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WE, THE PEOPLE OF SOUTH AFRICA,
RECOGNISE THE INJUSTICES OF OUR PAST;
HONOUR THOSE WHO SUFFERED FOR JUSTICE AND FREEDOM IN OUR LAND;
RESPECT THOSE WHO HAVE WORKED TO BUILD AND DEVELOP OUR COUNTRY;
BELIEVE THAT SOUTH AFRICA BELONGS TO ALL WHO LIVE IN IT.
UNITED IN OUR DIVERSITY.
WE THEREFORE, THROUGH OUR FREELY ELECTED REPRESENTATIVES,
ADOPT THIS CONSTITUTION AS THE SUPREME LAW OF THE REPUBLIC SO AS TO
HEAL THE DIVISIONS OF THE PAST
AND ESTABLISH A SOCIETY BASED ON DEMOCRATIC VALUES, SOCIAL JUSTICE AND
FUNDAMENTAL HUMAN RIGHTS;
LAY THE FOUNDATIONS FOR A DEMOCRATIC AND OPEN SOCIETY IN WHICH GOVERNMENT
IS BASED ON THE WILL OF THE PEOPLE
AND EVERY CITIZEN IS EQUALLY PROTECTED;
IMPROVE THE QUALITY OF LIFE OF ALL
FREE THE PEOPLE

OF EACH PERSON; AND BUILD A UNITED AND
TAKING ITS RIGHTFUL PLACE AS A SOVEREIGN
NATION.
May God protect our people. Nkosi Sikelelwe
God seen Suid-Afrika. God bless South Africa.

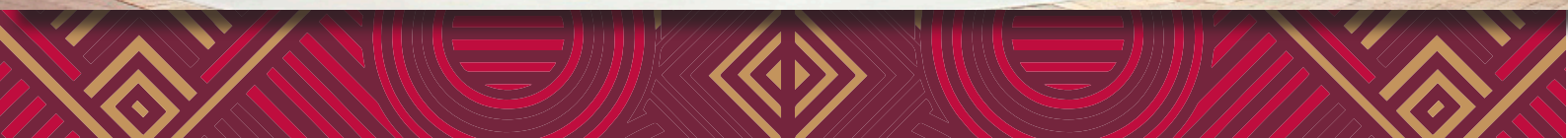


Expert Symposium on Social Justice, Hunger and the Constitution

Centre for Social Justice (CSJ)
Stellenbosch University

5 September 2024

Bertha Retreat Boschendal, Franschhoek



Expert Symposium on Social Justice, Hunger, and the Constitution

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Venue: Bertha Retreat Boschendal, Franschhoek

Theme: *Social Justice, Hunger, and the Constitution*

"We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society."¹

I Purpose

The purpose of the *Expert Symposium on Social Justice, Hunger, and the Constitution* is to bring together constitutional experts to explore the progress made towards ending hunger. The conversation will take place at the intersection between social justice, hunger, and the human right to food. The reflections will be contextualised in South Africa's first three decades of constitutional democracy and the progress made in ending hunger as a social justice and human rights imperative. Also mainstreamed will be the country's Sustainable Development Goal (SDG) specifically the goal of ending hunger by 2024, and the African Union

¹ Nelson Mandela "Address: on the Occasion of the ANC's Bill of Rights Conference" in *A Bill of Rights for a Democratic South Africa: Papers and Report of a Conference Convened by the ANC Constitutional Committee* (May 1991) 12.

(AU) Agenda 2063 Goal of reaching a high standard of living, quality of life and well-being for all citizens.

The Constitution of the Republic of South Africa, 1996 (Constitution),² entrenches the right of access to food as a justiciable right. Section 27(1)(b) of the Constitution specifically provides that:

“(1) Everyone has the right to have access to— (b) sufficient food and water ...” For children, the right to food is further reinforced by section 28(1)(c) of the Constitution, which states that “(1) Every child has the right— (c) to basic nutrition, shelter, basic health care services and social services”.

The reflections from this expert symposium will be informed by an understanding, as affirmed by the North Gauteng High Court in *Equal Education v Department of Basic Education* (“*Equal Education*”),³ that section 7(2) of the Constitution places a duty on the state to “respect, protect, promote, and fulfil all human rights, including the right to food”. In fact, the Constitutional Court has gone one step further to draw the nexus between the duty to advance human rights and the constitutional commitment to advance social justice together with the duty to ensure equal enjoyment of these human rights in pursuit of the right to equality and the value of advancing equality. This reasoning is clearly articulated in *Government of the Republic of South Africa v Grootboom* (“*Grootboom*”).⁴

Despite clear constitutional commitments and the fact that the right to food is also protected under international law, achieving zero hunger is one of the 17 SDGs, and a fortune has been spent in 30 years of democracy to address hunger and related multiple dimensions of poverty. Data available to the CSJ suggest a growing hunger epidemic. According to Statistics South Africa (“Stats SA”), in 2021, out of nearly 17.9 million households in South Africa, approximately 80% (14.2

² B Nkrumah “Opening Pandora’s box: A legal analysis of the right to food in South Africa” (2019) 52 *De Jure* 47 48.

³ *Equal Education v Minister of Basic Education* 2021 (1) SA 198 (GP) para 44.

⁴ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) paras 1, 25.

million) reported having adequate access to food.⁵ Meanwhile, 15% (2.6 million) and 6% (1.1 million) reported inadequate and severely inadequate access to food, respectively.⁶

The COVID-19 lockdown brought about a surge in poverty, unemployment, and a lack of food. By May and June 2020, nearly half (47%) of households faced challenges affecting their ability to purchase food, resulting in increased hunger among children and adults, with percentages rising to 15% and 22%.⁷ Despite South African women carrying the primary burden of care, unemployment rates among women reached a rate of 42% during the first quarter of 2019. In addition, the impact of the COVID-19-associated lockdown restrictions further exacerbated this, as women accounted for 60% of the three million jobs lost between February and June 2020.⁸

The number of individuals experiencing food insecurity is likely to increase as climate change, socio-political, and economic dynamics continue to place stress on food systems. From a social justice perspective, it is worth examining which social groups are hungry and the equality character of the multidimensional causes of and factors behind hunger while exploring the impact of hunger on the realisation of other human rights and related human well-being goals.

The United Nations (UN) High Commissioner for Human Rights outlines four fundamental components of the right to food:⁹

- **Availability:** Food should be accessible through various means, such as agriculture and fishing, and it should also be readily available in markets and shops.

⁵ Statistics South Africa "Assessing food inadequacy and hunger in South Africa in 2021 using the General Household Survey (GHS)" (11-04-2023) *StatsSA* <<https://www.statssa.gov.za/publications/03-00-20/03-00-202021.pdf>> (accessed 20-05-2024).

⁶ Statistics South Africa "Assessing food inadequacy and hunger in South Africa in 2021 using the General Household Survey (GHS)" (11-04-2023) *StatsSA* .

⁷ J May, C Witten, L Lakeiii & A Skeltoni "The slow violence of malnutrition" (2020) *South African Child Gauge* 24 28.

⁸ 36.

⁹ United Nations OHCHR and the right to food "Key aspects of the right to food" (undated) *United Nations* <<https://www.ohchr.org/en/food>> (accessed 15-04-2024).

- **Accessibility:** Food must be affordable, ensuring individuals can maintain an adequate diet without sacrificing other essential needs like education, healthcare, or housing.
- **Adequacy:** Food should meet dietary requirements tailored to individual needs such as age, health, and occupation. It must be safe for consumption and free from harmful substances.
- **Sustainability:** Food accessibility should be sustainable, ensuring availability for present and future generations, thus emphasising the importance of responsible resource management and conservation.

II Objectives

The Expert Symposium on *Social Justice, Hunger, and the Constitution* (expert symposium) seeks to:

1. Clarify the constitutional commitments to equality and broader social justice regarding access to food and implications for ending hunger, taking into account constitutional obligations and applicable international human rights norms, the SDGs, the AU's Agenda 2063 and the National Development Plan 230 (NDP).
2. Reflect on the legacy of past injustices and the state of progress made in advancing equality in relation to access to food and the reasons for it, as well as reasons behind the rate of progress.
3. Explore the link between the right to food and equal enjoyment of other human rights, including the right to education and the right to health.
4. Explore the implications of hunger for the rule of law, economic development/growth and peace, emphasising the importance of equitable food distribution in fostering social stability and development.
5. Emerge with social justice and human rights resonant approaches for harnessing the transformative power of the law in advancing food security and broader socio-economic rights as a means to catalyse change in the next decade. This coincides with the final decade of achieving the UN SDGs.

III Outcomes

The outcomes of the expert symposium will include:

1. A peer-reviewed publication on Social Justice, Hunger and the Constitution providing measurable insights and recommendations.
2. A policy brief to the government regarding constitutional obligations regarding the right to food and its relationship with the SDG goal of ending hunger, incorporating some thoughts on policy hits and misses in the first three decades of democracy and possibilities for progress under the Government of National Unity (GNU).
3. A shared and improved understanding of jurisprudence on the right to food and consequent freedom from hunger and action that needs to be taken to address hunger.
4. Accelerated progress on the Musa Plan for Social Justice (Musa Plan), incorporating thoughts on innovative ways it could contribute to advancing freedom from hunger and the right to food in fulfilment of constitutional commitments regarding establishing a society that is based on democratic values, social justice and fundamental human rights.
5. Agree on definite ways of exploring breakthrough science, technology, and research, including Artificial Intelligence, to facilitate the design of laws and policies that will enhance universal delivery of the right to food and parity regarding nutrition security.

IV Background

The expert symposium forms part of a suite of research and stakeholder engagement activities of the CSJ and Law Trust Chair in Social Justice, whose purpose is to promote and advance social justice scholarship, consciousness and collaboration to accelerate social justice reform in academia and society. The expert symposium seeks to contribute to the CSJ's commitment to catalyse progress towards breaking the back of structural inequality while eradicating poverty in pursuit of the SDGs, focusing on SDG 10 on advancing equality and SDG 2 on ending "poverty in all its forms everywhere" while moving the needle on related goals in Agenda 2063 and the NDP by 2030.

While hunger may affect any social group anywhere due to food security disruption, data available to the CSJ shows a strong correlation between hunger, inequality, and poverty.

The expert symposium will focus on freedom from hunger as a social justice and human rights issue that, beyond constitutional compliance, is a matter of the country's compliance with its international human rights instruments, including the Universal Declaration of Human Rights (UDHR) in Article 25,¹⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 11(1) and (2),¹¹ and the African Charter on Human and People's Rights (ACHPR) in Article 16,¹² SDG 2 and Goal 1 of Agenda 2063. Additionally, the Universal Declaration on the Eradication of Hunger and Malnutrition 1974:

"Every man, woman, and child have the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties."¹³

The connection between the right to food and other human rights underscores their interdependence, indivisibility, and interconnectedness.¹⁴ As noted by the High Court in the *Equal Education* case on the school feeding scheme, breaching the right to food can compromise the fulfilment of other human rights, including those related to health, education, or life, and *vice versa*.

The expert symposium, accordingly, aims to examine the right to food from the perspective of relevant constitutional law principles, the international human rights framework, the SDGs and the NDP through a social justice lens.

¹⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 (III).

¹¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3.

¹² African Charter on Human and Peoples' Rights (adopted 27 June 1981 entered into force 21 October 1986) 1520 UNTS 217.

¹³ United Nations "International Standards Special Rapporteur on the right to food" *United Nations* <<https://www.ohchr.org/en/special-procedures/sr-food/international-standards#:~:text=Every%20man%2C%20woman%2C%20and%20child,their%20physical%20and%20mental%20faculties>> (accessed 15-04-2024).

¹⁴ Office of the United Nations High Commissioner for Human Rights "The Right to Adequate Food" <<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>> (accessed 15-04-2024).

V Expert symposium format

The expert symposium will be held free of charge and in person at the **Bertha Retreat Boschendal, Franschhoek**, on 5 September 2024. Participants from outside Stellenbosch and Cape Town are invited to stay overnight at the retreat.

The expert symposium will consist of facilitated sessions on key constitutional issues followed by a way forward session.

Proposed panel sessions on the following thematic topics

1. **Theme 1:** Legal frameworks and constitutional protections, policy dissonances, and synergies.
2. **Theme 2:** Pragmatic challenges and barriers (the intersectional/interconnected drivers of food insecurity).
3. **Theme 3:** Role and performance of government at three levels, the judicial system and independent constitutional bodies, in strengthening constitutional democracy.
4. **Theme 4:** Role and performance of business, civil society, and international partners.
5. **Theme 5:** Future Policy directions and implementation: Practical strategies towards advancing social justice.

VI Programme and related activities

Programme pack to follow.

See information on each thematic topic below.

VII BRIEFING NOTE ON THE PROGRAMME THEMATIC TOPICS

Please note that in our symposium sessions on social justice, hunger, and the Constitution, participants are encouraged to approach the conversation with a broad perspective on social justice commitments and their impact on the relevant

topic, as well as the equality duty derived from those commitments. It is essential to delve into relevant emerging jurisprudence related to each topic. Each discussion should involve introspection into the past, present, and future implications of the topic, with a focus on solutions and practical strategies. Moreover, discussions should acknowledge the complexity of positionality and be firmly grounded in our constitutional imperatives. Throughout our deliberations, the overarching focus should remain on social justice and workable future policy directions. Additionally, participants are reminded to remain within the scope of their respective topics.

Theme 1: Constitutional and International Normative Standards and Legal Frameworks on the Right to Food

This topic delves into the legal and constitutional mechanisms that safeguard the right to food, both internationally and within the context of South Africa. It involves a comprehensive review of relevant international human rights instruments, such as the UDHR, ICESCR, ACHPR, and domestic constitutional provisions. The objective is to scrutinise the interpretation and application of these legal frameworks in South Africa, assessing their effectiveness in ensuring food security for all citizens. Examining jurisprudence and legal precedents will identify areas where legal protections may be strengthened or expanded to better address issues of hunger and food insecurity, paying particular attention to appropriate legislation and enforcement frameworks.

We request participants be guided by the Social Justice Impact Assessment Matrix (SIAM),¹⁵ an impact-conscious tool that the CSJ has used to estimate the impact of COVID-19 rules on regular citizens. SIAM is currently manually applied, with the intention of using data science for optimised applications. We are working with data scientists and engineers and looking to include gamers to use data analytics to predict unintended poverty and inequality exacerbating impacts of planned policies and laws to avoid furthering

¹⁵ TN Madonsela "Making social justice real: Reflections on constitutional fidelity regarding the social justice commitment and achievement of equality in the transformation of the judicial system" in Z Boggenpoel (ed) *Law, Justice and Transformation* (2022) 164; See also TN Madonsela *Handbook on Gender Management and Leadership* (2002) 43.

inequality and poverty gaps through disparate impacts of facially neutral laws and policies on disadvantaged social groups.

Theme 2: Pragmatic Challenges and Barriers (The Intersectional/Interconnected Drivers of Food Insecurity).

This topic focuses on addressing challenges and barriers to the right to food while considering the interconnected nature of constitutional rights. Recognising that these issues are often symptomatic of broader socio-economic inequalities and systemic barriers. Participants will explore multifaceted challenges faced by marginalised communities, including inadequate access to resources and structural barriers to food access. By identifying these challenges and barriers, participants will aim to develop a nuanced understanding of the root causes of food insecurity, laying the groundwork for targeted interventions and policy reforms.

The discussion will therefore examine how the right to food intersects with other fundamental rights, such as poverty, sustainable consumption, gender inequality, quality health, education, housing and climate change. Through investigating how limiting or infringing the right to food compounds existing vulnerabilities, we seek to uncover the complex web of factors contributing to food insecurity to identify transformative interventions that go beyond mere inclusion.

Theme 3: Role and Performance of Government at Three Levels, The Judicial System, and Independent Constitutional Bodies, in Strengthening Constitutional Democracy.

Right to Food (RTF) is a positive and collective right that requires state intervention. This panel discussion will scrutinise the contributions and effectiveness of organs of state in promoting social justice, addressing hunger, and upholding constitutional democracy. Participants will engage in reflective dialogue on how these spheres of government can enhance their roles to

serve the principles enshrined in the Constitution better and be accountable for the RTF security and equitable access to resources. Strategies for bolstering the independence, effectiveness, and impact of these organs of state in fostering a more just and equitable society will also be explored.

Theme 4: Role and Performance of Business, Civil Society and International Partners.

This panel discussion will evaluate the contributions and effectiveness of businesses, civil society organisations, and international partners in advancing social justice, addressing hunger using practical and realistic plans, and upholding constitutional democracy. Participants will further engage in a thoughtful examination of how these actors can collaborate more effectively to accelerate progress on the Musa Plan, incorporating thoughts on innovative ways it could contribute to advancing freedom from hunger and the RTF in fulfilment of constitutional commitments regarding establishing a society that is based on democratic values, social justice and fundamental human rights. Finally, the High Court of South Africa (Gauteng Division) order against the Department of Basic Education and provincial education departments should be explored to develop new plans to feed over nine million learners that depend on the National School Nutrition Programme (NSNP).¹⁶

Theme 5: Future Policy Directions and Implementation: Practical Strategies Towards Advancing Social Justice.

This session seeks to assess the effectiveness of existing policies aimed at realising the RTF and food sovereignty and to identify gaps in implementation and propose strategies for effective enforcement. Such strategies should include a level of disaggregation of those already experiencing chronic

¹⁶ *Equal Education v Minister of Basic Education*, the organisation Equal Education and the school governing bodies of two public schools (“the applicants”), represented by SECTION27 and the Equal Education Law Centre sought an order directing the government to resume the National School Nutrition Programme (“NSNP”) and for the court to issue a structural interdict to ensure compliance.

hunger and those who are vulnerable to ensure these policies address the needs of everyone where they are, and priority is accorded accordingly.

By critically examining national and international policy frameworks and implementation mechanisms, participants will aim to identify best practices and lessons learnt to inform future policy development and implementation efforts.

This discussion seeks to highlight the importance of promoting substantive equality, community solidarity, and human dignity in shaping a more inclusive and compassionate society that considers the availability, access, demand and consumption of nutritious foods.

We suggest developing a list of central capabilities to incorporate into national constitutions and guaranteed to all and at a certain threshold. This also involves encouraging interdisciplinary research and collaboration to address complex social issues from multiple perspectives, while promoting global cooperation and knowledge sharing to tackle issues such as poverty and famine, as well as fostering community solidarity by supporting local initiatives that build social cohesion and mutual support networks. From this discussion, participants will agree on definite ways of facilitating the design of laws and policies that will enhance the universal delivery of the RTF and parity regarding nutrition security.



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