

# The Right to Food of Students in Tertiary Institutions in South Africa

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# ACKNOWLEDGMENTS

The Dullah Omar Institute (DOI), University of the Western Cape is grateful to the Centre of Excellence in Food Security (CoE) for supporting the publication of this document. The contributions of the Open Society Foundation South Africa (OSF SA) and Mott Foundation are also acknowledged.

This booklet has been developed to assist students, administrators and policy-makers in ensuring the realization of the right to food of students in tertiary education in South Africa.

To be cited as: Adeniyi, Oluwafunmilola & Durojaye, Ebenezer 'The Right to Food of Students in Tertiary Institutions in South Africa (Dullah Omar Institute 2020).



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## INTRODUCTION

Access to adequate food is a serious challenge across the globe, leading to hunger and malnutrition – currently, 1 in 8 people worldwide go hungry every day. In 2015, the international community adopted the Sustainable Development Goals (SDGs), the second of which is to end hunger by 2030 and ensure that no

one anywhere in the world is hungry or malnourished. Although South Africa is striving to meet the SDGs, hunger remains pervasive, with millions of people in the country suffering daily from hunger. Food insecurity is a reality for many, all the more so for vulnerable groups.



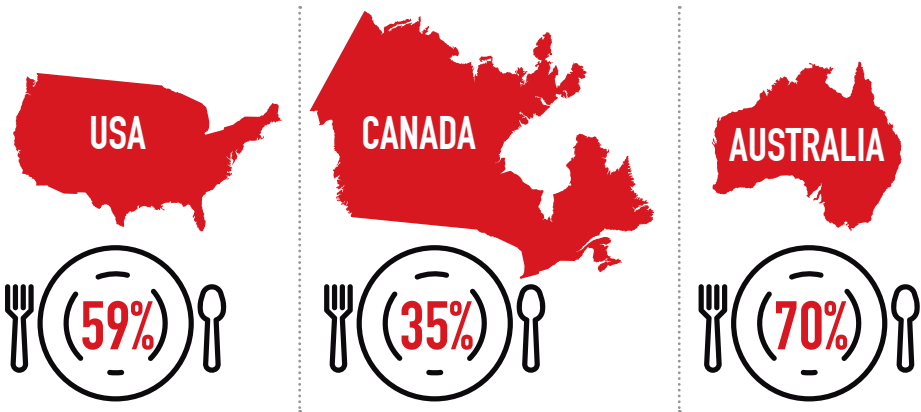
The Food and Agriculture Organization (FAO) of the United Nations states that '[f]ood security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life'. By implication, efforts to address food security remain incomplete until deliberate, targeted attention is paid to the food-security needs of vulnerable groups. One such group are students in tertiary institutions.

It is a common misconception that students in tertiary institutions are an elite and thus food-secure. In reality, they are more likely to be food-insecure than other population groups. Evidence from countries such as the United States and Australia reveals alarming levels of food insecurity among tertiary students, levels sometimes even higher than national averages. A 2011 study was conducted at a rural university in Oregon, USA, which showed that up to 59% of students had experienced food

insecurity in the previous year. Another university in Australia showed alarming levels of up to 70% food insecurity among students. Another study from the University of Manitoba in Canada showed up to 35.3% food insecurity prevalence among students. In South Africa, students in tertiary institutions are a particularly vulnerable group. They are mostly unemployed, do not fall within the age bracket of persons entitled to social grants from the government, and are reliant on income from parents or other caregivers which is split up among contending needs.

Whilst disadvantaged students from pre-school up to secondary school are entitled to daily meals under the National School Nutrition Programme, (South Africa's school-feeding scheme), this does not extend to students in tertiary institutions. As such, students who were beneficiaries of the school-feeding programme find themselves without food upon entry into tertiary institutions.

## STUDENT HUNGER



The National Student Financial Aid Scheme (NSFAS) disbursement to students is often seen as a solution to food insecurity on campuses. However, this ignores the 'missing middle' of students who are too poor to fund their studies but too rich to qualify as NSFAS-funded students. In addition, inefficiency and poor coordination on the part of NSFAS result in long delays in disbursement of funds to qualifying students, thus aggravating hunger among students. The amounts disbursed as allowances to students are also inadequate in that they do not take into account compounding factors, such as inflation, VAT increases and transportation costs, which raise the cost of food for stu-

dents. Furthermore, NSFAS disbursements do not largely take into account foreign students, who depending on their specific contexts (such as refugees) have been shown to be particularly vulnerable.

Hunger continues to be a major factor contributing to high drop-out and weak academic performance among students in South African tertiary institutions. Most students affected by hunger on campuses are from historically disadvantaged backgrounds, meaning that hunger follows lines of racialised inequality and predominantly affects black and coloured students.

### In response to the situation, this handbook addresses four questions:

- What is the right to food?
- Who has the duty to realise the right to food of students in tertiary institutions?
- What can students do to realise their right to food?
- What can be done to permanently address the scourge of food insecurity in South African tertiary institutions?





## a THE MEANING OF THE RIGHT TO FOOD

The right to food in South Africa is recognised and guaranteed in various laws at the international regional and national level. The Constitution, which is the supreme law of the land, protects the right to food in three sections:

- Section 27(1)(b) states that everyone has the right to have access to sufficient food.
- Section 28(1)(c) gives every child the right to basic nutrition.
- Section 35(2)(e) protects the right of every detained person and prisoner to adequate nutrition.

While the government is not required to provide food for everyone, it is required to create an enabling environment that ensures access to food for everyone. What this means is that the government must create an environment where everyone must have both the physical and economic access to either produce or purchase food. However, in situations where people are unable to feed themselves, the government is expected to step in by directly providing food.

## b THE LINK BETWEEN THE RIGHT TO FOOD AND OTHER RIGHTS

The realisation of the right to food can have implications for other rights such as health, dignity and life. For an individual to have access to food, he or she must have access to resources and other services. Therefore, the right to food cannot be realised if one does not have access to land, suffers from poor health or nutrition, or is denied access to housing and jobs. Many individuals including school-leavers and students in tertiary institutions, do not enjoy the right to food due to unemployment, inequality, race, gender disparities or poor living conditions. This can result in the violation of the rights to dignity and non-discrimination.

## C

## THE RIGHT TO FOOD UNDER INTERNATIONAL LAW

In addition to being recognised in the Constitution, the right to food is recognised in international human rights instruments, documents and consensus statements. Examples include article 11 of the International Covenant on Economic, Social and Cultural Rights; article 24 of the Convention of the Rights of the Child; article 15 of the Protocol to the African Charter on the Rights of Women; implicit recognition in the African Charter on Human and Peoples' Rights; and the FAO's Voluntary Guidelines on the Progressive Realisation of the Right to Adequate Food in the National Context (Voluntary Guidelines).

South Africa has committed to realising everyone's right to food as set out under international law.

## WHO HAS THE DUTY TO REALISE THE RIGHT TO FOOD OF STUDENTS IN TERTIARY INSTITUTIONS?

As seen above, the right to food is recognised in national and international documents. These guarantees require the government to respect, protect and fulfil the right to food. In order for the government to realise these duties, it must adopt a rights-based approach, one which calls for accountability, requires citizens' participation as rights-holders (and not merely as recipients), and emphasises the needs of vulnerable groups.

### The threefold duty of states to realise the right to food

**Duty to respect:** The state must not deliberately or by omission interfere in the enjoyment of the right to food. A state will be in breach of this duty if it adopts policies, programmes or practices that hinder a group of people's access to food. This could arise where the state takes measures which interferes with the peoples' enjoyment of their right to food. For instance, where a state abolishes an already existing school nutrition programme or bans food traders from selling food. Further, where a state fails to adopt policies or law to cater for the right to food, especially among vulnerable groups.

**Duty to protect:** The state must ensure that a third party does not interfere with the right to food of the people. Thus, it must regulate the activities or private actors such as companies and others so that they do not hinder access to safe and nutritious food, especially by vulnerable groups.

**Duty to fulfil:** The state must take adequate measures, including legislative, administrative, judicial and budgetary measures, towards the realisation of the right to food. This requires the government to enact appropriate legislation on the right to food, commit resources to the realisation of the right to food, and ensure access to justice for those who have experienced the violation of their right to food.

What this means is that the government has the duty to ensure that the right to food of everyone, including students in tertiary institutions, is realised in South Africa. To discharge this duty, laws, policies and programmes must be adopted that enhance access to food. These must not entrench discrimination in addressing food insecurity. Furthermore, special attention must be given to vulnerable groups to address their particular circumstances and ensure the fulfilment of their right to food. International law, to which the South African government is a signatory, regards the freedom from hunger of all as a minimum standard in realising the right to food.

## It is therefore a breach of its obligations under international law for South Africa not to address hunger on campuses.

### Who are vulnerable groups?

There are no universally agreed definitions of vulnerable groups. However, vulnerable groups are often described as people who, due to their special circumstances, are likely to suffer or experience more disadvantage than other members of society. Usually they include women, children, persons with disabilities, the elderly, the poor, minority groups, indigenous populations, and sexual minorities.

With regard to access to food, school-leavers and students in tertiary institutions can be seen as vulnerable since they are not covered under any social grant and do not earn any income. Consequently, they often struggle to enjoy access to adequate food. It should also be noted that while all school-leavers and students in tertiary institutions may experience difficulty in accessing adequate food, female school-leavers and students

in tertiary institutions may encounter a worse situation. This is because, food insecurity on campuses also increases the risk and incidence of transactional sex on campuses. Transactional sexual relationships by their nature increases women's predisposition to gender based violence (GBV) and sexually transmitted infections.

### Who is a duty-bearer?

This usually refers to the person who bears the responsibility to perform a duty. Thus, under international law, the state is regarded as the primary duty-bearer. In some situations, a private actor may also be regarded as a duty-bearer.

### Who is a rights-holder?

This usually refers to the person who enjoys the rights recognised in national and international law. Thus, every individual within a state is regarded as a rights-holder.

While the duty to realise food security for all rests on the government, non-state actors also have a crucial role to play. Thus, university administrators, corporations and business entities, non-governmental organisations and other actors can play an important role in ensuring access to food for everyone, including students in tertiary institutions.

### Some policies and programmes to realise access to food in South Africa

- Reconstruction and Development Programme (ANC, 1994)
- Agriculture White Paper (NDA, 1995)
- Integrated Food Security Strategy (IFSS) of 2002
- National School Nutrition Programme and Food for All Programme
- National Policy on Food and Nutrition Security 2013
- Household Food and Nutrition Security Strategy (DSD, 2013)
- Fetsa Tlala (End Hunger) Food Production Intervention (DAFF, 2013)



## WHAT CAN STUDENTS DO TO REALISE THEIR RIGHT TO FOOD?

Rights-holders are not mere recipients of the state's benevolence. In a constitutional democracy such as South Africa, rights-holders are active participants and a major force in holding the state accountable for realising their rights and seeking redress where a breach of these rights occurs.

### What this means is that every student who is food-insecure has a role to play in addressing his or her insecurity.

#### As a student, if you are food-insecure and at risk of hunger:

- Contact your institution's administration (through the student administration division) for stop-gap assistance – while this may not be a long-term solution, it addresses your immediate need for food.
- NSFAS-funded students may require further evaluation and/or interventions regarding disbursements for living allowances by the university administration, as well as education on how best to maximise resources. Nevertheless, a funded student is not barred from seeking assistance when it becomes necessary.
- As a student who is either a South African citizen or permanent resident, you can apply for a Social Relief of Distress Grant (SRDG). This application is lodged at your nearest South African Social Security Agency (SASSA) office. **The grant is given either in food parcels or vouchers to buy food, and is awarded for a period of three months (renewable for another three months) under any of the following conditions:**
  - The applicant is awaiting payment of an approved social grant.
  - The applicant has been found medically unfit to undertake remunerative work for a period of less than six months.
  - The breadwinner is deceased and application is made within three months of the date of death.
  - No maintenance is received from a parent, child or spouse obliged in law to pay maintenance, and proof is furnished that efforts made to obtain maintenance have been unsuccessful.
  - The breadwinner of that person's family has been admitted to an institution funded by the state (a prison, psychiatric hospital, state home for older persons, treatment centre for substance abuse, or child and youth care centre).
  - The applicant has been affected by a disaster as defined in the Disaster Management Act of 2002 or the Fund-raising Act of 1978.
  - The person is not receiving assistance from any other organisation.
  - Refusal of the application for social relief of distress will cause undue hardship.
- The SRDG is particularly important if you fall within the category of 'missing middle' students, and can assist in relieving distress from a lack of food. It is also important for students appealing against a rejection of their NSFAS applications.
- Ultimately, the government has an obligation to ensure that students in tertiary institutions are free from hunger. As rights-holders in the context of food, students have a duty to hold the government accountable for a breach of this duty. To redress continued violations of the right to food on campuses, student representative councils and other collective student structures/bodies, working in coalition, can engage with the authorities, approach Chapter 9 institutions such as the South African Human Rights Commission, and get help from organisations that provide legal support.

## Examples of university-specific initiatives to address hunger on campuses

### University of the Western Cape (UWC)

UWC's administration, in conjunction with Tiger Brands, hosts an initiative that distributes dry-produce food packs to identified food insecure student, especially before and during exams.

The Gender Studies Department at UWC also distributes food packages to students in need. The Reslife Division of UWC identifies students at risk of hunger through its Development Officers (postgraduate students are appointed in these positions), and based on a needs assessment, Reslife provides students with dry food and toiletry parcels monthly, for up to three months, depending on the student's circumstances.

### University of Witwatersrand (Wits)

Wits Inala is a student-driven organisation at the University aimed at food sovereignty and climate justice. It encourages students' self-sufficiency through the cultivation of food produce in dedicated food gardens on campus.

### University of Pretoria

Through its Student Nutrition and Progress Programme (SNAPP), the University of Pretoria provides meal allowances or food parcels to students in need.

### University of Johannesburg

The University of Johannesburg, in conjunction with Tiger Brands, recently launched the Plates4Days Programme, which supports students by providing for their dietary needs.

## WHAT CAN BE DONE TO PERMANENTLY ADDRESS THE SCOURGE OF FOOD INSECURITY IN SOUTH AFRICAN TERTIARY INSTITUTIONS?



It is clear that the measures above are at best stop-gaps to relieve specific cases of hunger in tertiary institutions. What is missing is an accountability mechanism that enhances coordination, is based on a human-rights approach, and extends relief schemes to every food-insecure student in every institution countrywide. This missing element is a gap in the framework necessary for ensuring that duty-bearers realise the right to food for students in tertiary institutions.

The government has the constitutional duty to realise the right to food – and, at a minimum, the freedom from hunger – for every person. This constitutional duty extends to students in tertiary institutions. However, in the absence of enabling legislation and a responsible department, it is hard to work out which of the numerous government structures should be held accountable for breaches in discharging this duty. The first step towards this is the enactment of a framework law on the right to food in South Africa. A framework legislation on the right to food can help identify the responsible de-

partments for the realization of the right to food. It can also assist in outlining the various responsibilities of the three tiers of government in realising the right to food.

As one of the most unequal societies in the world, South Africa has both a moral and legal duty to close the gap and ensure the reduction of inequality in the shortest time possible. This can be achieved through the education of the country's youth. But education does not happen in a vacuum. If the basic preconditions for education at tertiary institutions are absent, then educational attainment remains a myth, as does ending the cycle of poverty and inequality. It is thus essential that the scourge of food insecurity be addressed at a national level – and urgently.

In other words, a strong accountability mechanism needs to be identified, and without delay, to prevent potentially dire outcomes for students.



Specific legislation on the right to food would clarify which government bodies are responsible for this right, as well as give detailed content to it. Specific policy interventions and budgetary allocations are also needed for addressing student food-insecurity in the tertiary education sector both in the short and long term. Finally, the roles of institutional administrations and other non-state actors in the tertiary-education sphere need to be clarified.

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