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IMPLICATIONS OF COVID-19 FOR RIGHT TO FOOD IN UGANDA

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Introduction

“We are going to die of hunger before this virus even kills us”. This was the grim prediction of a one Eunice Nabifo, a mother of three in Kampala.¹ Her fear is not unfounded. You will notice that many Ugandans, often called the urban poor, live a hand to mouth existence. Their ability to feed themselves as well as their dependents is hinged on being able to work for a day’s wage. Following the outbreak of COVID-19 in Uganda, the government’s stringent lockdown measures to limit the spread of the infection have exacerbated the precarious circumstances of such vulnerable people. This article therefore seeks to examine access to food for people such as Nabifo from a human rights perspective, tracing the historical developments that predisposed them to vulnerability and how COVID-19 has added salt to the wound to give the entire problem several new dimensions.

Conceptualizing the Right to Food

Human rights may be defined as legal entitlements that people have against political and societal threats. They are fundamental in protecting the freedoms and dignity of especially the vulnerable in society.² These rights are broadly categorized into two; civil and political rights on one hand, and social, economic and cultural rights on the other. This work shall primarily confine itself to the latter, within which the food rights discourse is situated.

The fundamental principles underpinning the right to food can be traced to international human rights instruments such as the UDHR Charter of 1948,³ as well as the ICESCR of 1966.⁴ In 1999, the United Nations Committee on Economic, Social and Cultural Rights (the Committee) issued General Comment No.12 to clarify on the normative content of the right to food.⁵

¹ Agaba John, “Uganda’s ‘Urban Poor’ Fear Dying of Hunger During COVID-19 Lockdown”, Cornell Alliance for Science, April 17, 2020. Available at <https://allianceforscience.cornell.edu/blog/2020/04/ugandas-urban-poor-fear-dying-of-hunger-during-covid-19-lockdown/>. Accessed on April 20, 2020 at 12:56 PM.

² Bard Andreassen, “*Development and the Human Rights Responsibilities of Non-State Actors*”, Boston, Harvard University Press, 2006.

³ Article 25, Universal Declaration of Human Rights Charter, 1948.

⁴ Article 11, International Covenant on Economic, Social and Cultural Rights, 1966.

⁵ CESCR, “General Comment No. 12: The Right to Adequate Food (Art. 11)”, Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999.

According to the Committee, the right to food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.⁶ Evidently, the gist of the problem is not a lack of adequate food to feed the world's population per se, but rather, a lack of access to adequate food especially by the most vulnerable of the world's population.⁷

According to General Comment No.12, the right to food is made up of three constituent elements. These are food security, nutrition and food sovereignty. Each of these constituent elements is in turn briefly examined below.

Food Security

According to the Food and Agriculture Organization (FAO), food security is said to exist when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.⁸ Historically, this has been the focal point for most countries and efforts were accordingly channeled into interventions aimed at yield improvement, grain storage, food processing and preservation.⁹

Nutrition

General Comment No.12 stipulates that one's diet must contain the requisite diversity and quantity of food nutrients that their body needs for optimum physical and mental development at the various stages of their lives. In a similar vein, the food availed for consumption ought to be free from adverse substances such as aflatoxins.¹⁰

⁶Ibid.

⁷Paragraph 5 of General Comment No.12.

⁸FAO, "The State of Food Insecurity in the World 2001", Rome, 2001

⁹Acidri M. Emmanuel, A Critical Analysis of EAC Cooperation in Agriculture and its Impact on the Right to Adequate Food in Uganda", LL.M Dissertation, University of Dar es Salaam, 2019.

¹⁰Paragraph 10 of General Comment No.12.

Food Sovereignty

The United Nations has interpreted this element to imply that people have the freedom to define their own food preferences and model of food production, determine the extent to which they want to be self-reliant and protect domestic food production as well as regulate trade in order to achieve sustainable development objectives.¹¹ This element is a recognition of the fact that whereas the need for food is a common denominator for all mankind, there exist diversities in terms of cultures, religious beliefs as well as modes of production among persons and these ought to be respected.

Status of Right to Food in Uganda

Evolution of the Right in Uganda

Whereas the evolution of the right to food at the international level has been marked by consistency in progress, efforts at the national level have been less promising. The right to food has not received the priority it deserves, and this is hardly surprising for it keeps in tandem with the tendency of States to prioritize civil and political rights over economic, social and cultural rights.¹²

At the time of independence, Uganda was considered to be self-sufficient with regard to providing for the food needs of its population. Agricultural production thrived to such an extent that there was a food surplus which the country could afford to sell to its neighbors and beyond.¹³ Furthermore, there were cooperative societies through which agricultural produce was marketed and distributed throughout the country.¹⁴

The then socialist leaning government also set up national food reserves in Masese and Nalukolongo to primarily store grain such that periods of scarcity could be effectively mitigated. Furthermore, it pursued a policy of micro food security by which each household was required to maintain a granary with food stocks.¹⁵

¹¹Office of the High Commissioner for Human Rights, "The Right to Adequate Food: Fact Sheet No.34", Geneva, Switzerland.

¹²Twinomugisha Ben, "Some Reflections on Judicial Protection of the Right to a Clean and Healthy Environment in Uganda", Law, Environment and Development Journal, Volume 3, Issue 3, 2007.

¹³Leliveld Andre et.al, "Agricultural Dynamics and Food Security Trends in Uganda", ASC Research Report, Overseas Development Institute/African Studies Center, Issue 2, 2013. Available at <https://openaccess.leidenuniv.nl/handle/1887/22943>. [Accessed on April 1, 2020 at 1:02 PM].

¹⁴SsaliMicheal, "Marking 100 Years of Cooperatives in Uganda", Daily Monitor, October 2, 2013. Available at <https://www.monitor.co.ug/Magazines/Farming/Marking-100-years-of-cooperatives-in-Uganda/689860-2015428-q9b56bz/index.html>. [Accessed on April 1, 2020 at 1:07 PM].

¹⁵Acidri M. Emmanuel, *Supra* note 8.

With the ascent of Idi Amin to power in 1971, this image of progress was extensively fractured. The ensuing political instability severely hampered food production and distribution, resulting into the skyrocketing of food prices as well as rationing of the available stocks.¹⁶ This state of affairs spilled over into the successive short-lived governments of Yusuf Lule, Godfrey Binaisa, Milton Obote and Tito Okello.¹⁷

On January 21, 1987, Uganda ratified the International Covenant on Economic, Social and Cultural Rights by which it undertook, among other legal obligations, to take progressive steps towards the realization of the right to food for all.¹⁸ This was one year after the National Resistance Army of Yoweri Museveni took over the reins of power after a five year guerilla struggle.

In the same year, an institutional framework – the National Food and Nutrition Council – was set up to coordinate various aspects of the right to adequate food such as food security and nutrition.¹⁹ Furthermore, Structural Adjustment Policies instigated by the World Bank were introduced in the country in an effort to prop up the struggling economy.²⁰ These policies led to privatization of the various government interventions in food management such as the food reserve facilities in Masese and Nalukolongo.

The promulgation of a new Constitution in 1995 was greeted with a lot of enthusiasm from various stakeholders for its highly progressive provisions.²¹ Whereas the new Constitution expounded on various human rights, it was silent as a grave when it came to the right to food. Instead, it made a vague allusion, first through references to food security and nutrition in the National Objectives and Directive Principles of State Policy,²² and thereafter by including a provision that states that it (the Constitution) does not exclude those rights which are not explicitly mentioned.²³

¹⁶Kanyehamba George, "Constitutional and Political History of Uganda: From 1894 to Present", Kampala, LawAfrica Publishing (U) Ltd, 2010.

¹⁷Ibid.

¹⁸Rukundo Peter et.al, "Food as a Human Right during Disasters", Food Policy 49 (2014) 312–322, 2014. Available at <https://www.sciencedirect.com/science/article/pii/S0306919214001407?via%3Dihub>. [Accessed on April 1, 2020 at 1:24 PM].

¹⁹Rukundo Peter, "Roles and Capacity of Duty Bearers in the Realization of the Human Right to Adequate Food in Uganda", African Journal of Food, Agriculture, Nutrition and Development, Issue 7, Volume 11, 2011.

²⁰Makokha Kevin, "Uganda Country Report: A Synthesis of the Four SAPRI Studies", Kampala, National Steering Committee, 2001.

²¹Yiga Emmanuel, "The Constitution of the Republic of Uganda and Implications for Media Freedom", JOCOM. Available at <https://jocom.mak.ac.ug/news/constitution-republic-uganda-and-implications-media-freedom>. [Accessed on April 1, 2020 at 1:56 PM].

²²Objectives 14 and 22, National Objectives and Directive Principles of State Policy, Constitution of the Republic of Uganda (As amended), 1995.

²³Article 45, Constitution of the Republic of Uganda, 1995 (As Amended).

In 2009, the Ministry of Agriculture, Animal Industries and Fisheries made an effort to remedy this state of affairs and advance efforts to realize the right to food through the introduction of a draft Bill,²⁴ but it was rejected at cabinet level and never made it to parliament. Instead, the current effort is to pass a remotely connected piece of legislation which is being pushed by the Ministry of Health.²⁵

*Evaluation of the State Report on Economic, Social and Cultural Rights.*²⁶

All State parties to the International Covenant on Economic, Social and Cultural Rights are required to submit periodic reports highlighting the progress they have made in realization of the rights expounded therein. Uganda submitted its initial (and only) report to the Committee in 2012 wherein it indicated the efforts it has made to realize the right to food, among other rights.

However, Uganda's State report is found to be wanting in two respects. First, it is contradictory because it asserts that the country is self-sufficient in food,²⁷ but this is immediately followed by acknowledging that population growth has outpaced food production.²⁸ Secondly, it contains an outright falsehood whereby it claims that at the time of the report's making, the Food and Nutrition Bill was in parliament awaiting enactment, yet the Bill was defeated at cabinet and never made it to parliament as claimed.²⁹

Relatedly, the report asserts that efforts have been made to implement the Right to Food Guidelines as well as publicizing them. However, this assertion has been debunked through empirical studies by scholars which found that most duty bearers do not understand their mandate,³⁰ just as rights holders are not familiar with the right.³¹

²⁴Draft Food and Nutrition Bill, 2009.

²⁵Food and Drug Safety Bill, 2017

²⁶Government of Uganda, Initial State Report to the UN Committee on Economic, Social and Cultural Rights, Advanced Unedited Version, 2012.

²⁷Ibid, paragraphs 108 and 109.

²⁸Ibid, paragraph 110.

²⁹Acidri M. Emmanuel, Supra note 8

³⁰Rukundo Peter, Kikafunda Joyce and Oshaug Arne, "Roles and Capacity of Duty Bearers in the Realization of the Human Right to Adequate Food in Uganda", African Journal on Food, Agriculture, Nutrition and Development, Volume 11, Issue 7, 2011.

³¹Rukundo Peter et.al, "Perceptions on the Right to Adequate Food After a Major Landslide Disaster: A Cross-Sectional Survey of Two Districts in Uganda", BMC International Health and Human Rights, 15:9 DOI 10.1186/s12914-015-0047-x.

Assessment of National Efforts using the FAO Toolkit ³²

According to FAO, the first step is to ask whether Uganda has sufficient frameworks to realize the right to food. At the legal framework level, it is observed that Uganda lacks a law aimed at specifically advancing efforts to realize the right to food.³³ Instead, there are scattered pieces of legislation which touch on the various facets of the right to food. At the policy level, the country fares better. There is the Food and Nutrition Policy of 2003, supported by other sector – specific policies. Unfortunately, there is limited implementation of these policies. Regarding the institutional framework, many duty bearers are not aware of their mandate, while among those who are aware, many hold the erroneous view that implementation of the right is a duty of UN agencies.³⁴

The second limb of interrogation is whether government is using the maximum of its resources to realize the right. Uganda has committed itself to achieve food security and nutrition by signing regional declarations in which African States undertake to commit a minimum threshold of resources towards these two. Under the Maputo Declaration,³⁵ it undertook to commit at least 10 percent of its national budget towards agriculture, while the Abuja Declaration saw it commit at least 15 percent to health.³⁶ Neither of these thresholds has since been met.³⁷

The third step is to find what groups are most affected by the inadequacy of efforts to realize the right. According to a vulnerability profiling study carried out by the Ministry of Finance in 2004, vulnerable persons fall in three broad categories. Under conflict related vulnerability, there are refugees, orphans and traumatized civilians. The second group is based on demographics and includes persons living with HIV/AIDS and Persons with Disabilities while the third lot is based on poverty to include the unemployed and child headed households. It was found that the only group whose right to food is sufficiently taken care of by the government are the refugees.³⁸

³²FAO, "A Guide on Conducting a Right to Food Assessment at District Level in Uganda", Rome, FAO.

³³Acidri M. Emmanuel, *Supra* note 8.

³⁴Rukundo Peter, Kikafunda Joyce and Oshaug Arne, *Supra* note 28.

³⁵Maputo Declaration on Agriculture and Food Security in Africa, 2003.

³⁶Abuja Declaration, 2001.

³⁷Acidri M. Emmanuel, *Supra* note 8.

³⁸*Ibid.*

The final limb of interrogation is to establish what causal link exists between State failures and the extent of violations. Under this benchmark, the UNICEF Conceptual Structure on Malnutrition is used as a model to analyze the link between government decisions and the state of the right to adequate food in a country. It examines the causes of malnutrition at 3 levels; the immediate causes,³⁹ underlying causes,⁴⁰ and root causes.⁴¹ Uganda's performance on all three fronts has been found to be wanting.⁴²

Enter COVID-19

It is within the above context that the COVID-19 pandemic broke out in China in late 2019 and spread around the globe, reaching Uganda in March 2020. It found a population that was largely struggling with perennial food insecurity and chronic malnutrition, as well as a government that was preoccupied with concerns other than the right to food.

In a raft of unprecedented measures delivered through prime time national broadcasts, the government set about containing the COVID-19 pandemic. The first address delivered by the Head of State on March 18, 2020 focused on measures aimed at decongesting public spaces in order to limit spread of the virus. Only the very last directive, worded as a polite call, urged persons to feed well in order to boost their immunity so that they can overcome the disease in the event of infection.

In the second address of March 21, 2020, a prohibition was placed on all persons seeking to enter Uganda. This was a departure from the previous address whereby the ban only affected persons from what were considered "high risk" countries. Although not obvious, this directive effectively locked out Ugandans who had travelled to neighboring countries to source food stuffs since cross border trade in agricultural products has been flourishing under the EAC arrangement.⁴³

³⁹Factors, such as an individual's health status at a given time, that affect the intake of nutritious food and the body's ability to utilize the same.

⁴⁰Environmental factors - such as availability of food, access to food, knowledge of food handling and the state of sanitation - that affect food intake.

⁴¹Governance issues such as the state of security, distribution of resources, levels of corruption and macroeconomic performance.

⁴²Acidri M. Emmanuel, *Supra* note 8

⁴³*Ibid.*

In the third address of March 25, 2020, more stringent measures were announced. A ban was placed on public transportation with immediate effect. Secondly, persons dealing in non – food items were prohibited from trading in the markets. Whereas the former constrained the aspect of physical access to food for the majority of persons that rely on public transportation, the latter constrained economic access since it deprived a section of persons from earning a livelihood.

Not done yet, a fourth address delivered by the Head of State on March 30, 2020 ushered in even more stringent measures to contain the pandemic. The ban on public transportation was extended to private means, effectively crippling efforts at physical access to food for those who cannot walk the distance or have the food delivered to them. All non – food stores were also closed, thereby depriving even more people of their livelihoods to guarantee economic access to food. A curfew was imposed from 7pm – 6:30am daily, raising questions about the guarantee to access food at all times.

On April 14, 2020, which coincided with the end of the 14-day lockdown, the President announced a 21-day extension to the lockdown, with all the earlier stated measures retained.

Whereas the above rights restrictions can be justified on the grounds of public health,⁴⁴ a further directive touching on the right to food seemed odd: the police were instructed to arrest any politicians who tried to distribute free food to the masses and charge the said politicians with attempted murder. Whereas the charge cannot obviously stand in a fair legal process, the threat has serious ramifications for the right to food of the most vulnerable.

Even the justification of protecting public health is hard to invoke for this odd directive, because in all cases where exceptions to the directives were made, this was followed by a provision calling for the establishment of Standard Operating Procedures (SOPs). It is difficult to see why food distribution to the vulnerable by non-State actors should be criminalized, rather than regulated.

⁴⁴Article 43, Constitution of the Republic of Uganda, *Supra*.

The Government Food Aid Scheme

In response to the increased vulnerability caused by presidential directives to contain the COVID-19 pandemic, the government embarked on a campaign to distribute food aid to some categories of persons who are especially vulnerable because their entire livelihoods depended on a daily wage and were thus wiped out with the commencement of the lockdown. Whereas this initiative is a highly welcome intervention considering the government's past reluctance with regard to food rights issues, several cracks quickly emerged in the scheme to undermine it from within.

First, the government announced that the intervention would only target 1.5 million Ugandans who were drawn from Kampala and Wakiso districts.⁴⁵ In response to the parliament's demand that the food distribution scheme be rolled out nationally, the president fired back that this was not an anti-poverty campaign, but rather a targeted response to mitigate the effects of the lockdown. However, it will be observed that urban centers are spread throughout the whole country – exemplified by the recent designation of regional cities – and so are the urban poor affected by the lockdown.

Secondly, the process has been bogged down by logistical challenges and operational inefficiencies. It will be observed that one of the consequences of the longstanding neglect of the right to food has been the virtual absence of institutional frameworks such as a public food distribution scheme to coordinate such government efforts in the face of crises. Not surprisingly, the food distribution process which was expected to be expeditious, has not covered more than half the targeted area two weeks after its commencement.⁴⁶

Thirdly, and perhaps most worrying, are the allegations of corruption that have rocked the Office of the Prime Minister in relation to the food aid procurement process. Officials from the prime minister's office were recently arrested for allegedly inflating the cost of food items that the government was procuring from suppliers, yet other suppliers had offered to supply the same items at lower rates. In any case, the dubiously procured food items were found to be of substandard quality.⁴⁷ It remains to be seen what relief the targeted communities will receive, in light of such corrupt tendencies among the line institutions.

⁴⁵MukhayeDamali, "Government Halts Food Distribution Over Lack of Beans", Daily Monitor, April 15, 2020. Available at <https://www.monitor.co.ug/News/National/Government-halts-food-distribution-over-lack-of-beans/688334-5524560-v6pbcyz/index.html>. Accessed on April 15, 2020 at 12:58 PM.

⁴⁶Ibid.

⁴⁷URN, "OPM Officials Arrested for Inflating Relief Food Prices by Shs 4Bn", The Observer, April 9, 2020. Available at <https://observer.ug/news/headlines/64196-opm-officials-arrested-for-inflating-relief-food-prices>. Accessed on April 15, 2020 at 1:31 PM.

Way Forward

There are no quick fix solutions to the COVID-19 pandemic, for its novel nature yields more questions than answers. At present, scientists – and humanity at large – can only guess how long the pandemic will last, whether it is a one-off outbreak or it will be recurrent, why it devastates some societies and demographics more than others and how we can cope with the havoc it is wrecking across the spectrum.

While all efforts to contain the pandemic are commendable, we have to brace for that dreadful moment when the virus forges its way past all our preventive measures and is left with none but our last line of defense – bodily immunity. The data from patients who have recovered from COVID-19 is still scanty and therefore unreliable, but it goes without saying that in the absence of effective medication to date, a lot of how this battle will pan out is dependent on the nutritional fortitude of our bodies, how food secure we are, and the diversity of food sources at our disposal.

Fortunately, COVID-19 has not yet wrecked devastation in Uganda anywhere near the scale witnessed in many parts of the developed world. Hunger and malnutrition continue to be the greater enemy, which the pandemic threatens to capitalize on as the fuel for further devastation. It is not too late for us to realign our priorities and give the right to food its due prominence. If not for its own goodness, at least it should be our best hope against a pandemic for which there exists no known antidote to date.

About the Author

Emmanuel Malunga Acidri currently works with TRIUMPH Uganda as a Research Officer. He has previously been involved in human rights research and advocacy with the Public Interest Law Clinic (PILAC) of Makerere University as well as the Legal Aid Clinic of the Law Development Center (LDC-LAC). Emmanuel is a lawyer by training, specializing in human rights law. He holds a Bachelor of Laws degree from Makerere University and a Master of Laws degree from the University of Dar es Salaam.

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