THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

MISCELLANEOUS APPLICATION No. ___ of 2020

(ARISING OUT OF CIVIL APPEAL No.____of 2020)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO INTERVENE AS AMICUS CURIAE BY THE APPLICANTS HEREIN ARISING FROM CIVIL APPEAL N0._____OF 2020

AND

1. CENTER FOR FOOD AND ADEQUATE LIVING RIGHTS (CEFROHT)

2. ATTORNEY GENERAL

NOTICE OF MOTION

(Under Articles 126 (1) and 127 of the Constitution of the Republic of Uganda, 1995, Sections 14, 33 and 39 (2) of the Judicature Act Cap. 13, Section 98 of the Civil Procedure Act Cap. 71 and Order 52, Rules 1 and 3 of the Civil Procedure Rules S.I 71-1)

TAKE NOTICE that this Honorable Court will be moved on the _____ day of _____ 2020 at _____ O'clock in the fore/afternoon or soon thereafter as he can be heard, Counsel for the Applicant shall move Court for orders that:

a) Leave be granted to the Applicant to join the proceedings in Civil Appeal No. ____of 2020 as Amicus Curiae.

b) Each party bears its costs in this motion.

TAKE FURTHER NOTICE that the grounds of this Application are contained in the affidavit of the ……...of the Applicant herein MR. …….which shall be relied on at the hearing and any other affidavits but briefly are;

1. The Applicants are members of ESCR-Net - International Network for Economic, Social and Cultural Rights (ESCR-Net), that contains over 280 organizational and individual member human rights defenders in over 75 countries across the world.
2. That the Applicants have valuable legal expertise in the area of economic and social rights particularly wish to aid the court with this expertise in the determination of the substantive suit before this Court.
3. That the Applicants are neutral and impartial and are independent of the dispute between the Parties in the substantive suit, have keenly studied and are interested in the Right to Food arising in the pending suit.
4. The Applicants' participation will contribute to novelty on the law relating to the right to food and its cogent submission will assist the Court in arriving at a just and fair decision in the pending suit as well as contribute further to developing jurisprudence on the subject.
5. That the participation of the Applicants shall ensure that the Court benefits from these matters of law, which would otherwise escape this Court, and arrive at an informed decision.
6. The nature of intervention by the Applicants as Amicus Curiae is in public interest and outweighs potential opposition to this Application from both Parties to the Petition.
7. It is in the wider interest of justice that the Applicants seeks to participate in the pending suit as Amicus Curiae.

DATED at Kampala this _____ day of _____ 2020.

_____

COUNSEL FOR THE APPLICANT

GIVEN under my hand and seal of the court this _____ day of _____ 2020.

_____

DEPUTY REGISTRAR

THE REPUBLIC OF UGANDA

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1. CENTER FOR FOOD AND ADEQUATE LIVING RIGHTS (CEFROHT)

2. ATTORNEY GENERAL

AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, Salima Namusobya.of C/o Initiative for Social and Economic Rights (ISER), Plot 60, Valley Drive, Ministers Village, Ntinda, P.O Box 73646, Kampala, do solemnly make oath and state as follows:

1. THAT I am an adult female Ugandan of sound mind, the Executive Director, of Initiative for Social and Economic Rights (hereinafter referred to as 'ISER'), the Applicant herein, and I affirm this affidavit in that capacity.
2. THAT the Applicant is a local independent, not-for-profit human rights Non-Governmental Organisation (NGO) registered under the laws of Uganda whose objective is to promote the effective understanding, monitoring, implementation, and realization of Economic and Social rights in Uganda. [**The Certificate of Registration of the Applicant is attached and marked A'**].
3. THAT the Applicant fulfils its objectives on promotion of the Economic Social Rights including the Right to food as stipulated in domestic, regional and international human rights instruments through a combination of legal advocacy, strategic litigation, action-oriented research, monitoring and

documentation; public information; capacity building; and community outreach, sensitization and empowerment.

4. Internationally, the Applicant has participated in a third-party intervention on a matter before the UN CESCR; Ana Esther, Alarcon Flores et al v. Ecuador, Communication No. 14 of 2016 on interim measures and admissibility of communications.
5. That the Applicant, under Miscellaneous Application No. 152 of 2018, was granted leave by the High Court of Uganda to appear as Amicus Curiae under Miscellaneous Cause No. 23 of 2018 having been found to have the valuable legal expertise and a proven record of over six years in the area of Economic and Social Rights. In 2019, at the behest of the High Court of Uganda, Lira, ISER applied to appear as Amicus Curiae under Civil Suit No. 034 of 2018. ISER has also made an application, Civil Application No. 155/2018 to intervene as amicus curiae under Civil Appeal No. 157 of 2017.
6. THAT the Applicant also engages in legal advocacy at a regional and international level. At the regional and international level, the Applicant has observer status with the African Commission on Human and Peoples' Rights (African Commission) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); which mandates allow for it to monitor the implementation of economic and social rights under the African Charter on Human and Peoples' Rights (ACHPR) and African Charter on the Rights and Welfare of the Child (ACRWC) including the Right to Food.
7. That I am an expert member of the economic, social and cultural rights working group of the African Commission on Human and Peoples Rights. The applicant has also been active in monitoring the right to food and reporting to international mechanisms including the Universal Periodic Review (UPR). In 2016, the applicant coordinated the preparation and drafting of the Civil Society Organisations (CSOs) Alternative Report for the Universal Periodic Review (UPR) on the status of implementation of economic and social rights including the Right to Food. The Applicant also prepared fact sheets on the Right to Food in Uganda.
8. THAT given the above outlined and other experiences the Applicant is a competent participant and possesses valuable legal expertise and a proven record in the area of right to food. The Applicant thus avails itself to aid this honorable court of its experiences on the right to food in the determination of the substantive suit before this Court.
9. THAT the Applicant's intervention as amicus curiae will be on novel areas of the law and these areas will assist the Court in arriving at a just and fair decision in the pending suit and develop

jurisprudence on the Right to Food in Uganda and Africa at large. A brief on areas of law intended to be canvassed is attached hereto and marked "I".

10. THAT the Applicant is a neutral and impartial participant whose intervention is independent of the dispute between the Parties in the head suit, non-partisan and does not intend to support either party to the pending suit or descend into the merits of the dispute between the Parties.
11. THAT, the nature of intervention by the Applicant as Amicus Curiae is in public interest and outweighs potential opposition to this Application from both Parties to the Petition.
12. THAT it is in the wider interest of justice that the Applicant seeks to participate in the pending suit as Amicus Curiae.
13. THAT I affirm this affidavit in support of the motion for leave to be granted to participate as Amicus Curiae.
14. THAT all that I have stated herein above is true and correct to the best of my knowledge and belief.

Affirmed by the said]

_____]

AT KAMPALA THIS _____ Day]

Of _____ 2020] _____

AFFIRMANT

Before Me

_____

A COMMISSIONER FOR OATHS

THE REPUBLIC OF UGANDA

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AMICUS CURIAE BRIEF

Respectfully submitted by:

1. Center for Economic and Social Rights
2. FIAN International
3. Human Rights Law Network (HRLN)
4. Initiative for Social and Economic Rights (ISER)
5. Pro Public

As coordinated by:

The secretariat of ESCR-Net – International Network for Economic, Social, and Cultural Rights

Summary **6**

Relevant international and comparative right to food legal standards **6**

General aspects of the right to food 6

Recognition and enforcement of the right to food within the domestic legal order 10

Food distribution standards 15

Food reserves standards 18

Food price stabilization standards 23

Food contamination standards 24

Maximum available resources in the face of a food emergency 25

Conclusion **28**

Summary

Established international, regional, and comparative right to food standards inform and reinforce the Ugandan State's human rights duties to respond to the novel coronavirus (COVID-19) pandemic by:

1) recognizing and enforcing the right to food within the domestic legal order;
2) appropriately providing for all necessary food distribution during the pandemic;
3) establishing and maintaining food reserves;
4) ensuring economic accessibility of food and food price stabilization;
5) ensuring food safety; and
6) utilizing maximum available resources in the face of the food emergency.

Relevant international and comparative right to food legal standards

Numerous sources of law and interpretation establish the right to food in the universal, regional, and domestic legal contexts. These sources delineate core features of right to food, contemplating principles such as adequacy, availability, accessibility, and sustainability, as well as justiciable state duties to respect, protect, and fulfill the right. Many sources also provide specific guidance relevant to the recognition of the right to food within the domestic legal order, to food distribution, to food reserves, to food price regulation, to food safety, and to the utilization of maximum available resources in the context of the COVID-19 pandemic.

General aspects of the right to food

In United Nations (UN) instruments applicable to Uganda, the right to food is recognised, *inter alia*,[1] under Article 25[2] of the Universal Declaration of Human Rights, Article 11[3] of the International Covenant on

[1] Among other references of note, the United Nations (UN) General Assembly's 193 member states adopted on 25 September 2015 the Sustainable Development Goals (SDG), a comprehensive set of goals that aims to "end poverty, protect the planet, and ensure prosperity for all", including by ensuring "Zero Hunger", "Good Health and Well-being" and "Clean Water and Sanitation." SGD Goals 2, 3, and 6, https://www.undp.org/content/dam/undp/library/corporate/brochure/SDGs_Booklet_Web_En.pdf. Numerous statements and writings of the UN Special Rapporteurs on Right to Food and on Human Right to Safe Drinking Water and Sanitation also reiterate the right to food as do other UN resolutions, declarations, and other materials cited in this *amicus* where pertinent.

[2] Article 25(1) of the Unitersal Declaration of Human Rights reads: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[3] Article 11 of the International Covenant on Economic, Social and Cultural Rights reads: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the

Economic, Social and Cultural Rights (ICESCR), Article 27 of the Convention on the Rights of the Child (CRC), Article 12(2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Articles 25[4] and 28[5] of Convention on the Rights of Persons with Disabilities, and Articles 20[6] and 23[7] of the Convention Relating to the Status of Refugees.

The UN Committee on Economic, Social and Cultural Rights' (CESCR) General Comment 12 (GC 12)[8] provides an authoritative articulation of the principal facets of the right to food. As per paragraph 6 of GC 12:

> the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with merely a minimum package of calories, proteins and other specific nutrients.[9]

Paragraph 7 of GC 12 explains that *adequacy* means that account must be taken of what food is appropriate under given circumstances. Paragraph 8 adds that the core content of the right to adequate food implies, "the *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;" and "the *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." GC 12 also discusses *sustainability* as a component of the right to food. Furthermore, according to GC 12, "ensur[ing] that everyone is free from hunger and as soon as possible can enjoy the right to adequate food" requires:

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principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

[4] Article 25 of Convention on the Rights of Persons with Disabilities: "States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall: [...] (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability."

[5] Article 28 of Convention on the Rights of Persons with Disabilities: "(1) States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability. [...]"

[6] Article 20 of the Convention on the Status of Refugees: "Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals."

[7] Article 23 of the Convention on the Status of Refugees: "The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

[8] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 12 (GC 12), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

[9] UN CESCR, GC 12, §6. *See also*, African Commission on Human and Peoples' Rights (ACHPR), Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §85, https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf

> the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. It should also identify the resources available to meet the objectives and the most cost-effective way of using them.[10]

States have a core obligation to take the necessary actions to mitigate and alleviate hunger, as provided for in paragraph 2 of article 11 of the ICESCR, even in times of natural or other disasters. Paragraph 14 of GC 12 summarizes that "[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger." State duties include respecting, protecting, and fulfilling the right to food, as detailed in paragraph 15.

Uganda is also a signatory state to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), formally adopted by the United Nations General Assembly on 17 December 2018. The object and purpose of UNDROP is to respect, protect and fulfill the rights of peasants and other people working in rural areas and rests on the *ius cogens* principle of non-discrimination. Rights holders are extensively defined under Article 1, its scope includes: "any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land". In addition to the Declaration's specific norms on the right to adequate food (Art. 15), UNDROP is also relevant to states measures taken to address the current coronavirus (COVID-19) pandemic, as it notes states obligations under unforeseeable circumstances. In this way, UNDROP specifically refers to the right to an adequate standard of living for peasants and their families and dictates that states "shall take appropriate measures to strengthen the resilience of peasants and other people working in rural areas against natural disasters and other severe disruptions..." (Article 16.5). The right to an adequate standard of living is deeply interlinked to the right to adequate food (Article 15) and encompasses access to "means of production necessary to achieve them, including production tools, technical assistance, credit, insurance and other financial services." (Article 16.1).

The right to food is also recognised regionally in various regional instruments, including the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child, the Maputo Protocol on the Rights of Women in Africa—all ratified by Uganda—and the American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social, and Cultural Rights. Under the African human rights system, it is settled understanding that the right to food is inherent in the African Charter on Human and Peoples' Rights.[11] While the African Charter does not recognize explicitly the right to food, the African Commission in a landmark decision of the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights vs. Nigeria , the ACHPR concluded that:

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[10] CESCR, GC 12, § 21.

[11] *See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (SERAC v. Nigeria), African Commission on Human and Peoples' Rights (ACHPR), Com. No.155/96 (2001), available at: https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf. *See also* Resolution 431 on the Right to Food and Nutrition in Africa ACHPR/Res. 431(LXV) Nov. 10, 2019.

> 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). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.[12]

Comparative constitutional and statutory standards from national jurisdictions further illustrate features of the right to food. According the Supreme Court of Nepal, a common law jurisdiction, if government's negligence, slowness, or delay in taking decisions leads to shortage of food resulting to death of citizens, then government should be responsible for it; government cannot alienate itself from the constitutional duty of timely availability and supply of sufficient food throughout the country.[13]

Most Latin American states have acknowledged the right to food as a right for everyone. The constitutions that expressly recognize it are those of Bolivia, Brazil, Ecuador, Guatemala, Guyana, Haiti, Nicaragua, Venezuela, Mexico, and El Salvador. In four other countries, national constitutions guarantee the right to food for specific groups: for example, the right to an adequate and healthy food for children in Colombia (Art. 44)[14], Cuba (Art. 9)[15] and Paraguay (Art. 53);[16] or the right to food in the context of work, as in the Suriname's Constitution (Art. 24).[17] Three more of these implicitly guarantee it by elevating the International Covenant on Economic, Social and Cultural Rights and other international human rights treaties ratified by the state to constitutional or supra-constitutional status, as is the cases of Argentina, Uruguay, and Costa Rica. Finally, in other countries, the right to food has been protected by the national courts in relation with the rights of health or life, as happens in Peru[18] or Chile.[19]

Justiciability of the right to food is not in question. For example, the African Commission on Human and Peoples' Rights found a violation of the right of food of the Ogoni people.[20] And in the Ogiek case, the African Court on Human and Peoples' Rights found "the Ogieks have been deprived of the right to enjoy and freely dispose of the abundance of food produced by their ancestral lands" in analyzing Article 21 of the

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[12] *SERAC v. Nigeria*, ACHPR, §64.

[13] Decision No. 8540 NKP Part: 53, Year: 2065 BS Month: Baisakh Volume 1, Writ No. 014, Supreme Court of Nepal.

[14] Article 44: "The following are basic rights of children: life, physical integrity, health and social security, a balanced diet (…)"

[15] Article 9: "b. as the Power of the people, in the service of the people themselves, guarantees: • that there will be no child lacking a school, food, and clothing."

[16] Article 53: "Of Children. The parents have the right and the obligation to assist, to feed, to educate, and to shelter [amparar] their minor children. The law will punish them in the case of non-fulfillment of their duties of providing food [asistencia alimentaria]."

[17] Article 24: "The State shall take care of the creation of conditions in which an optimal satisfaction is attained of the basic needs for work, food, health- care, education, energy, clothing and communication."

[18] Implicit recognition in Article 2: "Every person has the right: 1. To life, his identity, his moral, psychical, and physical integrity, and his free development and well-being (…)". As established in the STC N°01470-2016-PHC/TC decision by the Constitutional Court: https://tc.gob.pe/jurisprudencia/2019/01470-2016-HC.pdf

[19] Article 19 of the Constitution recognizes in clauses 1 and 9 "the right to life and to physical and mental integrity of the person" and "the right to health protection."

[20] *SERAC v. Nigeria*, ACHPR, §65-66. *See also* the African Commission's discussion of indigenous peoples' right to food in Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) vs. Kenya, ACHPR, Decision 276/03, §283-286.

African Charter.[21] Economic, social, cultural and environmental rights in the inter-American system have progressively been developing, particularly in recent years, in which the Inter-American Court of Human Rights began to recognize the direct enforceability of ESCR based on the interpretation of Article 26 of the American Convention on Human Rights[22]. In the case "Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina" (2020), the Inter-American Court established an important precedent on the international obligations of states in relation to the right to food. In this case, the Inter-American Court recognized the link between protecting the indigenous people's lives, traditional way of living and cultural identity, with ensuring their collective territories and their right to water and traditional food and diet. For the first time in a contentious case, the Court analyses the rights to a healthy environment, adequate food, water and cultural identity autonomously, from an interpretation of Article 26, in their interdependence and in accordance with its specificities regarding indigenous peoples. Thus, the Court sets standards on the right to water, *food* and a healthy environment, in relation to the international duties of the States to respect and to fulfil human rights. Several national courts have also ruled on right to food issues, and other international decisions provide examples of instances in which adjudicatory bodies, such as the Human Rights Committee or the International Court of Justice, have protected the right to food indirectly, such as in cases on the rights of minorities.[23]

Recognition and enforcement of the right to food within the domestic legal order

Though paragraph XXII on food security and nutrition in the Ugandan Constitution, in the section on National Objectives and Directive Principles of State Policy, states that "….the State takes steps to encourage people to grow and store adequate food, establish national food reserves, and promote proper nutrition through education and other means, in order to build a healthy state," current national jurisprudence in Uganda does not expressly recognize a constitutional right to food.[24]

International human rights law requires states to take the steps necessary to render those rights effective in their domestic legal order, including the right to food. Comparative constitutional law examples demonstrate

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[21] *African Commission on Human And Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, Judgment, African Court on Human and Peoples' Rights, 2017, §201, available at: https://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf.

[22] The relevant chapter of the American Convention on Human Rights states as follows: "CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS Art. 26 Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

[23] For a discussion of these and other examples, *see* Golay, Christophe, UN Food and Agriculture Organization, 2009, p. 23, 34-36, http://www.fao.org/3/a-k7286e.pdf.

[24] *See, for instance*, the South Africa Constitution that guarantees the right to food: Art. 27. (1) Everyone has the right to have access to— (b) sufficient food, https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf; *See also* Kenya's Constitution, that guarantees the right to food: Art 43. (1) Every person has the right— (c) to be free from hunger, and to have adequate food of acceptable quality, http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010

how courts have recognized the right to food this in different jurisdictions, including in reference to constitutional directive principles and/or in the absence of express textual guarantees.

The accession of the State of Uganda into the ICESCR requires it to take steps towards the progressive realization of the right to food, including the adoption of legislative measures (Art. 2(1), ICESCR). In addition, according to the General Comment No. 3 on the nature of States parties' obligations, CESCR has highlighted that:

> [a]mong the measures which might be considered appropriate, in addition to legislation, is the **provision of judicial remedies** with respect to rights which may, in accordance with the national legal system, be considered justiciable."[25] (our emphasis)

GC 12, in turn, specifically requires that:

> [a]ny person or group who is a **victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels**. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of no-repetition." [26] (our emphasis)

And, in paragraph 34 of GC 12, the UN CESCR remarks that, "[j]udges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions."

In addition, CESCR in General Comment 3 stated that:

> while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."[27]

Effective recognition of the right to food within the domestic legal order, including by the judiciary, is the kind of deliberate, concrete, and targeted action envisioned as an immediate or short term step State authorities should take upon entry into force of the Covenant with respect to their jurisdiction.

Uganda's regional human rights obligations from the African human rights system reinforce this duty to effectively recognize the right to food within the domestic legal order. The African Charter on Human and Peoples' Rights, ratified by Uganda in 1986,[28] points out in Article 1 that, "[t]he Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms

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[25] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 3 (GC 3), §5 available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.
[26] UN CESCR, GC 12, §32.
[27] UN CESCR, GC 3, §2, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11
[28] ACHPR, Ratification Table, , available at: https://www.achpr.org/ratificationtable?id=49

enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them."[29] In Resolution 431 (LXV) from November 10, 2019, on the Right to Food and Nutrition in Africa, the African Commission highlighted that States Parties to the African Charter should:

> [t]ake appropriate policy, institutional and legislative measures to ensure the full enjoyment of the right to food which includes constantly accessible and quality food that meets the requirement of nutrition and cultural acceptability.[30]

Indeed, the full enjoyment of the right to food under the African Charter requires the State of Uganda to ensure that it is justiciable nationally with a possibility of offering adequate remedies when it is violated. The Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights indicate that:

> All rights recognised in the African Charter must be made effective under national legal systems. **Violation of economic, social and cultural rights protected under the African Charter must entitle affected individuals and peoples to effective remedies and redress under domestic law.** A rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would be incompatible with the principle that human rights are indivisible and interdependent. International remedies are ultimately only supplementary to effective national remedies.
>
> Effective remedies can be either administrative or judicial but must be accessible, affordable and timely. **Administrative tribunals and the courts should recognise the justiciability of economic, social and cultural rights, and grant appropriate remedies in the event of violations** of these rights by State or non-state actors. The training of the judiciary and administrative officials should expressly include the enforceability of economic, social and cultural rights.[31] (our emphasis)

The Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter further detail an avenue for the effective recognition of economic, social and cultural rights where express constitutional language is absent, providing that:

> ...where economic, social and cultural rights are not expressly included in the constitution of a State party, the courts and administrative tribunals should strive to protect the interests and values underlying these rights through an expansive interpretation of other rights, for example, the rights to life, human dignity, security of the person, equality and just administrative action.

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[29] African Charter on Human and Peoples' Rights, available at: https://www.achpr.org/legalinstruments/detail?id=49

[30] ACHPR, Resolution on the Right to Food and Nutrition, , available at: https://www.achpr.org/sessions/resolutions?id=462

[31] ACHPR, Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §21-22, https://www.achpr.org/legalinstruments/detail?id=30

According to the Guidelines and Principles, "[d]omestic law must be interpreted as far as possible in a way which conforms to States parties' obligations under the African Charter."[32]

Resolution 374 of the African Commission also calls upon States to adopt legislative, administrative and other measures to guarantee the right of everyone to be free from hunger and to mitigate and alleviate hunger, even in times of natural disasters.[33]

In sum, both the ICESCR and the African Charter require that Uganda recognize the right to food within the domestic legal order and that such incorporation be effective, that is, remediable by judicial or other appropriate recourses. Current jurisprudence in the State of Uganda does not yet comply with these treaty mandates. The State of Uganda has human rights obligations to explicitly recognize the right to food as among its justiciable fundamental rights guarantees.

Domestic courts in various jurisdictions have derived the right to food from the right to life and directive principles relevant to food analogous to those present in the Ugandan constitution.

For instance, in *C.E.S.C. Limited and Ors. Vs.Subhash Chandra Bose and Ors*[34] the Supreme Court of India, citing international human rights law, observed that human needs, such as food, clothing, housing, education, work, leisure, fair wages, decent working conditions, social security, and health, are integral to the right to life. Similarly, in *Shantistar Builders v. Narayan Khimalal Totame* (1990),[35] the Supreme Court stated: "The right to life is guaranteed in any civilized society. That would take within its sweep the right to food…"

In the Indian Constitution, the right to food is envisaged under Part IV of the Constitution i.e. Directive Principles of State Policy. While the Principles are not technically enforceable by courts,[36] they serve as invaluable guidelines which must be borne in mind in formulating policy. Particularly important with regards to the right to food is Article 47, which affirms the duty of the State to raise the level of nutrition, the standard of living, and the public health.[37]

The Supreme Court of India has explicitly stated in various cases that the right to life should be interpreted as a right to "live with human dignity", which includes the right to food and other basic necessities. For instance, in *Maneka Gandhi v. Union of India*,[38] the Supreme Court stated: "Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living." In *Francis Coralie v. Union of Territory,*

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[32] ACHPR, Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §24-25, https://www.achpr.org/legalinstruments/detail?id=30

[33] Resolution 374 on the Right to Food and Food Insecurity in Africa, ACHPR/Res.374(LX), 22 May 2017.

[34] *C.E.S.C. Limited and Ors. Vs.Subhash Chandra Bose and Ors*, AIR1992SC573, Supreme Court of India.

[35] *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520, Supreme Court of India.

[36] Art. 37 of the Indian Constitution reads: "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

[37] Other relevant directive principles in the Indian constitution include the right to an adequate means of livelihood under Article 39; the rights to work, education and public assistance in cases of unemployment, old age, sickness and disability and in other cases of undeserved want under Article 41; living wages for workers under Article 43; and the principle relating to the duty of the state to secure social order for the promotion of welfare under Article 38.

[38] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, Supreme Court of India.

Delhi,[39] the Indian Supreme Court also recognised the broader scope of Article 21 by stating that "right to life does not merely mean 'animal existence' but living with 'human dignity,' which include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self." In *Chameli Singh v. State of Uttar Pradesh*,[40] the Supreme Court of India held that the need for a decent and civilized life includes the right to food, water and decent environment.

In its jurisprudence recognizing the right to food, the Supreme Court of India has firmly established the right's justiciability, including by engaging in judicial enforcement and monitoring of implementation. For example, on *PUCL v Union of India*[41] the Supreme Court of India, in recognizing the right to food as a component of right to life, the Court issued a continuing mandamus to monitor the overall implementation. In an interim order on November 28, 2001, the Court converted the benefits of these eight legal schemes into legal entitlements, meaning a person could approach the court as a matter of right if the benefits of the scheme were denied to them. States were directed to complete the identification of families and beneficiaries below the poverty line under the various schemes, issue cards and commence distribution of 25 kgs. grain per family per month, along with other benefits. In the case of mid-day meals, the interim order went further than just giving a legal protection to existing entitlements. It also directed the government to replace monthly "dry rations" of grain with daily, cooked mid-day meals with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days.

Similarly, in Nepal, the Supreme Court derived the constitutional right to food in relation to right to life with dignity, the latter of which is guaranteed as a fundamental right in the text. According to the Court, without the right to food, the right to freedom cannot be enjoyed and the life without food cannot be lived with dignity.[42] In its analysis, the Court looked at the fundamental rights ensured by the Interim Constitution of Nepal, its directive principles, various human right treaties to which Nepal is a party, and various declarations on the right to food.[43] In a separate ruling, the Nepalese Supreme Court carved out a role for the judiciary to work to render the constitution's directive principles effective, pointing out that they are not meaningless and cannot be ignored.[44]

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[39] *Francis Coralie v. Union of Territory, Delhi*, AIR1981 SC 746, Supreme Court of India. Another broad promulgation of the right to life with dignity is found in *Bandhua Mukti Morcha v. Union of India.* AIR 1984 SC 802.

[40] The court has observed in this connection:

> In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object.

Chameli Singh v. State of Uttar Pradesh, AIR 1996 SC1051, Supreme Court of India.

[41] *PUCL v Union of India*, Writ Petition [Civil] 196 of 2001, Supreme Court of India.

[42] Decision No. 8540 NKP Part: 53, Year: 2065 BS Month: Baisakh Volume 1, Writ No. 014, Supreme Court of Nepal.

[43] Decision No. 8540 NKP Part: 53, Year: 2065 BS Month: Baisakh Volume 1, Writ No. 014, Supreme Court of Nepal.

[44] Decision No. 6391 Year 2054 BS, Supreme Court of Nepal; Decision No. 6127 Year 2053 BS, Supreme Court of Nepal.

Food distribution standards

International right to food standards apply to the Ugandan government's food distribution efforts and planning in response to the COVID-19 pandemic. In emergencies, the states have the obligation to protect and provide the right to food to those incapable of doing so. This obligation emanates, for instance, from the GC 12 of the UN CESCR:

> States have **a core obligation to take the necessary action to mitigate and alleviate hunger** ... **even in times of natural or other disasters**.[45] (our emphasis)

The African Commission has similarly defined the minimum core of the right to food as including the State duty to:

> Tak[e] the necessary action to guarantee the right of everyone to be free from hunger and to mitigate and alleviate hunger even in times of natural or other disasters.[46]

States are required to develop national plans and policies that include constantly accessible and quality food that meets the requirements of nutrition and cultural acceptability.[47] According to the United Nations Food and Agriculture Organisation (FAO) Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of the National Food Security (FAO Guidelines), food security strategies:

> ...could include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms. As appropriate, such strategies could address all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food. They could also address access to resources and to markets as well as parallel measures in other fields. **These strategies should, in particular, address the needs of vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies**.[48] (our emphasis)

Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels.[49] Effective pandemic relief food distribution policies should meet these standards.

In analyzing the right to food in conjunction with disaster relief in the event of an earthquake, for instance, the Supreme Court of Nepal held that if there is a situation of starvation due to inability to procure

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[45] CESCR, GC 12, §6.

[46] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §86, *See also SERAC v. Nigeria*, ACHPR.

[47] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §86 (iv & v); Resolution 431 on the Right to Food and Nutrition in Africa ACHPR/Res. 431(LXV) Nov.10, 2019.

[48] UN FAO Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of the National Food Security (FAO Guidelines), available at: www.fao.org/3/a-y7937e.pdf.

[49] UN CESCR, GC 12, §25.

foodgrains, food should be made available through appropriate means.[50] Tracking international standards, the Court further stated that there should be regular and permanent access to food...to all individuals, families and communities. This includes quantity and quality of food, availability, financial and material access. Such food should be sufficient to keep a person physically and mentally healthy in terms of age, health, standard of living. Also available food should be religious and culturally compatible or suitable and acceptable.[51]

The State should also cover rural areas in any food distribution scheme. Access and availability are essential to the right to adequate food (Art. 15) under UNDROP. Access is measured in both physical and economic terms at all times and requires substantial aspects such as adequacy and sustainably produced and consumed food (Art. 15(1)-15(2)).

Furthermore, food distribution policies should be officialized and published in order to promote public information and State accountability. Indeed, with respect to rural areas, adequate guidance from states to vulnerable people and the entire population on the matter at hand is linked to UNDROP norms, which establish the right to receive information and states obligations to ensure that right holders have access to relevant, transparent, timely and adequate information (Art. 11(1)-11(2)). The latter is complemented by the right to the enjoyment of the highest attainable standard of physical and mental health, i.e. the obligation of states to guarantee access in rural areas on a non-discriminatory basis, especially for groups in vulnerable situations… [to] information concerning health. (Art. 23).

In regard to policymaking, it is also worth recalling core guidelines pertaining to emergencies in the FAO's *Guide on Legislating for the Right to Food*:

> Require the competent public authorities **to review the relevant legislative and institutional framework regulating food emergencies** so as to ensure that it covers both early warning and preparedness for a crisis **as well as organizing and managing food response in the case of a crisis, and that it complies with the right to food and the relevant international standards**.
>
> **Establish or strengthen a national institution responsible for coordinating the emergency food response and ensure that its mandate and functions are compatible with the right to food and international standards regulating emergencies**.
>
> Designate the competent public authority responsible for initiating the request for international assistance in the case of necessity and for supervising and coordinating distribution of food response received.[52] (our emphasis)

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[50] Decision No. 9876, Year 2072 BS, Writ No. 0178, Supreme Court of Nepal.

[51] Decision No. 9876, Year 2072 BS, Writ No. 0178, Supreme Court of Nepal.

[52] UN FAO, *Guide on Legislating for the Right to Food*. Rome, 2009, p. 130-131, available at: www.fao.org/3/a-i0815e.pdf. Of note, regarding the designation of point persons in government to respond to food crises, in *National Campaign Committee for Eradication of Bonded Labour India News Communications Ltd. v. Govt. of NCT of Delhi* the Court suggested an appointment of a Nodal Officer who can be approached by the families in case of any difficulties in distribution of food. W.P. (C) 2985/2020.

A lack of legislation does not exempt the state from acting. Quite on the contrary, it demands concerted efforts from all government powers to overcome the legal gap in order to guarantee the right to food of the population during an emergency.

Indeed, certain courts in India have been proactively requiring the State adopt, publish and carry out effective food distribution and accessibility policies as part of mandated pandemic relief. For example, the Delhi High court in *Delhi Rozi-Roti Adhikar Abhiyan v. Union Of India & Ors*[53] has directed that the government of Delhi shall ensure the that all ration shops remain operational and disburse Public Distribution System (PDS) food grains, in accordance with the policy formulated by both the Central Government, as well as, the State Government and further ensure delivery of the requisite food grains from the PDS ration shops on a regular basis between 09:00 a.m. to 01:00 p.m. and 03:00 p.m. to 07:00 p.m., on all seven days of the week. Further, the Court ordered the government to a) ensure that food grains are distributed to the poor, needy and marginalized non-PDS residents from the PDS, as well as, other distribution centers stated to be set-up by them, and b) that the Sub-Divisional Magistrates of each district carry out strict and regular monitoring and oversight of the distribution of food grains, as afore directed and upload the details of shop-wise distribution of rations to both the PDS and non-PDS residents on their official website, at the end of each day.

In another case, *Swaraj Abhiyan v. Union of India*, in the context of declared drought in nine States, the Supreme Court of India directed that no household in a drought affected area be denied food grains as required under the National Food Security (NFS) Act only because the household does not have a ration card. The States were further directed to adequately provide within a month the necessary supply of eggs, milk or other nutritional substitutes for children under the Mid-Day Meal Scheme. The Court further directed to extend the Mid-Day Meal Scheme for the benefit of children during the summer vacation period in schools.[54]

Any food distribution scheme should ensure equality and non-discrimination, including by encompassing particularly vulnerable groups, such as migrants and minorities. The United Nations Human Rights Committee, for instance, applied the International Covenant on Civil and Political Rights (ICCPR) non-discrimination guarantee in relation to social rights.[55] Notably, in light of the particularly precarious situation of migrant workers in India, many of whom were unable to travel home during the COVID-19 lockdown, the High Court in Kranataka ordered, in *Mohammed Arif Jameel and Anr. v. Union of India and Ors*, that:

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[53] *Delhi Rozi-Roti Adhikar Abhiyan v. Union Of India & Ors*, W.P.(C) 2161/2017, Delhi High Court, order dated 27-04-2020.

[54] The requirement of a household having a ration card was directed to be substituted by an appropriate identification or proof of residence that is acceptable to the State Government. Further, the States are fully entitled to provide any food grains or other items over and above and in addition to the entitlement of a household under the NFS Act. For the Mid-Day Meal Scheme, eggs, milk or other nutritional substitutes should be made available preferably five days in a week or at least three days in a week. *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498. Judgement and order dated 13-05-2016, Supreme Court of India.

[55] Communication No. 182/1984, U.N. Document CCPR/C/29/D/182/1984 of 9 April 1987 (finding Dutch social welfare scheme excluding married women was discriminatory). See also *Khosa and others v Minister of Social Development*, Judgment, Constitutional Court of South Africa, Case No. CCT, March 4, 2004.

> the State Government must ensure that so long as the migrant workers are not leaving the State, the supply of ration/food to them remains uninterrupted.[56]

Furthermore, in the case of *Veera Yadav v. The Chief Secretary*,[57] the Patna High Court declared that during the pandemic no member of the transgender community shall be deprived of their ration only on account of such status or not possessing the ration card.[58]

Food reserves standards

International standards also establish the need for States to maintain food reserves in order to prevent food insecurity during times of heightened need—such as during the COVID-19 pandemic—and to actively promote related measures, such as food price stabilization. For example, the FAO Guidelines affirm that States should take appropriate emergency preparedness measures, such as keeping food stocks, and establishing adequate systems for distribution.[59] Access to food reserves has also been established in UNDROP under states obligations to take appropriate and effective measures between and among States and, as appropriate, for the realization of the rights enshrined in the Declaration: "includ[ing] measures to improve the functioning of markets at the global level and facilitating timely access to market information, including on food reserves, in order to help to limit extreme food price volatility and the attractiveness of speculation"(Article 2(6)(e)). Under the African human rights system standards as well, States must take measures to ensure that surplus food production is safely stored to guard against famine, drought, and other hardships.[60]

As learned from the food crisis in 2008/2009, it is essential to strengthen states' capacities to establish food and grain reserves to deal with unexpected situations like the current pandemic. Even in emergencies, a minimum core of the economic, social and cultural rights remains non-derogable, such as freedom from hunger and the right to food, including as related to the non-derogable right to life.

Accordingly, given the foreseeable risks to life due to food insecurity during the pandemic, it is worth recalling the Inter-American Court's recognition of the State duty to prevent real and imminent risks to life by taking the appropriate necessary measures to address them when authorities know or should have known of such risks. Such situations of risk can be experienced, for instance, by persons in extreme poverty or those subjected to marginalization, among others. As stated by the Inter-American Court of Human Rights:

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[56] *Mohammed Arif Jameel and Anr. v. Union of India and Ors*, WP No. 6435/2020 before Karnataka High Court, India.

[57] *Veera Yadav v. The Chief Secretary*, CWJC No. 5627 of 2020, Patna HC order dated 20-05-2020.

[58] In a Public Interest Litigation before the Kerala High Court in India, the court directed that medicines are supplied free of cost in accordance with the policy of the State Government, whenever any member of the transgender community is approaching the concerned statutory authority with the medical prescription of a doctor, where the concern was that the government had ensured the distribution of rations, medicines, access to medical treatment etc. to the transgender community in Kerala. *Kabeer C. v. State of Kerala and Ors.* [WP (C) No. 9890 of 2020], Kerala High Court in India..

[59] FAO Guidelines, Guideline 16.7.

[60] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §12 (iii), 86. See also *SERAC v. Nigeria*, ACHPR.

> States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life...and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right.[61]

As witnessed in diverse parts of the globe, the COVID-19 pandemic has put a considerable part of the population in an even more vulnerable position.[62] Most of the workers in countries of the so-called Global South, for instance, street vendors and food sellers, depend on their daily activities to access food for them and their families. Therefore, the lockdown policies to avoid the spreading of the virus have a direct impact on those living from hand to mouth, for the impossibility of exercising their daily work activities.

According to the Director-General of the FAO, speaking in April regarding the pandemic and overlapping sources of food crises, "we need prevention, as the forecasts for food security in 2020 look bleak." His call echoed a 2017 statement of the UN Secretary-General, who remarked to the Security Council on the risk of famine in conflict zones, "prevention, as always, must be our watchword."[63] While this case pertains to a pandemic, rather than a conflict, the principle of prevention of food crises remains paramount, one which food reserves can be crucial to fulfill.

Furthermore, food reserves can prove useful to meeting the need of food price stability. In a 2014 report, the UN Special Rapporteur on the Right to Food urged the "the establishment of food reserves at the local, national or regional levels" as a method of combating food price volatility.[64] In a 2017 paper analyzing international food reserve schemes, the authors propose the establishment of a United Nations-managed global food reserve in part "to stabilize food prices, especially rice, in the world market by using the stockpile to defend a price band (i.e. lower and upper limits)."

There is no doubt Uganda, as the majority of the world, is facing an emergency without precedent in our recent history, also because of our current economic model.[65] This has caused innumerous negative impacts

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[61] *Sawhoyamaxa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Judgment, Mar. 29, 2006, §153, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf

[62] For some examples on the impact of the right to food of the most vulnerable, *see*: FIAN International, "Impact of COVID-19 on the Human Right to Food and Nutrition – Preliminary Monitoring Report" and "Monitoring Report on the Right to Food and Nutrition During COVID-19," available at: www.fian.org/files/files/Preliminary_monitoring_report_-_Impact_of_COVID19_on_the_HRtFN_EN(1).pdf and www.fian.org/files/files/Covid_Monitoring_Report_-Template_EN.pdf

[63] UN Secretary General, Remarks to the Security Council on countries at risk of famine, Oct. 12, 2017, available at: https://www.un.org/sg/en/content/sg/speeches/2017-10-12/sgs-countries-risk-famine-remarks. The Supreme Court of Nepal has also affirmed the State duty to take steps to prevent famine. Decision No. 8540 NKP Part: 53, Year: 2065 BS Month: Baisakh Volume 1, Writ No. 014, Supreme Court of Nepal.

[64] UN Special Rapporteur on the Right to Food, Final report: The transformative potential of the right to food, 2014, §D(1)(a), available at: https://undocs.org/A/HRC/25/57.

[65] In that regard, as analyzed by multiple academics: "Our actions have significantly impacted more than three quarters of the Earth's land surface, destroyed more than 85% of wetlands and dedicated more than a third of all land and almost 75% of available freshwater to crops and livestock production. Add to this the unregulated trade in wild animals and the explosive growth of global air travel and it becomes clear how a virus that once circulated harmlessly among a species of bats in Southeast Asia has now infected almost 3 million people, brought untold human suffering and halted economies and societies around the world. This is the human hand in pandemic emergence." J. et al. "COVID-19 Stimulus Measures: Must Save Lives, Protect Livelihoods, and Safeguard. Nature to Reduce the risk of Future Pandemics".

on the right to food, especially regarding food distribution, access, availability and prices, putting again in danger the most vulnerable.

FAO's Chief Economist and Assistant Director-General highlighted in a paper on the risks COVID-19 poses to food supply chains:

> During an emergency, **governments can purchase agricultural products from smallholder farmers to establish strategic emergency reserves** especially for nonperishable commodities to boost food supply. This can be used to deliver safety net programs and school meals even when schools are closed.[66] (our emphasis)

The maintaining of food reserves would be in line with the UN Committee on World Food Security (CFS)'s Global Strategic Framework for Food Security and Nutrition (GSF) recommendation of:

> [c]onsideration of the need, among others, for **strategic food reserves for emergency humanitarian purposes, social safety nets or other risk management instruments that promote food security and benefit women and men in poor and marginalized communities**.[67] (our emphasis)

Given the prolonged and indefinite nature of the pandemic, it is also worth noting that the Framework for Action for Food Security and Nutrition in Protracted Crises developed by the Committee on World Food Security, and endorsed by its State members in 2015, proposes "[a]lign[ing] humanitarian and development policies and actions and enhance resilience, by: … [c]onsidering **the establishment or scaling-up of food reserves, including at community, national, and regional levels in accordance with international obligations, where applicable**."[68] (our emphasis) According to the UN FAO and World Food Programme (WFP), "protracted crises require special attention," and "appropriate responses thus differ from those required in short-term crises or in non-crisis development contexts."[69]

These references provide relevant guidance for the current situation in Uganda. Firstly, they reaffirm the need of establishing strategic public food reserves to be used during emergencies, and secondly, they connect the establishment of these food reserves with the strengthening of local food supply chains and price stability, which promote social security and food sovereignty of local peasants' communities.[70] This system of connecting peasants to public food procurement has been successfully implemented in different regions of the world, including in different regions of the African continent.[71]

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). Available at: https://ipbes.net/covid19stimulus.

[66] UN FAO, Cullen, Maximo, COVID-19 and the risk to food supply chains: How to respond?, Mar. 29, 2020, available at: www.fao.org/3/ca8388en/CA8388EN.pdf.

[67] UN Committee on World Food Security (CFS) Global Strategic Framework for Food Security and Nutrition (GFS), available at: www.fao.org/cfs/home/products/onlinegsf/5/en/.

[68] UN CFS Framework for Action for Food Security and Nutrition in Protracted Crises (CFS-FFA), 2015, §22(xiii), available at: http://www.fao.org/3/a-bc852e.pdf.

[69] UN FAO and UN World Food Programme (WFP), The State of Food Insecurity in the World: Addressing food insecurity in protracted crises, 2010, available at: http://www.fao.org/3/i1683e/i1683e00.pdf.

[70] Please refer to the discussion of UNDROP above.

[71] For more details, please read the CFS High Level Panel of Experts (HLPE) report "Investing in smallholder agriculture for food security", June 2013, available at: www.fao.org/3/a-i2953e.pdf.

Examples from other countries illustrate the mandating of state food reserves to prevent and mitigate crises:

> Most countries susceptible to food emergencies have established strategic food reserves allowing them to cope with an emergency when it occurs, and have set up early warning systems to gather all information having a bearing on the current and expected food situation in the country (e.g. Ethiopia, Indonesia, the United Republic of Tanzania, Ukraine, Zambia).
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> The ***Indonesian*** Regulation on Food Security establishes the national food reserve, which consists of "government food reserves and public food reserves". The government food reserves are to be created at all government levels: central, provincial, regency/mayoralty as well as village (Art. 5). Public food reserves "shall be created independently and in accordance with the capacity of the society" (Art. 8). (See Governmental Regulation No. 68/2002 of 30/12/2002.)
>
> The Food Security Act of the ***United Republic of Tanzania*** (1991) addresses the management of a national food security reserve. Responsibility for the reserve lies within the Food Security Unit of the Ministry of Agriculture. The government has no mandate to intervene to stabilize prices, although it does purchase from more disadvantaged regions, where private traders are less active.
>
> A number of regional initiatives have also been established to cope with food emergencies such as the Southern African Development Community's Regional Food Reserve Facility (*www.sadc.int*), the East Asia Emergency Rice Reserve (*www.eaerr.com*) and the South Asian Food Security Reserve (*www.saarc-sec.org*).[72] (our emphasis)

Therefore, the Ugandan State has the duty to establish emergency policies and regulations providing for food and grain reserves to protect its population from escalating hunger and malnutrition.

Food aid during an emergency can only serve a supplementary role and does not replace the need for the establishment and maintenance of food reserves. According to the guiding principles present in the UN Charter,[73] along with various other international sources, international solidarity and multilateral cooperation are key elements for overcoming grave situations, such as the current one. Food aid has been one of the central actions taken to support those in need, being a crucial element of cooperation among states. However, it is important to stress that food aid must remain an exceptional solution only to be implemented if it is the *only* measure capable of facing a food emergency in a region or a country.

The Food Assistance Convention, adopted in 2012, makes it clear in its principles, that food aid has an exceptional character, not exempting the need to foster the local resilience of peasants and other communities. Food aid must be carried out in cooperation with local authorities, with the intention of, in parallel, enabling governments to improve their own food policies in a sustainable way. Some principles presented in article 2 of this Convention illustrate the relevant objectives that must guide the provision of food assistance:

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[72] FAO. *Guide on Legislating for the Right to Food*. Rome, 2009, p. 129, available at: www.fao.org/3/a-i0815e.pdf.

[73] UN Charter. 1 UNTS XVI. Article 1 (3) reads: [The purposes of the United Nations are:] To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Available at: treaties.un.org/doc/publication/ctc/uncharter.pdf.

The Parties, in providing and delivering food assistance to the most vulnerable populations, should always adhere to the following principles:

(a) General principles of food assistance:

(i) **provide food assistance only when it is the most effective and appropriate means of addressing the food or nutrition needs of the most vulnerable populations**;

(ii) provide food assistance, **taking into account the long-term rehabilitation and development objectives of the recipient countries, while supporting the broader goal of achieving food security**, whenever appropriate;

(iii) provide food assistance in a manner that **protects livelihoods and strengthens the self-reliance and resilience of vulnerable populations, and local communities, and that prevents, prepares for, mitigates and responds to food security crises**;

(iv) provide food assistance in such a way as **to avoid dependency and minimise direct and indirect negative impacts on beneficiaries and others**;

[…]

(b) Principles of food assistance effectiveness:

(ii) actively seek to **cooperate, coordinate and share information to improve the effectiveness and efficiency of food assistance programs**, and the coherence between food assistance and related policy areas and instruments;

(iii) **purchase food and other components of food assistance locally or regionally**, whenever possible and appropriate;

[…]

(viii) acknowledge, where appropriate, that **relevant authorities or relevant stakeholders have the primary role and responsibility for the organisation, coordination and implementation of food assistance operations**;

(c) Principles on the provision of food assistance:

(i) target **food assistance according to the food and nutrition needs of the most vulnerable populations**;

(ii) **involve beneficiaries in the assessment of their needs and in the design, implementation, monitoring and evaluation of food assistance**, as well as other relevant stakeholders, where appropriate;

(iii) **provide food assistance that meets applicable safety and quality standards, and that respects cultural and local dietary habits and the nutritional needs of the beneficiaries**;

(iv) **uphold the dignity of beneficiaries of food assistance**. […][74] (our emphasis)

[74] Food Assistance Convention. 2012, available at: www.foodaidconvention.org/Pdf/FoodAssistance/FoodAssistance.pdf.

These core principles make it clear that food aid has been evolving in the direction of a broader understanding, taking into account many socio-economic and political issues. This is also the understanding of the UN CESCR, which also highlights in its GC 12 some of the principles reflected in the Food Assistance Convention:

> Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population.[75]

Therefore, during the current pandemic, the right to food core elements – as defined in CESCR GC n. 12 (pars. 7-13) – must be more than ever taken into account. It means that *adequacy*, *availability*, *sustainability* and *accessibility* are also obligatory elements to any food aid action. From a holistic perspective—that is, considering multiple structural issues affecting people's right to food (e.g. racism, sexism, classism, economic and political systems) and the heightened vulnerability of certain groups (including women, children, the elderly, the socially excluded, migrants, refugees, persons with disabilities, workers)—***food aid and food reserves are interdependent actions***.

Therefore, in order to respect, protect and fulfill the realization of the right to food during the pandemic in Uganda, the State must act according to the international legal standards also when resorting to food aid. Food aid initiatives are provisional measures during an emergency and must be accompanied by sustainable food policies – including the establishment of food reserves – in order to prevent hunger and reduce negative impacts on the most vulnerable groups of the population, i.e. children, women, peasants and communities living in poverty.

Food price stabilization standards

As referenced above and touched upon with regard to related right to food standards, states have a duty to ensure "physical and economic access at all times to adequate food or means for its procurement" (CESCR GC 12, par. 6), an obligation that necessarily entails measures to maintain food affordability and price stability. In African human rights system standards, states are similarly required to ensure the economic accessibility of food, which implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.[76]

Regarding rural populations, UNDROP obliges states to take appropriate measures to "strengthen and support local, national and regional markets in ways that facilitate and **ensure that peasants and other people working in rural areas have full and equitable access and participation in these markets to sell their products at prices that allow them and their families to attain an adequate standard of living**"(Art. 16) (our emphasis). With respect to food consumers, the latter shall we be read in line with the

[75] UN CESCR, GC 12, §39.

[76] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §86 (viii).

obligation of states to ensure "**economic access** at all times to sufficient and adequate food" (Art. 15). (our emphasis) The aforementioned require states to take promptly legislative and administrative appropriate steps (Art. 2) and according to its international acquired obligations, **take the necessary measures to ensure that non-state actors such as private individuals and organizations, respect and strengthen the rights of peasants and other people working in rural areas** (Art. 2(5)). (our emphasis) The latter is especially relevant in the assessment of the different types of actors that might be involved in the acts of hoarding of essential goods, and to the state's obligation to ensure that no hoarding of essential commodities occurs.

Comparative law also supports the need for the Ugandan state to act effectively to maintain food economic accessibility. For example, in linking the right to food with rights to dignified life and freedom, the Supreme Court of Nepal stated that inevitable basic necessities such as food, water, shelter, health, freedom, privacy, education, clothes must be financially accessible to all in the market and in scenarios where everyone can obtain them.[77] The Supreme Court of India in *PUCL v. Union of India*[78] observed that the allocation of foodgrains is done for families under the Targeted Public Distribution System (TPDS) from Antyodaya Anna Yojana below poverty line (BPL) and above poverty line (APL). The allocations of such foodgrains are provided at highly subsidised prices to meet the requirements of food security of the people, in particular, the poorest of the poor.

As noted above, compliance with the food distribution and reserves standards noted previously can go a long way toward achieving food economic accessibility and price stability. For instance, in view of the Government of India, its "[Public Distribution System (PDS) (of food)] aims at insulating the consumer from the impact of rising prices of these commodities and maintaining the minimum nutritional status of our population."[79] "The PDS supplies have a stabilizing effect on Open Market prices by increasing availability, removing scarcity psychosis and deterring speculative tendencies."[80]

Food contamination standards

UN CESCR GC 12 details the State duty to ensure that food is free from adverse substances through establishing requirements for food safety and for a range of protective measures by both public and private means.[81]

[77] Decision No. 8540 NKP Part: 53, Year: 2065 BS Month: Baisakh Volume 1, Writ No. 014, Supreme Court of Nepal.
[78] *PUCL v. Union of India*, (2011) 14 SCC 556, Supreme Court of India.
[79] Bhaskar Majumder, *Poverty, Food Security and Sustainability — Public Distribution System in India*, Rawat Publications, Jaipur, (2004), p. 135.
[80] Government of India, Annual Report Part II, Ministry of Food and Civil Supplies, Department of Civil Supplies, New Delhi, (1991-1992), p. 53.
[81] UN CESCR, GC 12, §10.

Food quality standards guarding against issues such as contamination are a part of human right standards in the African system as well.[82] The African Commission has gone ahead to define the minimum core obligations for the state concerning the right to food to among others include:

> Refrain from and protect against destruction and / or contamination of food sources.[83]

In the "*Ogoni Case*," the African Commission recognised the *obligation to respect* the right to food, "requires that the Nigerian Government should not destroy or contaminate food sources.[84]

Comparative law is also informative on this point. In *The Association of the Traders Carrying the Food Business of Various Food Items v. Union of India*,[85] the Supreme Court determined that the statutorily required food safety regime protecting consumers is also a constitutional mandate emanating from the provisions of Article 21 read with Article 39 and 47 of the Constitution of India. In *Raj Kumar v. State of Uttar Pradesh*,[86] a case dealing with food regulation, adulteration and safety laws, the Court observed "even marginal deviation from the prescribed safety standards cannot be ignored," and held that once standards are laid down by legislators, those standards have to be followed. And in *Kisan Trimbak Kothula and Anr v. State of Maharashtra*[87] the Supreme Court held that the adulteration of food is so dangerous and widespread and has so often led to large human tragedies, sudden or slow, insidious or open, that social defence compels casting absolute liability on the criminal, even if the particular offence is committed with an unsuspecting *mens rea*.[88] In the case of the Supreme Court of Nepal, the tribunal has stressed that the right to food entails that the available food be nutritious, pollution-free, and in good condition.[89]

Maximum available resources in the face of a food emergency

As a party to ICESCR, Uganda is obligated, under Article 2(1)(a) to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Although some aspects of the right to food may be subject to progressive realization based on the resources available to a State, the obligations to meet the minimum core of the right and to ensure non-discrimination, take immediate effect. This is true even (or especially) in times of emergency or disaster. What this means in

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[82] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §86 (xxi).

[83] ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, §86, *See also SERAC v. Nigeria*, ACPHR.

[84] *SERAC v. Nigeria*, ACHPR, §65-66.

[85] *The Association of the Traders Carrying the Food Business of Various Food Items v. Union of India*, 2015 SCC OnLine Bom 4811, Supreme Court of India.

[86] *Raj Kumar v. State of Uttar Pradesh*,(2019) 9 SCC 427, Supreme Court of India.

[87] *Kisan Trimbak Kothula and Anr v. State of Maharashtra*, 1977 1 SCC 300, Supreme Court of India.

[88] According to the Court, to take risks in the name of very gullible dealers or very ignorant distributors, when the consequences may spell disaster on innocent victims, few or many, is legislative lackadaisical conduct, giving the wildest hostage to fortune. So it is that *mens rea* is excluded, and proof of *actus reus* is often enough.

[89] Decision No. 9876, Year 2072 B.S. Writ No. 0178, Supreme Court of Nepal.

terms of the right to food is that States must ensure that all people have at least the minimum essential level of food required to be free from hunger, even in such cases as detailed earlier in this document.[90]

Specifically, on the subject of the COVID-19 pandemic and State responses, the Committee has indicated the following with respect to the right to food and obligation of maximum available resources:

> All States parties should, as a matter of urgency, adopt special, targeted measures, including through international cooperation, to protect and mitigate the impact of the pandemic on vulnerable groups such as older persons, persons with disabilities, refugees and conflict-affected populations, as well as communities and groups subject to structural discrimination and disadvantage. Such measures include, among others … providing social relief and income-support programmes to ensure food and income security to all those in need; taking specially tailored measures to protect the health and livelihoods of vulnerable minority groups, such as the Roma, as well as those of indigenous peoples; ….[91]

Based on information available before the pandemic, however, approximately 33% of all Ugandans, and 38% of all children, were already suffering from hunger. Given that the situation has deteriorated as a consequence of COVID-19-related emergency restrictions, a fact acknowledged by the government, hunger has undoubtedly grown and requires immediate attention.

The UN CESCR has indicated that when there is a failure to take any necessary steps, or in the adoption of retrogressive steps, the burden of proof rests with the State to show that such a course of action was based on the most careful consideration and can be justified by reference to the totality of the rights provided for in the ICESCR and by the fact that full use was made of available resources.

In this case, although the government has engaged in a food distribution program and acknowledges that this is a time during which food security is under threat, it has limited the scope of this program to Kampala and nearby areas (Wakiso and Mukono) including nine regional referral hospitals. However, the need for food extends well beyond these few areas and, in fact, it is further outside of these areas, in which many marginalized communities live, where there is the highest degree of food insecurity. The rationale provided for by the government as to why its programs are limited to these areas is unclear, although statements suggest that its rationale is at least in part due to fiscal resources. Alongside food distribution schemes, the government indicates that it recognizes that there are no food reserves to ensure at least minimal assurance of the right to food, especially in a time when people are under lockdown measures and can't access food easily.

If a State claims resource constraints as justification for taking retrogressive steps, as is being suggested by the government particularly in the case of food distribution, the following seven criteria must be assessed to determine the validity of such an argument:

- The country's level of development;
- The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
- The country's current economic situation, in particular whether the country was undergoing a period of economic recession;

[90] UN CESCR, GC 12, §6, 17.
[91] UN CESCR, Statement, Apr. 17, 2020, §15, available at: https://undocs.org/E/C.12/2020/1.

- The existence of other serious claims on the State party's limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict;
- Whether the State party had sought to identify low-cost options; and
- Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.[92]

Based on the above criteria, the limitations on the food distribution scheme and the lack of a food reserve cannot be justified. While Uganda does face some resource constraints as a low-income country (based on the World Bank's most recent income classifications), the breach that is alleged in this case, namely failure to ensure the enjoyment of the minimum core of the right to food in a non-discriminatory manner, is of such severity that the bar for justification is significant. And while just about all countries are facing economic hardship as a consequence of the lockdowns that were imposed to respond to the COVID-19 pandemic, the government has not adequately articulated whether any other issues are further exacerbating its resource limitations beyond this and whether any lower cost alternative options for ensuring the right to food have been explored.

In fact, the government has expressed quite the opposite position, indicating that its efforts thus far have been totally adequate, in spite of clear evidence that the scope and the scale of the problem that pre-dated the crisis was already significant and the steps taken clearly do not even cover the simple geographic range of need. Finally, while Uganda is in receipt of food aid from various international sources, as the appellants' original brief argued, given the impact of the crisis worldwide and its impact of the availability of international assistance, it is not sufficient to rely exclusively on international food aid as the ultimate backstop for rights assurance. In any case, international food aid is a complementary activity and not one that serves as a substitute for the State attempting to meet its obligations with respect to the right to food. Rather than solely relying on international assistance, in order to ensure they are complying with the obligation of maximum available resources, States should also assess for example whether their domestic tax policy is adequately progressive and is raising sufficient funds from those most able to pay (e.g. wealthier individuals and multinational corporations).[93]

Governments, no matter what level of resources are at their disposal, are obligated to make sure that people living under their jurisdiction enjoy at least essential levels of protection of each of their economic, social, and cultural rights. Even in cases of economic downturn or other emergency, these core requirements must be guaranteed to everyone. The human rights legal framework spells out those responsibilities with the following three obligations[94]: a) Respect: "The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access." Protect: "The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food." Fulfil (facilitate): "The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and

[92] UN CESCR, Statement No. 7, 2007, §10, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2007%2f1&Lang=en.
[93] UN CESCR, Concluding Observations, South Africa, §16-17, Nov. 29, 2018.
[94] UN CESCR, GC 12, §15.

means to ensure their livelihood, including food security." Fulfil (provide): "Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters."

Conclusion

Based on the above, the *amici* urge the Court to:

a. Recognize and enforce the Ugandan State's duty to guarantee the right to food, in line with its international human rights obligations;
b. Recognize and enforce the Ugandan State's duty to urgently guarantee, in particular, the right to food of all vulnerable groups;
c. Recognize and enforce the Ugandan State's duty to urgently establish, publish, and carry out pandemic-relief food distribution in line with the aforementioned right to food standards;
d. Recognize and enforce the Ugandan State's duty to urgently establish and maintain food reserves in line with the aforementioned right to food standards;
e. Recognize and enforce the Ugandan State's duty to urgently ensure food economic accessibility and price stabilization in line with the aforementioned right to food standards; and
f. Recognize and enforce the Ugandan State's duty to urgently ensure corresponding food safety in line with the aforementioned right to food standards.