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**SUBMISSION TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION ON POLITICS,
POWER, AND THE RIGHT TO FOOD: A NATIONAL INQUIRY INTO THE FOOD SYSTEMS OF
SOUTH AFRICA**

1. SECTION27 is a public interest law organisation that works to influence, develop, and use the law to advance constitutional rights in South Africa - particularly the rights to have access to healthcare services and to basic education. We combine strategic litigation, advocacy, legal literacy, research, and community mobilisation to advance systemic change. Guided by the values of human rights, equality, dignity, and accountability, SECTION27's work seeks to ensure that the state institutions and private actors fulfil their constitutional obligations.

2. The right to food is guaranteed in several international and regional instruments and in South Africa's domestic law. Whilst South African jurisprudence on the right to food is limited, the legal protection of the right has become increasingly significant as food insecurity worsens. South African children face a triple burden of malnutrition, in the form of undernutrition and hunger, micronutrient deficiencies, and obesity.¹ The South African Early Childhood Review 2024 highlights a 33% increase in child malnutrition cases between 2020 and 2023.² In the Eastern Cape province, the deaths and hospitalisation of children due to malnutrition prompted the Eastern Cape Provincial Office of the South African Human Rights Commission to investigate child malnutrition in the province.³

3. Challenges related to diet-related non-communicable diseases ("NCDs") are increasingly becoming major public health concerns globally and in South Africa.⁴ According to the World Health Organisation ("WHO"), NCDs such as heart disease and cancer often stem from unhealthy diets characterised by the consumption of high

¹ S Drimie, M Faber & L du Plessis, "Understanding barriers and opportunities for fresh produce access in eThekweni Metro, Durban, South Africa" (2025) 121:7 *South African Journal of Science* 1.

² K Hall, C Almeleh, S Giese, E Mphaphuli, W Slemming, R Mathys, L Droomer, P Proudlock, J Kotze & M Sadan, *South African Early Childhood Review 2024* (Cape Town: Children's Institute, University of Cape Town & Ilifa Labantwana, 2024).

³ Eastern Cape Provincial Office: SAHRC provincial inquiry into child malnutrition and the right to food EC/2122/0409 August 2022.

⁴ A Barry, B Impouma, C M Wolfe, A Campos, N C Richards, A Kalu, C B Diallo, P Barango & B Farham, "Non-communicable diseases in the WHO African region: analysis of risk factors, mortality, and responses based on WHO data" (2025) 15:1 *Sci Rep*; See also Statistics South Africa, Non-communicable diseases in South Africa: Findings from death notifications, 2008–2018 (Report No. 03-08-01, 2023), <<https://www.statssa.gov.za/publications/Report-03-08-01/Report-03-08-012018.pdf>> last accessed 26 February 2026.

in sugar, salt and unhealthy fats and ultra-processed products.⁵ Notably, unhealthy diets are significantly more affordable than healthy foods, they are also aggressively marketed to children and low-income households.⁶ Seen together, all the abovementioned factors support an urgent case to adopt measures to reduce the consumption of unhealthy diets and increase the accessibility and affordability of healthy diets. It is against this backdrop that SECTION27 makes its submission to the South African Human Rights Commission's ("SAHRC") Inquiry into South Africa's food systems.

4. Our submission responds to the following themes in the terms of reference:

- A. **The indivisibility of rights:** The intersection between the right to food and related constitutional rights has implications for rights realisation. We first set out the international, regional, and domestic legal framework that governs the right to food. This is followed by an in-depth analysis of the relationship between the right to food and other fundamental rights including the rights to health and basic education. We also set out the obligations of the state and private entities in relation to the right to food.
- B. **Corporate capture of the food system:** The commercial determinants of health, which refers to the private sector activities that affect people's health, directly or indirectly, positively or negatively, drive health outcomes across the world. Our submission uses the commercial determinants of health lens to analyse the role of powerful economic actors in South Africa's food system, particularly in determining what is available for consumption.
- C. **Institutional coordination, policy coherence, and legislative adequacy:** The realisation of the right to food is multifaceted and requires multisectoral coordination. It is crucial that policies for various aspects of the food system shared objectives. Furthermore, there must be policy coherence across sectors to ensure that the policies are complementary and that one policy's implementation does not undermine another. Our submission on this theme

⁵ World Health Organization, Non-communicable diseases (2025), <<https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> accessed 26 February 2026.

⁶ The Lancet, "Ultra-processed foods: time to put health before profits" (2025) 406:10520 The Lancet 2601.

highlights the need for policy coherence and the potential of fiscal policies and procurement as tools for the realisation of rights.

A. The indivisibility of rights

The legal framework governing the right to food

5. The right to food is guaranteed in various international and regional instruments that South Africa has ratified. The Universal Declaration on Human Rights (“UDHR”),⁷ a foundational document adopted by the United Nations (“UN”) General Assembly in 1946, outlines fundamental human rights to be universally protected. Among these rights is the right to food, encapsulated in Article 25(1).⁸ This article provides that everyone “has the right to a standard of living adequate for the health and well-being of [them]self and of [their] family, including food...”⁹ Whilst not binding, the UDHR serves as a global framework for human rights, and its principles have been incorporated into legally binding treaties and national laws.¹⁰ South Africa has integrated the UDHR’s principles into its Constitution by recognising the right of access to sufficient food and children’s rights to basic nutrition.¹¹ This integration obliges South Africa to ensure that everyone has access to sufficient food, and all children enjoy their right to basic nutrition.

⁷ United Nations General Assembly, Universal Declaration of Human Rights (“UDHR”), adopted 10 December 1948, UN Doc A/RES/217 A (III).

⁸ *Ibid*, article 25(1).

⁹ *Ibid*.

¹⁰ United Nations, <<https://repository.nwu.ac.za/server/api/core/bitstreams/c6c5796b-37c8-4cc5-b164-6fc0811a46dd/content>> accessed 09 February 2026. The United Nations stated specifically that the “UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).” The significance of the UDHR and other soft law sources discussed throughout these submissions in the interpretation of human rights in South Africa was affirmed by the Constitutional Court in the case of *S v Makwanyane and Another* 1995 (3) SA 391 (CC), in paragraph 35.

¹¹ Constitution of the Republic of South Africa, 1996 (“Constitution”). Section 27(1) specifically provides that “Everyone has the right to have access to ... sufficient food ...” whereas section 28(1) provides that “Every child has the right ... to basic nutrition ...”.

6. Following the adoption of the UDHR, South Africa signed several United Nations (“UN”) and African Union (“AU”) treaties that recognise the right to food.¹² Among these treaties is the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which recognises the right to food through Article 11(1). This article asserts that state parties recognise the right of everyone to an adequate standard of living for themselves and their families, including adequate food, and that state parties must take necessary steps to realise this right.¹³ Furthermore, Article 11(2) requires state parties to realise everyone’s right to be free from hunger through both individual and international co-operation measures. This includes implementing programmes to improve production, distribution, and conservation of food by leveraging technical and scientific knowledge, disseminating nutritional principles, and developing agrarian systems for optimal development and utilisation of natural resources. Furthermore, it emphasises the need to address the challenges faced by food-importing and exporting nations to ensure the equitable distribution of food supplies in accordance with need.¹⁴
7. A broad interpretation of Article 11 of the ICESCR was provided by the Committee on Economic, Social, and Cultural Rights (“CESCR”) in its General Comment No. 12,¹⁵ which stated that, the right to adequate food is realised when every man, woman, and child, alone or in community with others, always has physical and economic access to adequate food or to the means for its procurement.¹⁶
8. According to the CESCR, the right to food has three significant elements: availability, accessibility, and adequacy. These elements must be met for the state to sufficiently

¹² South Africa is bound by these instruments because it has signed them, and the Constitution in section 231, provides that international agreements become binding on South Africa upon ratification, except for those that do not require ratification but are approved by the national executive.

¹³ International Covenant on Economic, Social and Cultural Rights (“ICESCR”), adopted 16 December 1966, entered into force 3 January 1976, UN Doc A/6316, 993 UNTS 3, Article 11(1). See also, Right to Education Initiative <<https://www.right-to-education.org/news/south-africa-ratifies-international-covenant-economic-social-and-cultural-rights>> accessed 09 February 2026. South Africa ratified the ICESCR in 2015.

¹⁴ *Ibid*, Article 11(2)(a) and (b).

¹⁵ Committee on Economic, Social and Cultural Rights (“CESCR”), ‘The Right to Adequate Food (Art. 11)’ (General Comment No. 12, 12 May 1999) UN Doc E/C.12/1999/5.

¹⁶ *Ibid*, paragraph 6.

realise the right to food. Availability means that food must be available in such a quantity and quality that it is adequate to meet the dietary needs of people, ensuring that such food is free from harmful substances and culturally acceptable.¹⁷ Furthermore, accessibility means that food must be both physically and economically accessible. Physical accessibility means that all people, including those who are physically vulnerable, such as young children and infants, elderly people, the physically disabled people, mentally, and terminally ill people as well as people affected by natural disasters.¹⁸ On the other hand, economic accessibility means that food should be affordable to everyone, including the most vulnerable members of society, such as children, women, and the poor.¹⁹ Lastly, adequacy means that the food made available and accessible should contain sufficient nutrients to support a healthy diet.²⁰

9. Another UN treaty that affirms the right to food is the Convention on the Rights of the Child (“CRC”).²¹ Article 24 of the CRC provides that state parties recognise the children’s rights to the enjoyment of the highest attainable standard of health and to take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious food.²² Furthermore, Article 27 asserts that state parties recognise the child’s right to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.²³ While the realisation of this right primarily depends on the parents or other people responsible for the child, the state is also obliged to support these individuals through appropriate measures to ensure proper nutrition.²⁴

¹⁷ *Ibid*, paragraph 8.

¹⁸ *Ibid*, paragraph 13.

¹⁹ *Ibid*.

²⁰ *Ibid*, paragraph 8.

²¹ Convention on the Rights of the Child (“CRC”), adopted 20 November 1989, entered into force 2 September 1990, UN Doc A/RES/44/25, 1577 UNTS 3. See also South African Parliament < https://www.parliament.gov.za/storage/app/media/Pages/2019/november/19-11-2019_30_Year_Commemoration_of_the_United_Nations_Convention_on_the_Rights_of_the_Child/docs/FAST_FACTS_UNCRC_draft_2_19_November_2019final.pdf?form=MG0AV3&utm_source=copilot.com > accessed 10 February 2026. South Africa ratified the CRC in 1995.

²² *Ibid*, Article 24(1) and (2)(c).

²³ *Ibid*, Article 27(1).

²⁴ *Ibid*, Article 27(2) and (3).

10. Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) acknowledges the right to food.²⁵ Its Preamble mentions that women, particularly in situations of poverty, must have access to adequate food.²⁶ Article 12 strengthens this obligation by requiring states parties to ensure that women receive appropriate services related to pregnancy, including adequate nutrition during pregnancy and lactation.²⁷

11. The African Charter on Human and Peoples' Rights (“African Charter”) does not explicitly guarantee the right to food.²⁸ However, the African Commission on Human and Peoples' Rights (“African Commission”) in its resolutions and jurisprudence²⁹ has recognised the right to food as one that can be inferred from other protected rights. In its resolution on the Right to Food and Nutrition in Africa, the African Commission emphasised that the right to food is fundamental to the rights to life, health, and economic, social, and cultural development, as outlined in the African Charter.³⁰ The African Commission emphasised that the right to food is fulfilled when every individual, alone or in community, always has physical and economic access to sufficient food or the means to procure it, ensuring freedom from hunger even during natural disasters or other crises.³¹

12. Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (“Maputo Protocol”), which was adopted to supplement the

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), adopted 18 December 1979, entered into force 3 September 1981, UN Doc A/RES/34/180, 1249 UNTS 13. See also Department of Justice and Constitutional Development <https://www.justice.gov.za/policy/african%20charter/african-charter03.html?form=MG0AV3&form=MG0AV3&utm_source=copilot.com> accessed 10 February 2026. South Africa ratified the CEDAW in 1995.

²⁶ *Ibid*, Preamble.

²⁷ *Ibid*, Article 12(2).

²⁸ African Charter on Human and Peoples' Rights (“African Charter”), adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev. 5, 1520 UNTS 217. See also above note 19. South Africa acceded to the ACHPR on 9 July 1996.

²⁹ *Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria* Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001, paragraph 64. Specifically, the African Commission stated that “... the right to food is implicit in the African Charter, in such provisions as the right to life (article 4), the right to health (article 16) and the right to economic, social and cultural development (article 22).”

³⁰ African Commission on Human and Peoples' Rights, Resolution 431 on the Right to Food and Nutrition in Africa (adopted at the 65th Ordinary Session, Banjul, 2019), Preamble.

³¹ *Ibid*.

provisions of the African Charter, provides that state parties shall ensure that women have the right to nutritious and adequate food.³² The Maputo Protocol requires state parties to take appropriate measures to ensure women have access to the means of producing nutritious food and must put in place adequate systems of supply and storage to ensure food security.³³

13. Another African regional treaty that provides for the right to food is the African Charter on the Rights and Welfare of the Child (“ACRWC”).³⁴ Article 14 of the ACRWC on Health and Health Services provides for the right to food by explicitly requiring state parties to ensure adequate nutrition and safe drinking water, and to combat disease and malnutrition within the framework of primary health care. This provision links nutrition to broader health obligations, such as reducing infant and child mortality, supporting expectant and nursing mothers, and integrating preventive health care into national development plans.³⁵

14. Further non-binding and political statements relevant to the right to food have been reflected and summarised in an addendum to this submission, for the Commission’s convenience.

Domestic law and policy framework

15. The South African Constitution provides for the right to food through three provisions: everyone’s right to have access to sufficient food; children’s right to basic nutrition and the rights of detained persons and sentenced prisoners to adequate nutrition.³⁶

³² Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”), adopted 11 July 2003, entered into force 25 November 2005, AU Doc CAB/LEG/66.6, Article 15. See also JD Mujuzi “The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: South Africa’s reservations and interpretative declarations” (2008) 12(2) Law, Democracy and Development, page 41. South Africa ratified the Maputo Protocol in 2004.

³³ *Ibid*, Article 15(a) and (b).

³⁴ African Charter on the Rights and Welfare of the Child (“ACRWC”), adopted 11 July 1990, entered into force 29 November 1999, OAU Doc CAB/LEG/24.9/49. See also African Committee of Experts on the Rights and Welfare of the Child < <https://www.acerwc.africa/en/member-states/ratifications> > accessed 13 February 2026. South Africa ratified the ACRWC in 1997.

³⁵ *Ibid*, Article 14.

³⁶ Our submission focuses on the first two.

16. Section 27(1)(b) of the Constitution guarantees everyone the right to have access to sufficient food and water.³⁷ Section 27(2) places an obligation on the state to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.³⁸ The obligation to take legislative and other measures requires the state to enact legislation to realise the right to food, which must be followed by “appropriate, well-directed policies and programmes” to be implemented by the state to ensure that people enjoy this right.³⁹ Furthermore, the right this must be realised progressively, meaning that the state must work towards the fulfilment and improvement of the enjoyment of the right of access to sufficient food to the maximum extent possible, using its available resources.⁴⁰

17. In recognition of the state’s heightened duty of care to certain vulnerable groups, the Constitution makes express provision for the rights of children and detained persons and inmates. First, the Constitution provides for children’s right to basic nutrition under section 28(1)(c), which is framed without internal qualifiers.⁴¹ In *Government of the Republic of South Africa v Grootboom*, (“*Grootboom*”) the Constitutional Court clarified the role of parents as primary duty bearers in relation to children’s rights.⁴² Section 28 places the primary obligation on parents or families⁴³ The Court emphasised that section 28(1)(a) must be read together with section 28(1)(b), which guarantees children parental or family care, or appropriate alternative⁴⁴ Accordingly, the state’s obligation is not to provide food or shelter “on demand” to all children living with their families, but rather to ensure that parents fulfil their responsibilities, and to intervene where parental care is absent or lacking⁴⁵ Furthermore, the state must

³⁷ Constitution of the Republic of South Africa, 1996.

³⁸ *Ibid.*

³⁹ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC), paragraph 42.

⁴⁰ L Chenwi, “Unpacking Progressive Realisation, its Relation to Resources, Minimum Core and Reasonableness, and Some Methodological Considerations for Assessing Compliance” (2013) 39 De Jure 744.

⁴¹ Constitution of the Republic of South Africa, 1996.

⁴² See above note 39, paragraphs 74-78.

⁴³ *Ibid*, paragraphs 76 and 77.

⁴⁴ *Ibid*, paragraph 76.

⁴⁵ *Ibid*, paragraph 77.

establish the legal, administrative, and social welfare infrastructure necessary to protect children's rights, while also fulfilling its broader obligations under section 27 to progressively realise everyone's, including children's, right to have access to sufficient ⁴⁶

18. In *Equal Education v Minister of Basic Education*,⁴⁷ the Court noted that the child's right to basic nutrition, as guaranteed in the Constitution, contains no internal qualifiers.⁴⁸ This absence of qualifiers means that the state's obligation to realise this right is not contingent upon the availability of resources, nor may it be subject to progressive realisation.⁴⁹ Where parents or families are unable to provide adequate nutrition, the state is obliged to act immediately to ensure that children receive it.⁵⁰ The right to basic nutrition is therefore of direct and immediate application. It may only be limited in accordance with the general limitation clause under section 36 of the Constitution, which requires a strict proportionality analysis. Furthermore, through a school nutrition programme that feeds over nine million learners a day, the state acted in compliance with its obligations to realise the right of children to basic nutrition and cannot decrease access without a regression analysis.

19. The constitutional provisions that guarantee the right to food must also be interpreted together with the obligations under section 7(2) of the Constitution: to respect, protect, promote, and fulfil.⁵¹ In *Sonke Gender Justice NPC v President of the Republic of South Africa*,⁵² the Constitutional Court held that the obligation to respect requires the state to refrain from any conduct or measures that would undermine or violate the enjoyment of the right to sufficient food and children's right to basic nutrition. The obligation to protect requires the state to take positive steps to safeguard these rights against interference or infringement by third parties, including private actors. The obligation to fulfil requires the state to adopt legislative, administrative, and policy

⁴⁶ *Ibid*, paragraph 78.

⁴⁷ *Equal Education v Minister of Basic Education* 2020 4 All SA 102 (GP).

⁴⁸ *Ibid*, paragraph 47.

⁴⁹ *Ibid*, paragraph 54.

⁵⁰ *Ibid*, paragraph 51.

⁵¹ Constitution of the Republic of South Africa, 1996, section 7(2).

⁵² *Sonke Gender Justice NPC v President of the Republic of South Africa* 2021 (3) BCLR 269 (CC).

measures that enable individuals and communities to realise these rights fully. Finally, the obligation to promote entails raising awareness and educating the public about the constitutional rights to food and nutrition, ensuring that all people are informed and empowered to claim and exercise them ⁵³

20. In *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd*,⁵⁴ the Constitutional Court considered the content of the right to food within the broader context of land, agriculture, food production, and the environment, as protected under section 27(1)(b) of the Constitution and informed by international law. The Court identified two essential elements of the right. The first is the sufficient supply of food, which requires the existence of a national food system capable of meeting the nutritional needs of the population.⁵⁵ The second is the opportunity for individuals to produce food for their own use, which entails the ability to access or utilise resources to secure food directly.⁵⁶ Together, these elements show that the right to food encompasses both collective obligations to ensure adequate national supply, and individual opportunities to access or produce food.

21. South Africa has various policies that are aimed at meeting the nation's nutritional needs, in line with the National Development Plan (2030). The National Policy on Food and Nutrition Security provides a broad framework for the realisation of children's right to basic nutrition, and everyone's right to have access to sufficient food. It identifies food assistance (social safety nets), nutrition education and local economic development as some of the pillars of food and nutrition security.⁵⁷ Some of the nutritional safety nets that are in place include the NSNP, fortification of food, the use of food banks,⁵⁸ and the Child Support Grant, which contributes to nutrition security for children, as well as contributing to the meeting of other basic needs.⁵⁹

⁵³ *Ibid*, paragraph 41.

⁵⁴ *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd* 2009 (1) SA 337 (CC).

⁵⁵ *Ibid*, paragraph 85.

⁵⁶ *Ibid*.

⁵⁷ Department of Agriculture, forestry and Fisheries, "The National Policy on Food and Nutrition Security for the Republic of South Africa" 2014.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*.

The indivisibility and interdependence of rights

22. The principle of indivisibility and interdependence of human rights is well established under both international and South African domestic law. It affirms that human rights cannot be treated as independent silos.⁶⁰ Instead, they form a unified system in which the realisation of one right depends upon the protection of others.⁶¹ The implication of this is that states must adopt integrated approaches to human rights protection, recognising that neglecting one human right could undermine other rights.
23. The Constitutional Court jurisprudence has consistently affirmed the principle of indivisibility and interdependence of human rights. In *S v Makwanyane*,⁶² for instance, O'Regan J acknowledged the mutually reinforcing nature of human rights.⁶³ Further, Yacoob J later articulated this principle in *Grootboom*,⁶⁴ stating that all rights in the Bill of Rights are interrelated and mutually supporting, and that ensuring socio-economic rights for all people allows them to enjoy other rights enshrined in the Bill of Rights.⁶⁵ Building on this jurisprudence, our submission examines the interconnectedness of the right to have access to sufficient food and to basic nutrition with other rights, including the rights to health, information, dignity, and education.

⁶⁰ Maastricht Principles on the Human Rights of Future Generations (adopted 3 February 2023, Maastricht University and partners), principle 5(b). See also O De Schutter et al, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" (2012) 34 Human Rights Quarterly 35.

⁶¹ A Zylberman, "The Indivisibility of Human Rights" (2017) 10 Springer Science + Business Media Dordrecht 1. See Vienna Declaration and Programme of Action (World Conference on Human Rights, Vienna, 25 June 1993, UN Doc A/CONF.157/23, 12 July 1993), Article 5 of the Declaration specifically states that "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis." See also UN General Assembly Resolution 60/251: Human Rights Council (3 April 2006) UN Doc A/RES/60/251, Preamble.

⁶² *S v Makwanyane* 1995 (3) SA 391 (CC).

⁶³ *Ibid*, paragraph 346.

⁶⁴ See above note 61.

⁶⁵ *Ibid*, paragraph 23.

The right to health

24. Section 27(1)(a) of the Constitution provides for the right to have access to healthcare services, which must be progressively realised through reasonable legislative and other measures.⁶⁶ Further, the Constitution provides for children's right to basic healthcare under section 28.⁶⁷ The right to have basic healthcare for children are dependent on food and nutrition as inadequate and non-nutritional food undermine the public health.⁶⁸

25. The CESCR in General Comment No. 26 makes the interdependence of food and health rights explicit by stating that health protection extends to the conditions children need to lead a healthy life, including access to nutritionally adequate and safe food.⁶⁹ This interpretation shows that food is not an optional element but rather is a structural determinant of health. The World Health Organization (WHO) further emphasised this by linking micronutrient deficiency to a wide range of physiological impairments, reduced resistance to infections, and impaired development. It stated that malnutrition contributes substantially to the global burden of disease.⁷⁰

26. The interdependence of the rights to food and health has also been affirmed by the African Commission in its resolutions and decisions. As stated above, in its resolution on the right to food and nutrition in Africa, the African Commission emphasised that the right to food is fundamental to the right to health. It held that malnutrition, which encompasses conditions such as "under-nutrition, micronutrient deficiencies or excess, overweight, obesity and other diet-related non-communicable diseases seriously affects the health and well-being of individuals."⁷¹ The African Commission,

⁶⁶ Constitution of the Republic of South Africa, 1996, section 27(1)(a) and (2).

⁶⁷ *Ibid*, section 28(1)(c).

⁶⁸ A Ayala and BM Meier, "A Human Rights Approach to the Health Implications of Food and Nutrition" (2017) 38:10 Public Health Reviews, pages 1-3. See also 1996 World Declaration on Food Security and the 2008 Rome Declaration on Food Security.

⁶⁹ CESCR, General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights, UN Doc E/C.12/GC/26, paragraph 43.

⁷⁰ World Health Organization, Guidelines on Food Fortification with Micronutrients, <<https://iris.who.int/server/api/core/bitstreams/8ea6327f-bd8c-4997-b8f5-705ed9d0c445/content>> accessed 19 February 2026, page xiv.

⁷¹ See above note 30, Preamble.

in the context of prisoners, emphasised the need for access to adequate food for detained persons to fully enjoy their rights to physical and mental health, which supports the notion of interconnectedness of the rights to food and health.⁷² Furthermore, the African Commission in the *SERAC* case stated that Nigeria had disregarded the right to food by violating the right to health.⁷³

27. The interdependence between the right to food and nutrition and health is also demonstrated by the UN and AU treaties. Article 24 of the CRC provides that state parties recognise children's rights to the enjoyment of the highest attainable standard of health and to realise these rights, states should take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious food.⁷⁴ Furthermore, Article 14 of the ACRWC provides for the right to health and health services, requiring states to combat inadequate nutrition to implement this right.⁷⁵

28. The rights to food, nutrition and health are inseparable, and the state's failure to ensure the realisation of the right of access to sufficient food and basic nutrition for children in particular undermines the realisation of the right to health.

The right to information

29. Section 32(1) of the Constitution provides everyone with the right of access to information held by the state and that held by another person, and that is required for the exercise or protection of any other rights.⁷⁶ This provision, on its own, shows that the right of access to information is a prerequisite for the enjoyment or protection of other rights in the Constitution, including the right to food. The Food and Agriculture Organisation Voluntary Guidelines to Support the Progressive Realisation of the Right to Food affirms this by encouraging states to take steps to realise the right to food,

⁷² *Ibid.*

⁷³ *Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria* Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001, paragraph 64.

⁷⁴ See above note 21, Article 24.

⁷⁵ See above note 34, Article 14.

⁷⁶ Constitution of the Republic of South Africa, 1996, sec 32(1)(a) and (b).

through education, information, and labelling regulations, to prevent overconsumption and unbalanced diets that may lead to malnutrition, obesity, and degenerative diseases.⁷⁷

30. The African Union Model Law further demonstrates the connection between the right of access to sufficient food and the right to information through Article 11, which addresses food labelling, marketing, and advertising.⁷⁸ This provision requires states to regulate the labelling of both locally produced and imported food products packaged for sale and consumption. Such regulation must ensure that labels disclose essential details, including ingredients, quantity, quality, nutritional value, expiry dates, and other relevant information. Article 11 also provides for sanctions against the dissemination of false or misleading information in labelling.⁷⁹ These requirements suggest that accurate and accessible information is core to the realisation of the right to food, as consumers cannot meaningfully exercise this right without reliable knowledge about the food they consume.

31. A research study by the University of Pretoria conducted in Soshanguve found that access to information and communication technologies improved household food security, showing that information is a practical determinant of food access.⁸⁰ Furthermore, research at the University of the Witwatersrand revealed that food insecurity among students was worsened by a lack of information about nutrition and available food programmes, which in turn undermined academic progression.⁸¹ These

⁷⁷ FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (FAO, Rome 2005).

⁷⁸ African Union, Model Law on Food and Nutrition Security (adopted 2022 at the Second Ordinary Session of the AU Specialized Technical Committee on Agriculture, Rural Development, Water and Environment, held in South Africa).

⁷⁹ *Ibid.*

⁸⁰ OA Akinboade, T Taft, JF Weber, OB Manoko and VS Molobi, "Correlates of Access to ICT and Food Security of the Poor in South Africa's Soshanguve" (2022) *GeoJournal*

⁸¹ F Wagner, T Kaneli and M Masango, "Exploring the Relationship between Food Insecurity with Hunger and Academic Progression at a Large South African University" (2021) 35(5) *South African Journal of Higher Education*

findings show that without access to information about nutrition and available food programmes, the state's efforts to realise the right to food are weakened.⁸²

32. The government has also recognised the interdependence between the right to information, the right to food and the right to health. Through the long-delayed Regulations on the Labelling and Advertising of Foodstuffs⁸³ it seeks to introduce Front of Pack Warning Labels to provide consumers with accessible information on the quantities of sugar, salt and fats in food, thereby empowering consumer to make healthier decisions.

The right to dignity

33. Section 10 of the Constitution provides that everyone has inherent dignity, which is one of the founding values of our society and must be respected and protected.⁸⁴ Hunger is an affront to human dignity, and its eradication was declared a collective responsibility of the international community.⁸⁵ The CESCR in General Comment No 12 reinforces this declaration, stating that "the right to adequate food is indivisibly linked to the inherent dignity of the human person."⁸⁶

34. South African courts have also affirmed the relationship between food and dignity. For instance, in *Grootboom*,⁸⁷ the Constitutional Court stated that "[t]here can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food..."⁸⁸ Further, in *Equal Education and Others*

⁸² SA Karim, T Frank & P Kruger, "A human rights approach to front of pack labelling in South Africa" (2025) 46(1) *Sabinet African Journals*.

⁸³ Draft Regulations relating to the labelling and advertising of food stuffs in terms of the Foodstuff, Cosmetics and Disinfectants Act 54 of 1972 R3337 <<https://www.health.gov.za/wp-content/uploads/2023/05/R3337-Draft-Labelling-Regulations-21-April-2023-sc-compressed-1.pdf>> accessed 26 February 2026.

⁸⁴ Constitution of the Republic of South Africa, 1996, section 10.

⁸⁵ Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the World Food Conference, Rome, 16 November 1974, UN Doc E/CONF.65/20.

⁸⁶ See above note 16 above, paragraph 4.

⁸⁷ See above note 61.

⁸⁸ *Ibid*, paragraph 23.

v Minister of Basic Education,⁸⁹ the High Court emphasised that when interpreting the Bill of Rights, section 39(1) requires courts to promote the values of human dignity, equality, and freedom. The Court held that if there were no obligation on the Department of Basic Education (“DBE”) to provide nutrition when parents cannot, children would face starvation. The Court held that “a more undignified scenario than starvation of a child is unimaginable.” The Court concluded that a constitutionally compliant interpretation requires the DBE to roll out the National School Nutrition Programme (“NSNP”), as it had been doing prior to the COVID-19 lockdown.⁹⁰

35. The reasoning in these cases demonstrates that the right to dignity cannot be realised in the absence of adequate food, and that state obligations to provide nutrition are significant in advancing the right to dignity.

The right to an environment not harmful to health

36. Section 24 of the Constitution guarantees everyone the right to an environment that is not harmful to health or well-being and obliges the state to protect the environment for present and future generations.⁹¹ This right is foundational because without a healthy environment, no other socio-economic rights can be meaningfully realised, including the right to food. In addition, climate change directly threatens this constitutional guarantee because rising temperatures, droughts, floods, and other extreme weather events undermine agricultural both commercial and subsistence agricultural activities, which are central to food production.⁹² In this way, the right to a healthy environment and the right to food are inseparable; environmental degradation translates into food insecurity.

37. The Climate Change Act 22 of 2024 acknowledges the vulnerability of South Africa to climate change, recognising that climate change intensifies extreme weather events

⁸⁹ See above note 69.

⁹⁰ *Ibid*, paragraph 53.

⁹¹ Constitution of the Republic of South Africa, 1996, section 24.

⁹² TS Masipa, “The Impact of Climate Change on Food Security in South Africa: Current Realities and Challenges Ahead” 9(1) Journal of Disaster Risk Studies 1-2.

that will affect the right to have access to sufficient food.⁹³ International bodies and courts affirm this link: the Intergovernmental Panel on Climate Change has shown that climate-induced droughts and heat waves reduce crop yields,⁹⁴ while the International Court of Justice Advisory Opinion on the Obligations of States in respect of Climate Change affirms that climate change exposes millions to food insecurity.⁹⁵ The African Committee of Experts on the Rights and Welfare of the Child has further found in its continental study that children are disproportionately affected, with climate change worsening hunger in vulnerable regions.⁹⁶

38. Thus, South Africa's obligations under the Constitution,⁹⁷ the Paris Agreement,⁹⁸ and the United Nations Framework Convention on Climate Change⁹⁹ require both mitigation and adaptation measures to combat climate change. These steps are not only environmental obligations but also essential pathways to advance the right of access to sufficient food. Protecting the climate system is therefore a constitutional and international imperative to safeguard food security.¹⁰⁰

⁹³ Climate Change Act 22 of 2024, Preamble. South Africa's vulnerability to climate change was also confirmed by the United Nations children's Fund ("UNICEF"), for this see UNICEF <<https://www.unicef.org/southafrica/press-releases/children-south-africa-today-analysis>> accessed 20 February 2026.

⁹⁴ Intergovernmental Panel on Climate Change, Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems (2019) ch 5 <<https://www.ipcc.ch/srccl/>> accessed 20 February 2026.

⁹⁵ International Court of Justice, Advisory Opinion on the Obligations of States in respect of Climate Change (23 July 2025), paragraph 78.

⁹⁶ African Committee of Experts on the Rights and Welfare of the Child, Study on Climate Change and Children's Rights in Africa: A Continental Overview (2022), page 4.

⁹⁷ See above note 113.

⁹⁸ Paris Agreement, adopted 12 December 2015, entered into force 4 November 2016, UN Doc FCCC/CP/2015/10/Add.1, 55 ILM 743. See also United Nations Treaty Collection <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en> accessed 20 February 2026. South Africa ratified the Paris Agreement in 2016.

⁹⁹ United Nations Framework Convention on Climate Change ("UNFCCC"), adopted 9 May 1992, entered into force 21 March 1994, UN Doc A/RES/48/189, 1771 UNTS 107. See also United Nations Treaty Collection <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> accessed 21 February 2026. South Africa ratified the UNFCCC in 1997.

¹⁰⁰ Masipa reference here. "Hence, Masipa's argument that "South Africa's ability to adapt and protect its food items depends on the understanding of risks and the vulnerability of various food items to climate change" is not surprising."

The right to water

39. Section 27(1)(b) of the Constitution provides for both the right of access to sufficient water and the right of access to sufficient food, reflecting their indivisibility as socio-economic rights.¹⁰¹ International law affirms this intersection: the CESCR in General Comment No. 15 on the right to water explicitly affirmed that water is essential for food production and preparation, making the two rights inseparable.¹⁰² The South African Human Rights Commission has similarly emphasised that the constitutional obligation to progressively realise the right to water is directly linked to food security, since water is essential for agriculture, livestock, and household consumption.¹⁰³

40. The Constitutional Court in *Mazibuko v City of Johannesburg*¹⁰⁴ captured this interdependence in powerful terms: “Water is life. Without it, nothing organic grows. Human beings need water to drink, to cook, to wash and to grow our food. Without it, we will die. It is not surprising then that our Constitution entrenches the right of access to water”.¹⁰⁵ This judicial recognition shows that the right to water is about sustaining life and enabling the realisation of the right to food. In practice, this means that state measures to secure food security must simultaneously ensure access to sufficient water. The two rights are therefore mutually reinforcing: protecting water resources is a constitutional and practical prerequisite for advancing the right to food, and conversely, food security cannot be achieved without safeguarding the right to water.

The right to basic education

41. The right to basic education is enshrined in section 29(1)(a) of the Constitution which guarantees everyone the right to basic education.¹⁰⁶ The right to basic education is one

¹⁰¹ Constitution of the Republic of South Africa, 1996, section 27(1)(b).

¹⁰² CESCR, General Comment No. 15: The Right to Water (arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2002/11 (20 January 2003), paragraphs 6 and 7.

¹⁰³ South African Human Rights Commission, “Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa, 2014.

¹⁰⁴ *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC).

¹⁰⁵ *Ibid*, paragraph 1.

¹⁰⁶ The Constitution of the Republic of South Africa, 1996, section 29(1)(a).

of the only socio-economic rights in the Constitution that is unqualified, which means it is not subject to progressive realisation nor dependent on a state's availability of resources.¹⁰⁷ The right to basic education is not limited to securing a learner's attendance at school. While access is a foundational component, courts have consistently found that the right includes the conditions necessary for learners to participate, learn and benefit meaningfully from education. Adequate nutrition is widely recognised as a prerequisite for learning because a child who is hungry, malnourished or food insecure cannot concentrate or engage productively in the classroom.¹⁰⁸ In its absence, learners' cognitive development, energy levels and overall well-being are compromised and the enjoyment of the right to education is undermined.¹⁰⁹

42. Recognising this, the government introduced the National School Nutrition Programme (NSNP) in 1994 as a means of improving education outcomes.¹¹⁰ The programme, which benefits over 10 million learners, is mandated to provide each beneficiary with a one meal per school day. In 2024, the Department of Education introduced the provision of breakfast porridge in addition to the mid-day meal.¹¹¹ Prior to 2024, breakfast porridge programmes were implemented only by private food companies. In addition to meal provisioning, two other objectives of the NSNP are nutrition education and the promotion of food security in school communities.¹¹² The importance of the NSNP was affirmed in *Equal Education v Minister of Basic Education*. The court emphasised that the suspension of the NSNP threatened not only learners' nutrition but also their ability to learn, thereby impairing their right to education.¹¹³

¹⁰⁷ F Verieva, "Realising the right to basic education: The role of courts and civil society" (2019) *Journal of South African Law*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Equal Education v Minister of Basic Education* 2020 4 All SA 102 (GP).

¹¹⁰ *Ibid.*

¹¹¹ Department of Basic Education, Media Statement on the Expansion of the National School Nutrition Programme (2024) <<https://www.education.gov.za/Portals/0/Media/Opinion%20Pieces/Feeding%20the%20Future%20opened%20World%20Food%20Day%20Oct%202023%20FinalVersion3.1.pdf?ver=2023-10-24-104231-860>> accessed 27 February 2026.

¹¹² Report on Implementation and Evaluation of the NSNP September 2016 <<https://www.dpme.gov.za/news/Documents/NSNP%20Report%20Final%2016092016.pdf>> accessed 27 February 2026.

¹¹³ See above note 109.

The court recognised that the NSNP is not a supplementary initiative but a core component of the state's delivery of children's right to basic nutrition. Without adequate nutrition, the right to basic education cannot be realised in a meaningful way.

43. In 2016, the Department of Basic Education commissioned an evaluation of the implementation of the NSNP programme.¹¹⁴ Key findings from this evaluation included confirmation of the programme's relevance but also highlighted some concerns with the programme's efficiency. The evaluation highlighted that the use of two procurement models resulted in discrepancies in the timely delivery of food. Provinces implementing the decentralised procurement model (in which school procure directly from service providers) generally received their food deliveries on time, suggesting that schools were better able to hold service providers accountable.¹¹⁵ Although the nutritional content of the meals was assessed by examining the extent to which schools prepared and served the correct number of food groups and the correct amount of starch, protein and fruit/vegetables, the evaluation did not assess whether the meals met the learners' nutritional and dietary requirements. Further, the lack of availability of sufficiently disaggregated cost and expenditure data meant it was not possible to undertake an in-depth cost analysis.¹¹⁶

44. The NSNP is funded through a conditional grant in terms of the Division of Revenue Act. Its budget allocation and spending are measurable and tangible expressions of the State's commitment to the realization of children's rights to education, adequate nutrition, health and dignity. Analysing long-term trends in NSNP funding is essential to assessing whether the state is allocating sufficient financial resources for the programme's implementation. In 2025, SECTION27 conducted a 13-year trend analysis of the funding patterns of the NSNP, encompassing actual allocations from 2013/14

¹¹⁴ Department of Planning Monitoring and Evaluations
<<https://evaluations.dpme.gov.za/images/gallery/DPME%20-%20National%20School%20Nutrition.pdf>>
accessed 27 February 2026.

¹¹⁵ *Ibid*, page 4.

¹¹⁶ *Ibid*, page 4.

and 2023/24, and projected funding three years into the future 2024/25.¹¹⁷ The analysis made the following findings:

- i. Between 2013 and 2025, NSNP budget allocations increased by an average of 5.9% showing real term growth (after adjusting for consumer price index (“CPI”) inflation). These above inflation increases signalled a deliberate effort by government to respond to rising costs and growing demands on the programme.
- ii. However, while CPI is a useful general measure for tracking real-term trends, given that the bulk of its NSNP budget is dedicated to food procurement, food inflation offers a more accurate benchmark for the NSNP. In several years, food inflation has significantly outpaced budget increases, eroding the programme’s ability to maintain meal quality and quantity. For instance, in 2015/16, the NSNP budget increased by 4.1% while food prices rose by 7.0%.

45. The school food environment encompasses the physical spaces, infrastructure and conditions within and outside of school premises where food is accessed, obtained, purchased and/or consumed.¹¹⁸ In South African schools, this includes the food provided through the NSNP, tuckshops, vending machines and food vendors outside the school premises. Since children spend extended periods of time in school, ensuring a healthy school food environment is critical when developing and implementing food and nutrition programmes for children.¹¹⁹ School years represent a period of rapid growth and development and are an opportunity to instil dietary practices as well as support a healthy transition to adulthood¹²⁰ Because children are also future parents,

¹¹⁷ SAMRC/ Wits Centre for Health Economics and Decision Science – PRICELESS SA ‘Optimising the National School Nutrition Programme to Support Nutritious Meal Provisioning and Safeguard Against Unhealthy Diet’ (2025) Unpublished.

¹¹⁸ FAO of the United Nations School Food and Nutrition. Healthy food Environment and School Food <<http://www.fao.org/school-food/areas-work/food-environment/en/>> accessed 27 February 2026.

¹¹⁹ See for example South Africa’s National Obesity Strategy 2015-2020 in which the government committed to supporting obesity reduction and prevention by creating health food environments in various public settings including schools.

¹²⁰ See *Equal Education v Minister of Basic Education* (22588/2020), where the Director General of the Department of Education is quoted to have said “Where [the NSNP] was implemented, the Programme was shown to improve punctuality, regular school attendance, concentration and the general well-being of participating learners. Whilst learners were being provided with nutritious meals, they were taught

their school food environments do not shape only their food choices and their health and nutritional status but will also impact future generations.

46. Despite recognising the importance of healthy school food environments, school-based policies do not sufficiently address their complexity. For example, there is no regulation of the types of food available from food vendors outside of school premises. Further, the types of food that are sold and marketed to children from tuckshops within the school premises remains unregulated despite national guidelines in place to establish healthy school tuckshops.

Recommendations

47. The realisation of the right to food is facilitated by and is critical to the realisation of other rights. Although the South African jurisprudence on the right to food has been slow to develop, international and regional instruments, and jurisprudence from regional courts offer guidance on the content of the right and the obligations on duty bearers. Additionally, the reasoning by South African courts in other socio-economic rights cases is instructive to the interpretation of the right to food. When multiple rights intersect as described above, the violation of rights can be complex and compounding, creating unique forms of discrimination, particularly against vulnerable groups, such as children.
48. The realisation of the right to food requires the relevant departments to work together. This would allow for synergy between departments that ensures that no persons is denied access to quality food.

to establish and maintain good eating and lifestyle habits for life. Nutrition education also provided educators with resource materials to support the curriculum and to make every school a healthy school. Furthermore, schools were encouraged to establish food gardens from which they could obtain fresh produce to supplement the menu in line with South African Food Based Dietary Guidelines.”

49. Whilst the state has taken steps to implement programmes such as the NSNP to advance these rights, there are some gaps in implementation, monitoring and evaluation. We make the following recommendations which could strengthen the NSNP and advance constitutionally guaranteed rights.
50. To our knowledge, a nutritional analysis of the current NSNP main meal has not been conducted. We are aware that the Department of Basic Education has commissioned a study to assess the nutritional quality of the current NSNP programme and determine whether current menus offer children adequate nutrition. The findings from this study will be critical to the improvement of the current NSNP programme as well the design of the expanded programme to benefit children in early childhood centres. This study therefore needs to be finalised urgently and made publicly available.
51. The last comprehensive review of the implementation of the NSNP programme was conducted and published by the Department of Public Monitoring and Evaluation in 2016. Some of the challenges identified then e.g. weak procurement systems have intensified and new challenges such as corruption have been identified. The successful implementation of the NSNP is dependent on strong procurement processes that are responsive, transparent and have strong accountability measures. The DBE and/or National Treasury must evaluate the current procurement models and meaningfully engage the public for input into improved procurement processes.
52. Currently, the NSNP programme is mandated to provide children of school going age with meals during school days leaving most children vulnerable during weekends and school holiday. Importantly, children below school going age are not beneficiaries of the NSNP programme. To maximise the educational and health outcomes, there is an urgent need to (i) expand NSNP to provide meals every day, and (ii) either expand the NSNP to early childhood development (ECD) centres or develop and implement a nutrition programme that is best suited for the ECD sector.

53. The successful implementation of nutrition programmes requires allocation of resources. We commend National Treasury's decision to index the NSNP budget to food inflation.

54. Climate change undermines the right to food as rising temperatures, droughts, and floods directly weaken both commercial and subsistence agriculture, which reduces food availability and affordability. To address this, we recommend that the government embed climate resilience into food systems governance. This includes expanding support for smallholder farmers through provision of drought resistant seeds, affordable water efficient irrigation systems, and rolling out farmers training in agroecological practices through existing agricultural extension services. The government should also integrate climate adaptation into rights-based programmes already in place. For example, procurement policies in the NSNP could be adjusted to prioritise climate-resilient local produce. Modest fiscal tools such as subsidies for health foods and taxes on ultra-processed food products can make nutritious diets more affordable.

B. Corporate capture of the food system

55. Corporate capture of the food system occurs primarily in two ways: the production, marketing and sale of ultra-processed food that displaces dietary patterns and contributes to non-communicable diseases; and corporate lobbying that influences food policy.

56. Over the past two decades, global food systems have evolved away from whole foods and minimally processed foods to a profit-driven system characterised by readily available (physically and economically) ultra-processed products.¹²¹ South Africa has not been spared.¹²² At the centre of this transformation are powerful profit-driven

¹²¹ The Lancet (2025) Ultra-processed foods: time to put health before profits 406:10520 2601.

¹²² Godbharle S, Kesa H, Jeyakumar A. Processed food consumption and risk of non-communicable diseases (NCDs) in South Africa: evidence from Demographic and Health Survey (DHS) VII. J Nutr Sci. 2024. 27;13:e19.

corporations that dominate the entire food chain from production through to consumption.¹²³

57. Ultra-processed foods are branded, commercial formulations made from cheap ingredients, with little or no whole foods, that displace long-established dietary patterns. This displacement is a key driver of the escalating global burden of multiple diet-related non-communicable diseases.¹²⁴

58. Marketing, including to children, is a key component of the ultra-processed food industry's social power. In 2024, Coca-Cola, PepsiCo and Mondelez's collective advertising spend was the equivalent of four times the WHO's annual operating budget.¹²⁵

59. The industry not only produces and markets products that contribute so significantly to non-communicable diseases, it also takes advantage of regulatory weaknesses to formulate products that are less healthy and more harmful. For example, in 2024, Public Eye published an investigative report which revealed that a particular Nestle cereal formula for babies over six months had no added sugar when sold in Switzerland, Germany, France and the UK, but contained unhealthy levels of sugar when sold in countries such as the Philippines, South Africa and Thailand.¹²⁶ This is one example of how powerful corporations determine what is available on the market for consumers, in this case to the detriment of young children in low and middle income settings. By flooding the markets with unhealthy, addictive products intended

¹²³ AB Gilmore et al, "Defining and conceptualising the commercial determinants of health" (2023) 401 *The Lancet*, 1194 - 1213

¹²⁴ C Monterio et al, "Ultra-processed foods and human health: the main thesis and the evidence" (2025) 406 *Lancet*, 2667.

¹²⁵ P Baker et al, "Towards unified global action on ultra-processed foods: understanding commercial determinants, countering corporate power, and mobilising a public health response" (2025) 406 *Lancet* 2706.

¹²⁶ L Gaberell, M Abebe, & P Rundall, "How Nestlé gets children hooked on sugar in lower-income countries" (2024) Public Eye <https://www.publiceye.ch/fileadmin/doc/Konsum/PublicEye_Magazin_47_Nestle_EN_08_compressed.pdf> accessed 27 February 2026.

for children, corporate capture begins in early life and corporations create life-long consumers to the detriment of health outcomes.¹²⁷

60. Through the insufficiently-regulated production, marketing and sale of ultra-processed food, the industry has changed dietary patterns in a way that contributes to non-communicable disease. While South Africa is not in as dire a situation as other countries whose populations consume upwards of 60% of their food as ultra-processed food, better regulation is urgently needed to prevent that eventuality.

61. One of the reasons for insufficient regulation, however, is industry lobbying on the development and implementation of food policies and regulation. Citing the way in which Argentinian civil society organisations and Indigenous Peoples were sidelined in the deliberations over seed law in favour of biotechnology companies, the UN Special Rapporteur on the Right to Food states that “corporations are shaping food policy because of their growing influence, which weakens democratic participation”.¹²⁸ This proximity to policy-makers also helps to consolidate their influence to ensure an industry-friendly regulatory environment either by advocating for self-regulation, delaying regulations to maintain a status-quo favourable to them, or watering down of regulations.¹²⁹ For example, when several countries in Latin America sought to implement cost-effective public policy interventions designed to reduce the consumption of unhealthy food, the food industry interfered with legal and policy reforms in attempts to protect their corporate interests.¹³⁰

62. Part of industry lobbying is shifting focus from system-level regulation to individual-level agency. It is in the industry’s interests to frame diet-related NCDs as lifestyle

¹²⁷ The Lancet Child and Adolescent Health (2025) 10:1 From first tastes to lifelong habits 1.

¹²⁸ UN Human Rights Council, ‘Corporate Power and Human Rights: Food Systems Report of the Special Rapporteur on the Right to Food’ (A/80/213, 2025) <<https://www.ohchr.org/en/documents/thematic-reports/a80213-corporate-power-and-human-rights-food-systems-report-special>> accessed 27 February 2026.

¹²⁹ *Ibid.*

¹³⁰ UN Special Rapporteur Report Michael Fakhri (UN Special Rapporteur on the Right to Food), ‘Corporate Power and Human Rights in Food Systems’ UN Doc A/80/213 (2025) <<https://www.ohchr.org/en/documents/thematic-reports/a80213-corporate-power-and-human-rights-food-systems-report-special>> accessed 27 February 2026.

diseases solely within the control of the consumer, despite the food system that makes consumer-control near impossible. It is in this vein that statements like “the government cannot protect consumers from the consequences of their own actions. Consumers need to take responsibility and strive to become informed and knowledgeable about food issues to make selective food purchases and practice the necessary safety requirements when handling, preparing and storing food”¹³¹ are made. When ordinary people are faced with overwhelming industry power that displaces both healthy eating patterns and presents obstacles to regulation, government is obliged to protect rights holders.

63. When corporate interests override the public good, the consequences can be serious and affect health, the environment and social equality. The influence exerted by industry on political decisions results in measures that prioritize profit over public good, as evidenced by the food industry lobby, which promotes ultra-processed food products. Furthermore, corporate interference compromises transparency, accountability and public participation and perpetuates inequalities

Recommendations

64. Food system governance could be strengthened to limit corporate interference, including through increased transparency in the policy-making process through the mandatory publication of all written, oral and private meeting submissions on policies and disclosure of all engagement with stakeholders.
65. Given the similarities in the approaches of tobacco, alcohol, fossil fuel and ultra-processed food industries to preventing the implementation of effective policies to

¹³¹ Food Advisory Consumer Service < <https://foodfacts.org.za/regulation-of-food-safety-and-quality-in-south-africa/> > accessed 24 February 2026. The Food Advisory Consumer Service (FACS) is an independent food and nutrition consumer service run by a committee that represents several association, unions and the National Department of Health Directorate of Food Control. FACS is also a member of the NDoH's Food Legislation Advisory Group, the body concerned with food legislation in South Africa.

reduce harms,¹³² research into how private corporations influence health that studies cross-sector corporate industry practices would be of benefit to law and policy makers.

66. Draft Regulation 3337: Regulations Relating to the Labelling and Advertising of Foodstuffs would require mandatory back of pack nutrition labelling, and mandatory front of pack warning labelling to show if a product is high in sugar, saturated fat, sodium, or contains artificial sweeteners; would restrict marketing for any product that carries a warning label; and would prohibit health claims on any product that carries a warning label. It has great potential to mitigate corporate capture of the food system through providing information and preventing harm through marketing. There have been significant delays in the finalisation of the regulation. We recommend that it be urgently finalised.

C. Institutional coordination, policy coherence and legislative adequacy in realizing the right to food

67. Some of the failures and challenges within South Africa's food system have been attributed to the absence of a ministry of food and leading to the food and nutrition related mandates being shared by various departments. While this gap may contribute to challenges with holding duty bearers to account and to developing and implementing coherent plans, that is neither determinative nor a constitutional requirement.
68. The National Policy on Food and Nutrition Security acknowledges that the realisation of the right to food requires well-managed inter-sectoral co-ordination, and the genuine integration of existing policies and programmes in health, education, and environmental protection.¹³³ To fully realise the right to food and related rights, the substance of the policies and their implementation must complement each other. This part of our submission first highlights some of the policies that have been adopted to

¹³² P Baker et al "Towards unified global action on ultra-processed foods: understanding commercial determinants, countering corporate power, and mobilising a public health response" (2025) *Lancet* 406 2707.

¹³³ See above note 57.

realise the right to food and the challenges faced in implementing the policies. Lastly, it briefly highlights other policies that could be leveraged to facilitate the realisation of the right to food.

69. South Africa has adopted several interventions to realise the right to food and the right to health. First, the adoption of the Regulation on the Reduction of Sodium in Certain Foodstuffs (“R214”) and related matters stipulate the maximum total sodium content for various types of foods including bread and savoury snacks. A study that analysed the sodium content of processed foods frequently consumed by children between the ages of two and five years found that a majority of the foods analysed are subject to R214.¹³⁴

70. The introduction of the Health Promotion Levy (“HPL”) in 2018 was intended as a measure to disincentivise the consumption of sugar-sweetened beverages.¹³⁵ However, due to industry lobbying, increases to the HPL rate have stalled and reduced its effectiveness over time. This despite the HPL’s revenue raising potential and an acknowledgment from National Treasury that “fiscal measures such as taxes are increasingly recognised as effective complementary tools to help tackle the obesity epidemic at a population level”.¹³⁶ The HPL has potential to raise revenue, in long-term to reduce public health spending on treatment of preventable diseases.

71. Fiscal policy is critical to human rights enjoyment as it determines what activities are incentivized or disincentivized, as well as how much resources are available and how they are mobilised and spent, including who contributes to and receives government-funded benefits.¹³⁷ This is particularly important for the enjoyment of rights that are

¹³⁴ M Korff, M Wicks, T van Zyl T and B van der Westhuizen, “The South African Sodium Regulation (R214): Does it make provision for processed foods frequently consumed by young children?” (2020) 14 *SAJCH* 45.

¹³⁵ World Health Organisation: Global report on the use of sugar-sweetened beverage taxes, 2025. Geneva: World Health Organization.

¹³⁶ National Treasury Policy Paper (2016) ‘Taxation of Sugar Sweetened Beverages’ <<https://www.treasury.gov.za/public%20comments/sugar%20sweetened%20beverages/policy%20paper%20and%20proposals%20on%20the%20taxation%20of%20sugar%20sweetened%20beverages-8%20july%202016.pdf>> accessed 27 February 2026.

¹³⁷ Fiscal policies to promote healthy diets: WHO guideline. Geneva: World Health Organization; 2024.

resource-dependent, regardless of whether they are immediately realizable or subject to progressive realisation. Firstly, fiscal policy determines resource availability and spending and as such it can either facilitate or hamper the State's ability to invest in the resource-dependent aspects of human rights realization. Hence, ensuring that enough resources are collected, allocated and spent is critical to uphold human rights obligations that require resources.¹³⁸

72. Fiscal policy can also promote accountability. Budgets offer valuable information to understand State priorities and give predictability to State processes and commitments. Therefore, budget analysis with a human rights lens can favour transparency and accountability regarding what is prioritised and how the priorities are executed. Participation in fiscal policy decisions also provides opportunities for rights-based advocacy and accountability mechanisms.¹³⁹ In relation to the right to food, taxes on unhealthy food could discourage thier consumption whilst subsidisation of healthy food could assist to ensure that healthy food is more accessible. In this submission, we have used the NSNP budget trend analysis to illustrate the importance of budgets as tools for the realisation of the right to food.

73. Public procurement is another policy tool that has the potential to be leveraged for the realisation of the right to food. Public procurement refers to the purchasing of goods and or services by the state.¹⁴⁰ In relation to the right to food, public procurement can be used to support small-scale food producers, who are among the most marginalized in many developing countries, to improve their access to markets.¹⁴¹ Public procurement can also be used to determine what food is purchased and consumed in public facilities such as schools, hospitals and correctional services facilities. Both the procurement models and the decisions on what is to be procured

¹³⁸ *Ibid.*

¹³⁹ ME Mamberti and O Minatta, "What Do Human Rights Have to Offer to Fiscal Policy? Implications of Fiscal Transparency, Participation and Accountability", (2022) 49:2 *Public Sector Economics* 297–314.

¹⁴⁰ FJ Luana Swensson & F Tartanac, "Public food procurement for sustainable diets and food systems: The role of the regulatory framework" (2020) 25 *Global Food Security* 100366.

¹⁴¹ See for example the Brazillian school feeding program which has been used to support local small-scale farmers whilst at the same time providing fresh nutritious food for children, In South Africa, provinces that use the decentralised procurement model are also able to procure from small scale local farmers.

could have wider impact on food systems. For example, the NSNP Conditional Grant Framework states that provinces must support and promote sustainable food production and must promote local economic empowerment, including procurement of fresh produce from smallholder farmers. Aligning food procurement with nutrition and health goals could significantly improve the availability and accessibility of healthy food in public institutions.

Recommendations

74. Policies passed in pursuit of the realisation of human rights must be coherent and complementary. In addition, they must be implementable which requires the allocation of resources through fiscal policies that are grounded in human rights. A We recommend that in designing and implementing policies within the food systems sectors as well as in other sectors, policy makers should consider how the various policies can be synergised to realise the right to food.

Conclusion

75. The right to food and children's right to basic nutrition are constitutionally entrenched guarantees that lie at the heart of our democracy. They are indivisible from the rights to health, information, dignity, water, basic education a safe environment that is not harmful to health.
76. This submission shows that hunger and malnutrition in South Africa are not simply the result of individual poverty or personal circumstance, but rather structural challenges shaped by policy choices, fiscal decisions, environmental pressures and corporate power. When these systems fail, the impact falls most heavily on children and low-income households.
77. The Constitution requires the State to take reasonable, coordinated and adequately resourced measures to progressively realise the right to sufficient food and fulfil children's right to basic nutrition. Building a food system that works for everyone requires confronting corporate capture, strengthening regulatory frameworks, aligning

fiscal policy with public health goals and ensuring that decision making processes are transparent and accountable. Our submission emphasises that the State is empowered to take all these measures to ensure the enjoyment of constitutionally guaranteed rights.

78. Furthermore, the SAHRC plays a constitutional role in this process. A core purpose of the SAHRC is to serve as an additional avenue to hold the state accountable. Section 184 (3) of the Constitution provides that each year, the SAHRC be furnished with information on the measures that have been taken to realise the right to food and the related rights in the Bill of Rights. This function is key to the exercise of the SAHRC's ability to hold the state accountable and must be carried out. Through monitoring, reporting and investigation under section 184, it can ensure that the State's obligations are not merely aspirational but realised.

Request to make oral submissions

79. Given SECTION27's experience in socio-economic rights litigation, advocacy and research as well as the evidence set out in our written submissions, we would like to request the opportunity to make oral submissions and engage directly with the SAHRC. It will allow us to clarify key legal and policy issues, respond to questions from Commissioners and expand on matters relevant to the Inquiry's thematic areas. We believe that such engagement will allow us to contribute meaningfully and assist the SAHRC with carrying out its constitutional mandate.

80. This submission is supported by:



Addendum: Non-binding and political statements relevant to the right to food

Instrument/Statement	Relevance
Rome Declaration on World Food Security 1996; Rome Declaration 2006 and The Rome Declaration of 2009	Recognised that the majority of the undernourished either cannot produce or cannot afford to buy sufficient food Emphasised the need for equitable access to productive resources such as land, water, seeds, and credit These Declarations situate the right to food within a broader framework of food security and food sovereignty, requiring states to integrate agricultural development, poverty eradication, and equitable access to resources into their domestic strategies.
Food and Agriculture Organization (“FAO”) Council Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security (2004)	These Guidelines provide states with a comprehensive framework for translating international obligations into national strategies.
UN General Assembly Resolution 76/166 (2021)	This resolution emphasises that the right to food is inseparable from the enjoyment of all human rights and calls upon states to take effective measures to ensure food security, particularly for vulnerable groups. It also affirms that States have the primary responsibility to promote and protect the right to food
The African Union’s Agenda 2063: <i>The Africa We Want</i>	A strategic framework adopted by AU member states which obliges governments to integrate food and nutrition security into their national development plans, prioritising sustainable agriculture, equitable access to resources, and resilience against climate change and conflict.
Treaty of the Southern African Development Committee	Provides for the right to food through its emphasis on food security, land, and agriculture as a central area of cooperation among member states.

	Further, Article 21 commits states to coordinate and harmonise policies that foster regional development and integration, explicitly listing food security as a priority.
SADC Regional Food and Nutrition Security Strategy (2015–2025)	Recognises the right to adequate food and sets out a regional plan to significantly reduce food and nutrition insecurity by 2025.
SADC Regional Agricultural Policy	Affirms the right to food and places food security at the centre of regional agricultural development. It recognises that sustainable access to adequate food cannot be achieved without coordinated investment in agriculture and therefore operationalises its commitments through the Regional Agricultural Investment Plan (RAIP).