

Reasons and Legal Solutions to Food Security Problems in South Africa

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Abstract: South Africa is facing a severe food crisis. Under the current background, the regional food crisis is not solved vigorously so that good relief cannot be obtained. South Africa's domestic legislation system on food and food issues still needs to be perfected. There is no specific department law on food, and the relevant stipulations and regulations are of low rank. Therefore, there is no corresponding legal basis in practice, and it is hard to solve the food issue domestically only by relying on existing domestic laws. Moreover, the legal system itself lacks foresight, preventive measures, and emergency plans. This essay analyzes the current situation of food problems in South Africa, causes of food shortages, and attempts to find domestic and foreign solutions from the legal level according to existing international organizations and relevant international treaties, so as to solve food security.

1. Instruction

As the climate changes, the substantial greenhouse gas emission and unpredictable weather conditions cause great food insecurity in some regions. The data pinpoints the fact that 6.8 million South Africans experienced hunger, and this severe situation still exists today. According to the World Food Program (WFP), about 11 billion people in South Africa are in a great food crisis.

Article 27, paragraph 1, paragraph 2, of the Constitution of the Republic of South Africa expressly states: "Everyone has the right to adequate food"; Article 28, paragraph 1, paragraph 3, guarantees the right of the child to basic nutrition; Article 35, paragraph 2, paragraph 5, also provides for the right of prisoners to adequate nutrition. Nevertheless, the stipulation of the constitution obviously has not relieved the pressure of food in South Africa. As food security and human rights attract more attention, the Human Rights Commission of South Africa regulated a series of investigation forms in order to protect food security based on the Paris Principles regulated by United Nations Human Rights Commission, and the Human Rights Commission of South Africa also has the right to file a lawsuit about food security on behalf of individuals or organizations [1].

Beyond the existed regulation related to food security, it is difficult to figure out the problem of food security. Thus, it requires the full participation of all subjects. The government of South Africa needs to make more detailed regulations based on their constitution, which particularly stipulated the standard of food approval as well as financial punishment in a definite amount if disobey. Moreover, more attention needs to be paid to the ways of implementation and it's also necessary to found a committee to supervise the executive actions ensuring the law works effectively. And individuals should learn more about the rules to protect themselves, also, an organization like the human rights organization should offer law aid to individuals and regions that are under food crisis.

2. Existing problems

2.1. The corresponding legal system is not comprehensive

2.1.1 Lack of high-level food security legislation

There is a lack of high-level legal documents in the area of food security. Although the South African government has been concerned about food security for decades and has introduced plenty of measures such as The Comprehensive Agricultural Support Programme (2004), The War on Poverty Programme (2008), South African National Food and Nutrition Security Policy (2013) when reviewing about the work to address this problem, the measures that have played a role have mostly taken the form of policy guidelines or government programs but not in the form of act or legislations. That indicates that South Africa still lacks a stable and comprehensive legal framework in the area of food security which should not only include strategies and political documents, but also legislation or legal reform. This defect of the South Africa legal system has led to the following problems: (1) The human right to food, which is enshrined in the South African Constitution, has no effective means of being realized. Section 27 of the South African Constitution states it is everyone has the right to health care, food, water, and social security. Meanwhile, the South African state has the obligation to take reasonable legislative and other steps. However, through reviewing the legislative work done before, the state has taken some steps to fulfill obligation but still not enough regarding reviewing legal framework and further improving it since the lack of food security legislation means that the right to food has no enforceable framework [2]; (2) Besides, the lack of exact act and legislation of food security may lead the government policy or strategy less effective since there is no enforceable legal basis for cooperation between government departments and other entities. Moreover, policies, strategies, and programs, unlike law, are not legally bound or even only be directive and advisory sometimes so that they may not be fully realized when there is a lack of coordination or monitoring. To some extent, this has had a negative impact on the process and speed of addressing food security, which is why food security remains an important issue for the South African State to address as a matter of urgency after processing lots of programs and strategies.

2.2.2 Shortage of long-term statutes regarding food security

In response to the issue of food security, South Africa has developed several pieces of legislation that to address the existing food security issues in South Africa. Most of this legislation is aimed at specific sectors of agriculture, such as forestry and fisheries. In the short term, these pieces of legislation have gone some way to alleviating the food security problem in South Africa, but in the long term, the legal framework for food security in South Africa is still inadequate and lacks a long-term perspective on the issue, as evidenced by the lack of a clear understanding of emergency events and land issues which have a fundamental impact on food security.

South Africa doesn't have a strong legislative series action to cope with the emergency events, for example, emergency granary, emergency policy, temporary relief subsidies to resist such events. Under this insured and unprotected circumstance, once the emergency occurs e.g., extreme weather, catastrophe, economic crisis, or influenced by the fluctuation from neighbor countries. compared to other states, the possibility of trapping in food insecurity is much higher for South Africa government.

Current legislation only satisfies the immediate, short-term needs rather than the long-term structural changes supportive of poor households [3]. According to Stats SA's GHS of 2018, the percentage of persons that experienced hunger decreased from 29,3% in 2002 to 11,3% in 2018 [3]. It is manifested that, the framework such as the National Policy on Food and Nutrition Security, the Household Food and Nutrition Security Strategy and the Fetsa Tlala Integrated Food Production Initiative is intended to streamline, harmonize and integrate the diverse food and nutrition security interventions in South Africa worked well. In the long term, South Africa still faces a high risk of food insecurity in the future, since there is still a lack of a relevant legal framework to help rural households in South Africa with land accessibility. By mid-2018, South Africa had over 60% citizens whose land/property rights were not recorded nor registered [3]. Following the abandonment of initial

attempts to draft a law for the comprehensive reform of land rights and administration in communal areas in mid-1999 and the declaration by the Constitutional Court in May 2010 that the revised Community Land Rights Act (CLaRA), adopted in 2004, was unconstitutional, a fifteen-year search for tenure reform in the country's communal areas effectively came to a halt [5]. Meanwhile, some scholars also had pointed out that long-term national food security is under threat due to reduced areas under production by the commercial sector amid uncertainties concerning land tenure and wage labor demands, exacerbated by the absence of supportive agricultural policies and legislation to protect domestic production and ensure farm profitability.

2.2 The monitoring and measurement mechanisms are incomplete

There is a lack of monitoring and measurement mechanisms to accompany the laws and policies to effectively safeguard their implementation at the practical level. Although the South African government is trying to provide more substantial assistance to smallholder farmers through the establishment of various organizations and the adoption of various laws and policies. Only 10,0% of the households involved in agriculture reported getting agricultural-related support from the government during the year preceding the survey [4]. The country still does not have a reliable, accurate, and timely analysis, information, and communication system on the conditions of the food insecure and no monitoring and evaluation framework to determine the impact of food security improvement interventions [1]. The lack of an effective monitoring system will render this series of legislative initiatives meaningless, as the law will have no real effect at the operational level, where the government will not know what is really going on. The absence of this link not only leads to a huge gap between the legal and policy designation level and the practical implementation level but also leads to a lack of sufficient data and facts to support the review process in the policy cycle. Yet, such a review is essential before the adoption of new laws, policies, strategies, and programs. Until 2021, however, no formal review of the IFSS or IFSNP has been conducted regarding law or policies concerned about food security. Failure to review the law and policies enforced before would cause the subsequent legislative work and policy development ineffectively.

3. Solutions

3.1 domestic available measures

To further address the issue of food security in South Africa, the South African legislature should improve the food security legal system from the following perspectives. (1) First of all, because of its unique historical background, much of the legislation in South Africa has been inherited from the previous apartheid regime and much of it violates the principle of equity, which is one of the important reasons for food insecurity in South Africa. Since 1996, South Africa has undertaken limited legislative reforms, but these have not been effective in changing its status quo. Therefore, South Africa needs effective legal reform based on a legal review to ensure that legislation on food security in South Africa is carried out on a fair and just legislative basis [6]. (2) Moreover, a higher level of food security legislation should be enacted to replace or guide the various projects that the South African government has enacted to address food security. Specifically, there is a need for a more legally binding legal reform or bill to provide guidelines for food security in South Africa over the next decade or even decades, to address the inefficiencies of cooperation between various government departments that have separate projects or strategies. It is more difficult for the legislature to enact high-level legislation than for the government to enact policy or local regulations, as legislation requires a more comprehensive picture of food security across South Africa and a greater degree of foresight. To overcome these difficulties, South Africa needs to improve its information system, which is essential for establishing high-level and forward-looking legislation. The lack of a government agency to collect, collate and analyze food security data is one of the obstacles to legislation in the area of food security in South Africa, as evidenced by extensive experimental data and research. (3) At the same time, a comprehensive food security law should not only focus on the right to food for South African nationals but should also form a framework for obtaining specific funding for programs and projects

related to food security, as set out in the annual performance plans for each department. It would also provide for specific enforcement mechanisms to ensure that relevant provisions are complied with. The Food Security Act should include various means of realizing basic human rights, identification of beneficiaries, targeting and registration methods, institutional arrangements, delivery mechanisms, accountability systems, and sound monitoring and evaluation systems, including continuous monitoring of hunger and poverty levels, and should provide for mandatory early warning systems and contingency plans (including insurance mechanisms. (4) The issue of land reform is an important tool for addressing food security in South Africa. Neither the voluntary market approach of the late twentieth century nor the more radical “expropriation without compensation” reforms of the last decade have met the expectations and demands of the wider South African people for land reform. South Africans have not been able to reach a unified view on the best solution to the land reform issue. However, the distribution of land to the people is only one form of land reform. What the South African authorities should do to truly realize the purpose of land reform is to help the South African people retain their land and realize their power over it by improving the relevant laws after the land distribution process. Only in this way can the limited land be fully utilized and provide a solid foundation for food security. requirements, emergency response systems, and disaster compensation schemes). The appeal mechanism is also an indispensable instrument to give nationals a channel for feedback and complaints.

3.2 international assistance

Multi-national assistance is also essential in dealing with food insecurity in South Africa. The problem of food security needs attention from all nationalities.

3.2.1 Getting help from the existing international organization

The members of international organizations related to food donation and food security need to form their obligations positively. A good case in this point is WFP’s food aid to North Korea between 1995 and 2000, due to the food shortage of 2 million tons reported by WFP. So, the WORLD Food Program developed a phased aid program. In 1995, 51.4 million tons of crops reached North Korea and it increased almost year by year and eventually rose to 930.12 million tons in 2001 [7]. Since the WFP did not initially receive large international donations, its initial aid scale was small, However, the donor countries that joined later such as the United States and Japan greatly promoted the aid process [8]. From the case of aid to North Korea, we can see that food aid can only be completed with the joint assistance of the World Food Organization and other food donor countries. The WFP needs to arrange the whole framework and schedule of food assistance implementation measures to correspond to specific problems, and the food donor countries provide a series of help financially. nevertheless, more international food trades need to be encouraged, frequent international trade can widen the overseas food markets which yield benefits for a developed country and relief the pressure of food supply in developing areas at the same time. What’s more, agricultural technology can be seen as a kind of international aid. Due to the substantial waste at the stage of production caused by undeveloped technology, South Africa needs more technology help from other states. When the innovation of technology is achieved, the high productivity of crops will alleviate food shortages.

3.2.2 Enhance the effectiveness of international conventions

First, From the perspective of the participants to the Convention: Although the international level specification is soft law and has weak executive force, as a signatory to the participating countries, signing the agreement means that the contents of the convention on the recognition are fully accepted, their behavior should be in strict accordance with the convention, unless there is a very special situation (for example involving national security and territorial security, etc.). The signatories to the Convention shall supervise each other's implementation of the contents of the Convention in order to ensure the realization of its purposes initially.

Second, strengthen supervision of the execution. The existing treaties and agreements e.g., the agreement on agriculture as well as the regulation of international organizations e.g., WFP and IGC

have already regulated the details of implementation but still lack the bound of members if the members violate rules. Therefore, a supervision commitment should be built to restrict the members' actions while offering helps and dealing with food insecurity problems and it can also pronounce how the states execute agreements in practice. The related conventions should also be perfected to add detailed standards of implementation as the reference of whether the members offend the rule.

4. Conclusion

Scalar Since the crisis of food security discovered in South Africa, the South African Parliament and various departments have implemented a series of policies and projects to improve legislation in specific areas such as forestry and fisheries to protect smallholder farmers and encourage agriculture. However, in the long term, South Africa's food insecurity is still not being addressed due to the lack of a high level and legally binding food security act, and the lack of a long-term legislative plan for the protection of human rights, land reform, and emergency affairs response. To address the root causes of the food crisis in South Africa and to ensure the country's national security and economic development, South Africa needs to continue to undertake legal reform in the area of food security and to make use of international organizations and relevant treaties to help protect its food security based on its compliance with the treaties.

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