
Briefing paper: The Food Security Bill, 2014

Introduction

Article 43 of the constitution establishes Kenyans' right "to be free from hunger, and to have adequate food of acceptable quality". Under Article 21 sub Article 3, all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. This part of the constitution underpins the importance of developing a legal framework on food security. Already, there is a policy (or white paper) to this effect, but for the said policy to work, it is important that there is law to give legal effect to the policy in respect to achieving the policy objectives and successful implement. The bill borrows from experiences of other countries such as China and India where food insecurity is a thing of the past.

Summary content within the Bill

The Bill proposes to give effect to *Article 43(1) (c)* of the Constitution on freedom from hunger and the right to adequate food of acceptable quality

Object and Purpose

The proposal is to provide a framework;

- a) That promotes the realisation of the right to freedom from hunger and access to food of acceptable quality as a fundamental human right
- b) That promotes the elimination and prevention of discrimination of marginalized groups in the access and distribution of food.
- c) That promotes food production, self-sustenance and food security in relation to all persons in Kenya.
- d) To promote mechanisms for the coordinated implementation of the national policy, programmes and plans on food security by the county governments.
- e) To provide a mechanism for ensuring that food poor persons access food at all times in adequate quantities and quality through implementation of State sponsored programme (specifically the vulnerable populations, the elderly and those requiring special attention).
- f) To provide for the establishment of institutions (for instance, *Food Security Authority* in the country which will operate under the ministry of devolution) that will advance co-operative governance and procedures for coordinating food security functions exercised by the State.
- g) For the planning, budgeting and implementation of the national policy on food

security and nutrition using a rights based approach and to ensure the participation of rights holders and the accountability of duty bearers.

- h) To guarantee the integration of the needs of vulnerable persons in food and nutrition strategies
- i) To ensure that food is treated as a national strategic resource
- j) To ensure that emergency situations that threaten mass access to food are anticipated, mitigated and addressed with equity and speed.
- k) To provide for a cross-sectoral networking platform comprising all relevant ministries, agencies and actors concerned with the production, storage and sale of food for purposes connected to ensuring access to food by all Kenyans at all times.

Guiding Principles

The Bill proposes that all persons shall, in the performance of their functions under this law upon being passed, be guided by the following principles in addition to the national values and principles set out under Article 10 of the Constitution:

- a) Universality, non-discrimination and equity in the access to adequate food.
- b) Preservation of the freedom and dignity of every human being.
- c) Accountability of duty bearers and transparency in the food sector particularly emergency food aid.
- d) Coordinated public participation in the formulation, implementation, monitoring and control of policies and plans related to food and nutrition security in every sector of government.
- e) Integrity and accountability in the determination of the food poor status of persons taking into account any other assistance they are eligible for including development funds or assistance from the government targeting specific categories of persons including women and the youth for the improvement of their general wellbeing.
- f) Empowerment and capacity building as a means of facilitating the attainment of the right food
- g) Targeted empowerment and capacity building initiatives for both at risk persons and persons with limited capability through the application of state sponsored programmes in order to enable those receiving assistance produce or purchase their own food in the shortest time possible.
- h) Transparency in the implementation of programmes and activities relating to food security and the allocation and utilization of public and private resource.
- i) Availability and access to timely and reliable information through the establishment of a simple, fair and accessible procedure enabling a person to seek information relevant to the enjoyment of the right to food.
- j) Ensure that interventions are based on objective information and methods, monitoring mechanisms and regular evaluations are established thus ensuring transparency in the public management and social audit and that the needs of the population are taken into account.

The Right to Food

For the enjoyment of the right to adequate food and freedom from hunger, the legal proposal is that National and County government shall-

- a) Respect, protect and fulfil the human right to food and guarantee mechanisms for its enforcement.
- b) Ensure the availability, accessibility, adaptability and acceptability of food for all in Kenya by making provision for access to production resources, income and support and maintaining an enabling environment in which households can attain adequate access to food and nutrition through their own efforts.
- c) Promote the production of diverse crops and foods and put in place measures including irrigation schemes, water harvesting schemes and other programmes that ensure the availability of adequate food for all.
- d) Put in place mechanisms that ensure the availability of farm inputs and implements and other mechanisms of food production in order to facilitate food production.
- e) Ensure the physical access to food that meets the minimum dietary needs of persons or communities suffering from or threatened with starvation.
- f) Put in place adequate infrastructure to facilitate access to circulation of food particularly in areas affected by food insecurity.
- g) Formulate and implement the family support programme and other appropriate programmes targeting-
 - (i) Food poor persons, households and communities for greater enhancement of their ability to produce or purchase essential food items and commodities in adequate quantities and quality; and
 - (ii) At risk persons and persons with limited capability for the purpose of building their capacity to access food on their own through interventions that mitigate the factors that cause them to be food poor.
- h) Put in place measures to ensure the availability and accessibility of food for individuals, groups and communities caught up in food emergencies and humanitarian disasters.
- i) Protect individuals, groups and communities from encroachment or interference by any person to the access to food.
- j) Ensure the ability of citizens to feed themselves by protecting citizens from the activities of private actors by establishing protective mechanisms against arbitrary evictions from land, eliminating collusion by private business to control food, market prices, enforcing laws on minimum wages, preventing and remedying pollution of land, water and other sources of livelihood by private actors and guaranteeing the safety of food in the market and such other activities as they may consider necessary.
- k) Take all reasonable measures to ensure that food resources and sources of food production are protected from destruction and are sustained for future use.
- l) Monitor and evaluate strategies and programmes for the realization of the right to be free from hunger and the right to adequate food.
- m) Provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realizing food and nutrition security.
- n) Guarantee transparency and accountability in the design and implementation of programmes and interventions on food security are based on objective information and methods and that they are regularly monitored and assessed.

Obligations of the National and County governments

Another proposal by the Bill is that the National and County governments shall to the extent of their constitutional mandate promote the physical and economic access to adequate food of acceptable quality. In ensuring that the National government fulfils its obligations under subsection (1), a National Food Security Authority shall be established with the following responsibilities-

- a) Take measures to create the opportunities and environment in which the right to adequate food can be realized.

- b) Adopt a comprehensive national strategy and plan of action and policies to promote the realization of right to adequate food.
- c) Support the domestic production of diverse foods including the cultivation of traditional crops and ensure that food is accessible to persons in areas affected by food insecurity
- d) Promote traditional and other practices and technologies of food production that ensure the conservation of biodiversity.
- e) Promote food production by establishing programmes to ensure that farmers have adequate farm inputs and implements to carry out food production.
- f) Promote a food nutrition culture which reappraises local knowledge and makes it possible to develop food and hygiene best practices.
- g) Create in consultation with the relevant county executive member and the cabinet secretary responsible for trade , appropriate areas for setting up local and regional food markets.
- h) Ensure that precautionary measures are taken to mitigate emergencies in relation to the unavailability of food.
- i) Promote investment in infrastructure to facilitate the movement of foods within local areas and to areas that suffer from food shortages.
- j) Promote the circulation of and access to timely market information by farmers.
- k) Facilitate access to resources and means of production and promoting the effective utilization of resources for maximum food production.

Obligation relating to freedom from hunger

The National and County governments will be mandated, to the extent of their constitutional functions, ensure that the minimum dietary needs of persons who cannot through their own means and for reasons beyond their control access food and basic nutrition for survival are met.

In fulfilling their obligations, the National and County Governments shall as proposed-

- (a) Adopt appropriate policies and action plans that promote food security.
- (b) Enhance preparedness to respond to food emergencies and to ensure provision for designated individuals and groups by establishing the institutional framework contemplated in this Act; and;
- (c) Adopt culturally- sensitive responses in ensuring that all persons are free from hunger.