



*Empuuta, N'ebigenderako:*  
Re-centering the Law as a Tool for the  
Realization of Food and Livelihood Rights  
in Uganda



Paper Presented

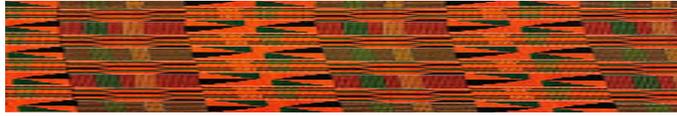
by

Dr. Busingye Kabumba

On the Occasion of the Official Opening of the Center for  
Food and Adequate Living Rights (CEFROHT)  
Programme and Head Office

Friday 29<sup>th</sup> October 2021





*Banange empuuta yakoze ki*

*Empuuta yakoze ki*

*Lwaki temutuwiila ku mpuuta*

*Lwaki twemwesonyiwa empuuta*

*Lwaki temuva ku mpuuta yaffe*

*Omuntu abadde awuuta empuuta nafuna ku Magezi*

*Omuntu nawuuta ku mpuuta n'akola ku lususu*

*Omuntu nawuuta ku mpuuta n'akakana*

*Omuntu nawuuta n'afuna ku ddembe?*

*Empuuta yakoze ki?*

*Buli kimu kyona kyona kiveewo n'empuuta eveewo?*

*Banange n'akawuuta kaveewo?*

*Ababaka banange mwesonyiwe empuuta*

*Omuntu yena agenda kukola kunsonga y'empuuta banange gyikwate mpola*

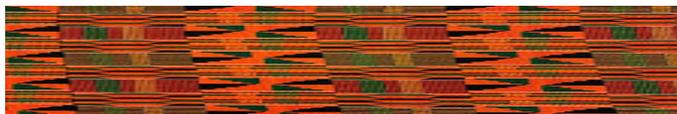
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## 1.0 Introduction

The rights to livelihood and to adequate food are perhaps some of the most under-appreciated ones today, a curious circumstance given their centrality to our very existence.

This occasion - of the Inaugural Ceremony of the Center for Food and Adequate Living Rights (CEFROHT) Programme and Head Office - is thus a timely and critical one in more ways than one, since it provides us with an opportunity to reflect upon the normative, procedural and institutional steps required to be taken to achieve a more robust realization of these rights.





This presentation begins by outlining the contours of these rights at the international, regional and domestic level; before going on to consider some ways in which we might collectively achieve a most effective legal order for the promotion and protection of these vital entitlements.

## 2.0 International and Regional Standards

The human right to adequate food is reflected in several international instruments. These include the 1948 Universal Declaration of Human Rights (UDHR);<sup>1</sup> the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>2</sup> the Convention on the Elimination of All Forms of Discrimination Against Women;<sup>3</sup> and the Convention on the Rights of the Child (CRC).<sup>4</sup>

These norms have been further elaborated by the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No.12 of 1999.<sup>5</sup> According to the Committee, 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.<sup>6</sup> In this regard, the Committee stressed that the core content of the right to adequate food implicated; i) 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 ii) the accessibility of such food in ways that are sustainable and which do not interfere with the enjoyment of other human rights.<sup>7</sup> In this context, availability denotes the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.<sup>8</sup>

For its part, accessibility includes both *economic* and *physical* accessibility.<sup>9</sup> Economic accessibility entails that personal or household financial costs associated with the acquisition of food for an

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<sup>1</sup> Article 25.

<sup>2</sup> Article 11.

<sup>3</sup> Articles 12 and 14.

<sup>4</sup> Articles 25 and 27.

<sup>5</sup> Available at <https://www.refworld.org/pdfid/4538838c11.pdf> (last accessed 28 October 2021).

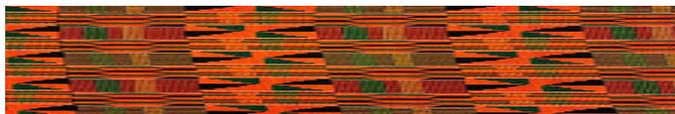
<sup>6</sup> At Para 6.

<sup>7</sup> At Para 8.

<sup>8</sup> At Para 12.

<sup>9</sup> At Para 13.





adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.<sup>10</sup> In this regard, socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.<sup>11</sup> On the other hand, physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including persons with intellectual disabilities. In addition, victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may require special attention and sometimes priority consideration with respect to accessibility of food. A significant vulnerability in this regard relates to the situation of many indigenous population groups whose access to their ancestral lands may be threatened.

Similarly, and drawing upon the CESCR's General Comment No.12, the United Nations Special Rapporteur on the Right to Food, has described it as 'the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.'<sup>12</sup>

What is evident is that the right to food has three core elements: i) availability; ii) adequacy; and iii) accessibility. Food must be available for both current and future generations, which means that the means of its production must be sustainable to ensure long-term availability. Food must also be adequate to ensure that it meets the dietary requirements of human beings. What is critical therefore is not just quantity (although this is obviously important) but also nutritional quality. This element also entails the requirement for cultural acceptability of food. Finally, accessibility requires both economic accessibility (in the sense that access to food should not jeopardize access to other basic commodities such as health, education and shelter) and physical accessibility for all, including vulnerable groups.

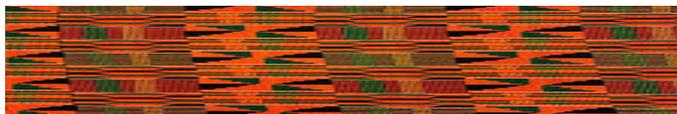
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<sup>10</sup> At Para 13.

<sup>11</sup> At Para 13.

<sup>12</sup> See Report of the Special Rapporteur on the right to food, Jean Ziegler A/HRC/7/5, available at <http://www.righttofood.org/wp-content/uploads/2012/09/AHRC75.pdf> (last accessed 29 October 2021) at para 17.





At the African level, the African Charter on Human and Peoples' Rights enumerates a range of economic, social and cultural rights,<sup>13</sup> and the right to food is also specifically expressed in the African Charter on the Rights and Welfare of the Child.<sup>14</sup>

The normative content of the right to food and adequate living has also been significantly elaborated through the work of the African Commission on Human and Peoples' Rights. In the famous decision in *Social and Economic Rights Action Centre & Another v Nigeria*,<sup>15</sup> for instance, the Commission made the following critical observations:

... 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.

The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.<sup>16</sup>

The African Commission also issued Resolution ACHPR/Res. 374 (LX) 2017 on the Right to Food and Food Insecurity in Africa,<sup>17</sup> in which it urged States, among other things, to: i) adopt legislative, administrative and other necessary measures 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; ii) ensure the accessibility of food to members of vulnerable and disadvantaged groups through special

<sup>13</sup> Articles 14, 15, 16, 17, 18, 21 and 22.

<sup>14</sup> Article 14.

<sup>15</sup> Communication No.155 of 1996, available at [https://www.achpr.org/public/Document/file/English/achpr30\\_155\\_96\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf) (last accessed 29 October 2021).

<sup>16</sup> At Paras 64 and 65.

<sup>17</sup> Available at <https://www.achpr.org/sessions/resolutions?id=416> (last accessed 29 October 2021).





programmes; and iii) prioritize and support the most sustainable management and use of natural and other resources for food at the national, local and household levels.

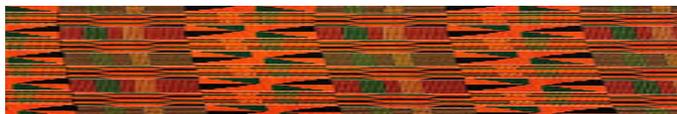
The Commission followed this up with Resolution ACHPR/Res.431(LXV)2019 on the Right to Food and Nutrition in Africa.<sup>18</sup> In this Resolution, the Commission called upon States Parties to the Charter to: i) take appropriate policy, institutional and legislative measures to ensure the full enjoyment of the right to food which includes constantly accessible and quality food that meets the requirement of nutrition and cultural acceptability; ii) promote and strengthen multi-sector and gender inclusive platforms at the national level, with the full and meaningful participation of small-scale food producers, farmers, livestock farmers and fishermen to develop, implement, and monitor policies towards the realization of the right to food and nutrition; iii) design policy responses and interventions in situations of protracted crisis, conflicts and natural disasters to protect vulnerable, disadvantaged and marginalized groups in order to realise their right to food and nutrition; iv) end the practice of resource grabbing affecting farming, fisheries, forests, and pastoralist communities, and move towards an equitable management of these resources (natural, material and financial) by strengthening community rights, benefit sharing policies, and enacting strong and binding legislations; v) ensure that prisoners have access to adequate food for them to fully enjoy their fundamental rights to physical and mental health; vi) foster local and organic food production and consumption, including by banning the use of genetically modified organisms; and vii) Strictly regulate the importation of foreign food items as well as the promotion and marketing of industrialized and highly processed foods.

### 3.0 The Ugandan Legal Framework

The above normative framework notwithstanding, Uganda's 1995 Constitution is rather muted as regards the critical right to food. One provision in this respect Objective XIV of the National Objectives and Directive Principles of State Policy, which enjoins the State to endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development, including to ensure in particular that 'all Ugandans enjoy rights and opportunities and access to education,

<sup>18</sup> Available at <https://www.achpr.org/sessions/resolutions?id=462> (last accessed 28 October 2021).





health services, clean and safe water, work, decent shelter, adequate clothing, *food security* and pension and retirement benefits'. In addition, Objective XXII of the NODPSP, on Food Security and Nutrition, mandates the State to: i) take appropriate steps to encourage people to grow and store adequate food; ii) establish national food reserves; and iii) encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.

This reticence is out of step with developments around the world, which have seen a growing number of countries include an explicit recognition of the right to food under their Constitutions. These include Belarus,<sup>19</sup> Bolivia,<sup>20</sup> Brazil,<sup>21</sup> Colombia,<sup>22</sup> Congo,<sup>23</sup> Costa Rica,<sup>24</sup> Cuba,<sup>25</sup> Ecuador,<sup>26</sup> Guatemala,<sup>27</sup> Guyana,<sup>28</sup> Haiti,<sup>29</sup> Honduras,<sup>30</sup> Kenya,<sup>31</sup> Malawi,<sup>32</sup> Mexico,<sup>33</sup> Moldavia,<sup>34</sup> Nepal,<sup>35</sup> Nicaragua,<sup>36</sup> Panama,<sup>37</sup> Paraguay,<sup>38</sup> South Africa,<sup>39</sup> Suriname<sup>40</sup> and Ukraine.<sup>41</sup> One explanation for the failure of the Ugandan Constitution in this respect might be the overarching preoccupation of its framers with addressing the specific challenges of political upheaval and civil and political rights violations which, as memorialized in the Preamble, had been a significant feature of our country's history.

Nonetheless, as experience from elsewhere has shown, the lack of a specific expression of the right to food is not, by itself, a bar to the realization of the right, where an active bar and a receptive

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<sup>19</sup> Article 21 (2).

<sup>20</sup> Article 16.

<sup>21</sup> Articles 6, 7 and 227.

<sup>22</sup> Article 44.

<sup>23</sup> Article 34.

<sup>24</sup> Article 82.

<sup>25</sup> Article 8.

<sup>26</sup> Article 13.

<sup>27</sup> Article 51.

<sup>28</sup> Article 40 (1).

<sup>29</sup> Article 22.

<sup>30</sup> Article 123.

<sup>31</sup> Article 43 (c).

<sup>32</sup> Articles 13 (b) and 30 (2).

<sup>33</sup> Article 4.

<sup>34</sup> Article 47 (1).

<sup>35</sup> Article 18 (3).

<sup>36</sup> Article 63.

<sup>37</sup> Article 56.

<sup>38</sup> Article 54.

<sup>39</sup> Articles 27, 28 (c) and 35 (2)(e).

<sup>40</sup> Article 24.

<sup>41</sup> Article 48.





bench exist. A key example in this regard is India, where significant progress has been achieved through strategic litigation, which has fortunately been well received by a people-centred judiciary. In the cases of *Kishen Pattnayak & Another v. State of Orissa*<sup>42</sup> and *People's Union for Civil Liberties v. Union of India & Ors*<sup>43</sup> for instance, the Supreme Court recognized the existence of a right to food in India, founded on Article 21 of the Indian Constitution, as fortified by the the Directive Principle of State Policy, under Article 47, relating to nutrition. Following the *PUCL* case, in particular, Supreme Court directives resulted in a range of significant measures including mid-day meals for school going children, provision for food in child care centres and the availing of food to certain vulnerable groups. Similarly, in the Ireland case of *G v. An Bord Uchtála*<sup>44</sup> the Court noted that the right to life meant and included 'the right to be born, the right to preserve and defend, and to have preserved and defended that life and the right to maintain that life at a proper human standard in matters of food, clothing and habitation'. Analogous approaches – in which provisions relating to the right to life or the protection of human dignity have been used to recognize and give effect to the right to food – have been adopted by courts in such diverse jurisdictions as Botswana,<sup>45</sup> Lesotho,<sup>46</sup> Fiji,<sup>47</sup> the United Kingdom<sup>48</sup> and the United States of America.<sup>49</sup>

Indeed, even with the limited scope under the 1995 Constitution, there has been some judicial recognition, and protection, of the right to food in the Ugandan context. One of the earliest cases in this regard was the 1998 decision in *Attorney General v Salvatori Abuki*.<sup>50</sup> In that case, the Supreme Court noted the importance of the right to livelihood, observing that:

By banishing the offender from his locality after the prison term, untold harm is likely to ensue rendering him destitute. The court should not lose sight of the effect of this order on his family and dependents. This is likely to be very frustrating and would eventually turn him into a criminal once again. It would therefore be ruinous and counter productive. As we move into the next

<sup>42</sup> A.I.R. 1989 S.C. 677.

<sup>43</sup> Supreme Court Writ Petition (Civil) No. 196/2001.

<sup>44</sup> 1980, IR 32.

<sup>45</sup> *Sesana, Sethoboga and Others v Attorney General*, 12 December 2006.

<sup>46</sup> *Khatang Tema Baitsokoli and Mosala Nkekela v Maseru City Council and Others* (CONST/C/1/2004).

<sup>47</sup> *Rarasea v The State, Criminal appeal* No. HAA0027.2000 of 12 May 2000.

<sup>48</sup> *Regina v Secretary of State for the Home Department ex parte Adam, Regina v Secretary of State for the Home Department ex parte Limbuela, and Regina v Secretary of State for the Home Department ex parte Tesema* (combined appeals), House of Lords, [2005] UKHL 66.

<sup>49</sup> *Cooper v Sheriff, Lubbock County*, 929 F.2d 1078, 1083 (5th Cir. 1991); *Antonelli v Sheaban*, 81 F.3d 1422, 1432 (7th Cir. 1996); and *Strope v Sebelius*, US Court of Appeals, 06-3144 (D.C. No. 05-CV- 3284-SAC) (10th Cir. 2006).

<sup>50</sup> Constitutional Appeal No. 1 of 1998.





millennium we should bear in mind that in different parts of Africa clarion calls can be heard for greater attention to human rights.

Later, in the 2005 case of *Hon. Okupa Elijah & 2020 Others v Attorney General & 3 Ors*,<sup>51</sup> Judge Batema referred to the *Abuki* case (as well as the Indian case of *Olga Tellis*) to similarly recognize the existence of the right to livelihood under the Constitution:

This right is not expressly provided for in the constitution of the Republic of Uganda. It is however justifiable by virtue of the provisions of Articles 8A and 45 which recognize rights and freedoms not expressly provided for by the Constitution.

Further, in the 2016 case of *James Mubindo and 3 Others v Attorney General*,<sup>52</sup> Judge Ssekaana observed as follows:

Evictions normally result in severe human rights violations, particularly when they are accompanied by use of force. The victims of the forced evictions are put in life and health threatening situations and often lose access to food, education, healthcare and other livelihood opportunities. Indeed, forced evictions often result in losing the means to produce or otherwise acquire food or in children's schooling being interrupted or completely stopped.

Forced evictions usually result in people being pushed into extreme poverty and as such pose a risk to the right to life. This could further tantamount to cruel, inhuman and degrading treatment, particularly when carried out with violence as it was in the case of Lusanjja in 2018.

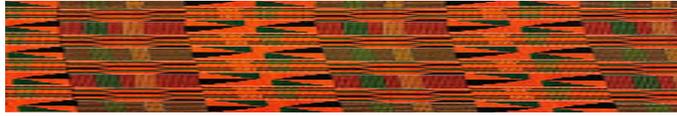
In *Social and Economic Rights Action Centre (SERAC) & Another vs Nigeria* (2001) AHRLR 60 (ACHPR 2001) it was held that the wanton destruction of property during evictions violates the right to housing and when housing is destroyed, property, health and family life are adversely affected.

Even if court has ruled in favour of an eviction or issued an eviction order in accordance with the law, the situation may necessitate the need to have a smooth process of effecting such an order. On the other hand, evictions or forced evictions from land may still be effected without a court

<sup>51</sup> Miscellaneous Cause No. 14 Of 2005, available at <https://ulii.org/ug/judgment/hc-civil-division-uganda/2018/10> (last accessed 28th October 2021).

<sup>52</sup> Miscellaneous Cause No.127 OF 2016, available at <https://ulii.org/ug/judgment/hc-civil-division-uganda/2019/3> (last accessed 28th October 2021).





order or the use of any physical force through harassment, threats or intimidation. Such scenarios need to be regulated through guidelines in order to protect the people.

The Constitution enjoins the state to provide protection to all people in order to safeguard the fundamental rights Guaranteed under it. It is this duty that is vested in the state that creates an obligation to ensure that everyone enjoys the protection of the law against being arbitrarily displaced from housing and land.

Nonetheless, perhaps the most intentional litigation in this respect is represented by the 2020 case of *Center for Food and Adequate Living Rights[CEFROHT] v Attorney General*.<sup>53</sup> The case sought declarations, among other things, that the Respondent's omission to issue guidance on the access to and availability of food during the Covid-19 pandemic; and its failure to regulate the prices of food during the same crisis and to provide guidance on food reserves in the country were violations of Objectives XXII and XXIII and Articles 8A, 20 and 45 of the Constitution. In deciding the matter, Judge Esta Nambayo observed that from the submissions of Counsel for both parties, it was not in dispute that the right to food was not directly catered for under the Constitution of Uganda but that it was an implied right under the right to livelihood.<sup>54</sup> In addition, citing Objective XXII, Judge Nambayo noted that it was not in dispute that the Constitution of Uganda recognized the right to adequate food and other economic, social and cultural rights.<sup>55</sup> As such, although the Judge dismissed the application, being of the view that the State had taken a number of reasonable measures to protect the right to food in the context of the Covid-19 crisis, the ruling is critical insofar as it affirmatively establishes the right to food as a feature of the Ugandan constitutional order.

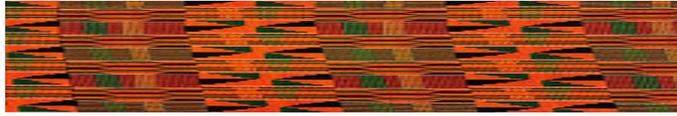
These positive developments notwithstanding, significant – and growing – challenges remain with respect to the realization of the rights to food in Uganda, which require a variety of legal and extra-legal responses. These include, to take but a very small sample, the land grabbing and forced evictions; threats to food security and food sovereignty, including monopolies and cartels (of which the recent *mpuuta* crisis is but the most recent example); food safety concerns, including the recently highlighted challenges of aflatoxins; food pricing (as an aspect of economic accessibility);

<sup>53</sup> Miscellaneous Cause No.75 of 2020, available at [https://media.ulii.org/files/judgments/ughccd/2020/157/2020-ughccd-157\\_5.pdf](https://media.ulii.org/files/judgments/ughccd/2020/157/2020-ughccd-157_5.pdf) (last accessed 28th October 2021).

<sup>54</sup> At Pages 16-17 of the Ruling.

<sup>55</sup> At Pages 31-32 of the Ruling.





destruction of critical natural resources and the question of sustainability (including, for instance, the ongoing destruction of Lwera); creeping protectionism, including the use of Technical Barriers to Trade (TBTs) – even in the context of the East African Community; dumping and other anti-competitive practices; difficulties in accessing agricultural finance and many others.

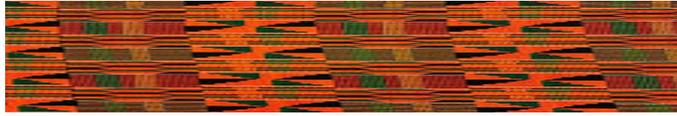
These challenges implicate a wide variety of legal fields – from international trade and investment law, consumer protection law, contracts law, food safety law, human rights and constitutional law, land law – which might together fall under the broad rubric of ‘Food and Agricultural Law’. In this regard, it is quite telling that such a critical course – of direct and immediate relevance to all Ugandans (70% of whose working population are employed in Agriculture) is not offered as a stand alone course in any Ugandan law school. This is an indictment of legal education in Uganda and more broadly speaking, telling of the crisis – of relevance – of the legal profession in the country today. Indeed, as a law teacher myself, I often reflect uneasily on Fela Kuti’s famous song: ‘*Teacher Don’t Teach Me Nonsense*’ – and wonder whether we are not failing ourselves, our students and our country in retaining the form and structure of legal education that we have today.

It is for this reason that today’s official opening – of CEFROHT’s Programme and Head Office – is particularly important. The work to be done in re-centering law as a critical tool for the realization of food and livelihood rights in Uganda is significant. Indeed, some important steps are being taken in this regard – including the establishment of a Food and Agricultural Law Cluster of the Uganda Law Society. However, a lot more needs to be done to meet the urgent and significant challenges of our times – and our people – in this regard.

#### **4.0 Conclusions and Recommendations**

The path upon which CEFROHT has embarked is evidently a critical one. The challenges to the realization of the food and livelihood rights are many, and growing, from within and without. Meeting them will require a corpus of dedicated, capacitated, engaged, tireless, strategic and indefatigable social justice warriors. That group will have to have both a bird’s eye, and a frog’s eye, view of the issues which require attention.





An urgent concern – when the time is right – should be the redesign of the 1995 Constitution to provide a firmer basis for more robust litigation of adequate living rights (including the right to food). Another should be the reform of legal education to ensure that the required social justice army has a sufficient able and willing recruits to draw from. And all these shall require committed, steadfast and reliable partners, from within and without, who are willing to stay the course and support the often quiet – but unspeakably meaningful work entailed.

Evidently, and as the recent *Mpuuta* crisis demonstrates, food is political. It is social. It is religious. It is cultural. It is economic. It is all these things – and more. To litigate in this area is to litigate the question of life itself, in terms of what makes it possible, what makes it meaningful, and ultimately, what makes it dignified. It is a task I am sure CEFROHT is up to, and it is a task I hope in whose fulfilment we shall all join. The proverbial harvest is plentiful, but the labourers remain pitifully few. My understanding – and hope – is that today we commit ourselves to growing the number of labourers litigating the jurisprudence of life.

