

Reading the right to food into the African Charter on Human and Peoples' Rights

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The African Charter on Human and Peoples' Rights (the Charter) of 1981 is the principal regional instrument protecting human and peoples' rights in Africa. It incorporates a wide range of socio-economic rights, including the rights to property, to work under favourable conditions and equal pay for equal work, to health, to education, family rights and the right to self-determination.

However, the Charter does not expressly recognise the right to food. It also does not recognise the right to an adequate standard of living. In contrast, the African Charter on the Rights and Welfare of the Child of 1990 binds State parties to provide adequate nutrition and safe drinking water in partial discharge of the duties engendered by the right to health.

The role of the African Commission

The African Commission on Human and Peoples' Rights (the Commission) is entrusted with the responsibility of monitoring and promoting the implementation of the African Charter. It has power, for example, to receive and adjudicate complaints alleging violations of human rights by States. Thus far, the Commission has entertained and decided a wide range of individual complaints involving interpretations of various provisions of the Charter.

Recent jurisprudence of the Commission establishes a growing commitment by this body to interpret the Charter progressively. For example, in the landmark decision of the *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights vs Nigeria (SERAC)*, the Commission found a violation of the right to food, which, as noted, is not expressly recognised by the Charter.

The facts in *SERAC*

The Nigerian Government was directly involved in oil production through the Nigerian National Petroleum Company (NNPC), which was the majority shareholder in a consortium with Shell Development Corporation (SPDC). The consortium exploited oil with no regard for the health or environment of local communities. It also neglected and failed to maintain its facilities, causing numerous avoidable spills in the proximity of villages. As a result, water, soil and

air became contaminated resulting in serious short- and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, an increased risk of cancers, as well as neurological and reproductive problems.

The Government of Nigeria condoned and facilitated these violations by placing the legal and military powers of the State at the disposal of the oil companies. In attempting to stop non-violent protests by the Ogoni people against these harmful activities, the Nigerian security forces attacked, burned and destroyed the protesters' villages, food and livestock. Many people were also killed in the process. The communication alleged violations of a range of rights, including the rights to housing and food.

The decision

The Commission found that the Nigerian Government had violated the right to food, among other rights. The Commission held that the right to food is implicitly recognised in such provisions as the right to life, the right to health and the right to economic, social and cultural development, which are expressly recognised under the Charter. The right to food, according to the Commission, is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation.

This right, it was held, bound the

Nigerian Government to protect and improve existing food sources and to ensure access to adequate food for all citizens. Its minimum

core required the Government not to destroy or contaminate food sources or allow private parties to do so, or to prevent people's efforts to feed themselves.

Thus, the Nigerian Government was found liable for destroying food sources

through its security forces and the State oil company, allowing private oil companies to destroy food sources, and creating significant obstacles to attempts by Ogoni communities to feed themselves.

Like the right to food, the Commission held that the right to housing or shelter is implicitly recognised by the Charter. It reasoned that this right can be derived from a combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, the right to property, and the protection accorded to the family, which are explicitly recognised under the Charter. The Commission noted that destruction of houses adversely affects people's property, their health and families. Furthermore, shelter means more than a roof over one's head. It embodies the right to be let alone and to live in peace - whether under a roof or not.

It was held that the Government violated the minimum core obligation implicit in the right to food by destroying the houses and villages of the Ogoni people and by obstructing, harassing, beating and, in some cases, shooting and

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For a review of this case see the *ESR Review*, Vol. 3 No 2.

killing those that attempted to return to rebuild their ruined homes. The forced displacements caused by the destruction of homes also amounted to a violation of this right.

The importance of recognising the links between food and housing in the African context

Most African communities survive on subsistence agriculture. Food sources are often close to their houses. Some societies ensure food security by storing and preserving the excess of their harvest in granaries, constructed with traditional techniques. Others plant crops in such a manner that some mature before others, in order to ensure a steady supply of food. Forced evictions and denial of access to housing interfere with this process.

Concluding remarks

SERAC is one of the most progressive decisions rendered by the Commission. The right to food is arguably a most important right in the African context, where the majority of the people live in poverty. By holding that this right is implicitly protected, the Commission has cured one of the Charter's glaring weaknesses.

The next step is expanding its content and ensuring its implementation. Owing to the nature of the facts, the Commission focussed largely on the negative obligations generated by this right. It did not elaborate on the positive obligations.

Most of the provisions in the Charter have remained mere aspirations. Implementation should therefore not only be done through

the protective mandate of the Commission but also through its promotional mandate, because litigation has limited potential to ensure the full realisation of rights. The Commission, during its consideration of periodic State reports, should require States to report on the steps taken to implement this right. The current reporting guidelines are very broad in nature. There is a need to provide guidelines on how each of the rights should be reported on. For instance, in reporting on the right to food the State should be required to report on all the processes involved in realising this right, beginning with production and proceeding through processing, marketing and distribution, access and storage.

There is also a need for the Commission to elaborate on the nature and content of this right and its obligations.

The UN Committee on Economic, Social and Cultural Rights' General Comment No 12 could provide a useful guide in this regard, but due consideration should be given to African contexts.

African States must also take concrete steps towards implementing this right at the domestic level. Relevant legislative and other measures must be put in place to ensure that the beneficiaries of the right enjoy it. Framework legislation, as discussed by Sibonile Khoza in this issue, is one such prerequisite.

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