected frequently by the dry spell which means crop failure is also frequent. It would therefore be wrong to jail such people when they can't produce enough food for reasons beyond their control. The object of this bill can easily be lost if innocent people will be prosecuted and put in the same room with murderers, rapists, robbers and petty thieves to face the law just because they are too poor to feed their children. In effect the entire bill does not address in clear terms the duty bearer responsibility of the state and its accountability.

The rational of the penalty is questionable. Parents who cannot afford to give their children three meals a day will be liable on conviction to six months imprisonment or to a fine. If one cannot afford three meals a day for his children, it is unlikely that the person will be in position to afford a fine. The other dilemma is that imprisoning parents for failure to provide food leaves the children or vulnerable persons within the household even more exposed to food insecurity.

The institutional framework that is set up for the implementation of the right to food is weak. The Food and Nutrition Council as proposed is composed of officials from

sector ministries whose membership is part time. The Council has no powers to enforce its decisions. It has no clear source of funding for implementing the elaborate objectives and functions it has been given. Further the institutional structure for implementing the proposed law is not clear. The responsibility is spread between the Prime Ministers Office, the Council and the district and sub county committees. The Secretariat of the Council is placed under the Prime Ministers Office. Under the control of the Prime minister and not the Council. There is clear need to have a strong and independent Council a fact being resisted on the grounds that it would be expensive. The several institutions such as the district and the sub county committees are set up without a clear source of funding and are therefore have no impact as they cannot operate without resources.

The Bill provides that in the case of violations complaints should be directed to the Uganda Human rights Commission. While it is ^{easy} to access the Commission, the Commission's out reach is limited to a few urban centers far away from the village person who in most cases is the most vulnerable to food insecurity. Secondly restricting the recourse mechanism to the Commission is limiting as it attempts to oust the jurisdiction of the courts for example the Local Council Courts that are present at every village level. More importantly is the obvious fact that an aspect of violation of the right to food such as a family going without food requires quick and immediate action. Other than legal procedures there should be spelt out clear administrative recourse mechanism to cater for situations that require quick action.

2. How has the Commission played a catalytic, lobbying and advisory role in the promotion of the right to food?

One of the important functions of the Commission is to monitor government compliance with international and regional human rights treaties and the standards they set. The Commission has understood this to mean examining government policies and existing laws. The same function is used to audit and input government policies Bills of parliament and laws. Over the years the Commission has therefore looked at various socio-economic rights including the right to adequate food. It

became apparent that government approach to food issues did not treat food as a human right contrary to its obligation under the international Covenant on economic social and Cultural Rights, 1966. Together with international stakeholders the idea of a national seminar to discuss how to catalyze the implementation of the right was borne. The idea was discussed with the Ministry responsible for Agriculture and the Ministry of health and also Makerere University who all agreed to organize together a national seminar. The seminar reviewed the relevant laws and policies and came up with recommendations including amendments to the then Draft Food and Nutrition Policy. A committee was set up to follow on the recommendations. Today those actions have led to the Food and Nutrition Policy and the framework law which is being drafted.

The Commission has a programme for promoting a rights based approach in policies. Through this program constant touch is made with ministries some of which refer ^{the} draft policies to the Commission for comment. That way the Commission was instrumental in influencing the content of policies like the Food and Nutrition Policy, Policy on Refugees, and the Policy on internally displaced persons whose right to food were being severely compromised. It is therefore central to mention that creating a good working relationship between the various stakeholders particularly the relevant government ministries is a good strategy to influence their outlook.