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THE RIGHT TO FOOD IN SOUTH AFRICA AND KENYA

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Opinion Briefs is a thought-provoking series that expands on the findings of the Urban Food Future's scoping report, *Pathways to Transform Urban Food Systems* (Paganini & Weigelt, 2023). Authored by the team and partners of Urban Food Futures, this collection serves as a stepping stone to enrich and deepen our work. With a collective vision to implement the pathways outlined in the scoping report, the series presents fresh insights, in-depth analysis, and innovative perspectives. These thoughtfully crafted briefs aim to challenge conventional notions and explore new horizons in the realm of urban food systems transformation to ignite meaningful discussions and catalyse tangible actions.

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EXECUTIVE SUMMARY:

This paper is a comparative deep dive into the implementation of the Right to Food (RtF) in Kenya and South Africa from a policy and legal perspective.

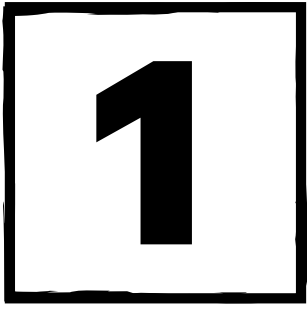
Kenya and South Africa have the RtF embedded within their constitutions; however, the lack of supporting legal frameworks hampers the implementation of the RtF in both countries. Today, levels of food insecurity remain high and suggest that several serious programmatic and legislative gaps remain. But there are growing efforts underway in South Africa and Kenya to ensure the RtF is enjoyed by all. There is strong evidence of South Africa's commitment and success in increasing access to food to the most vulnerable groups through the National School Nutrition Programme (NSNP) which provides meals to school-going children.

Driven by the understanding that a state's role is to respect, protect, and

fulfil the RtF, the recommendations identified for Kenya and South Africa include adopting a legal framework as a tool to mobilise action on the RtF. Importantly, the role of municipalities cannot to be overstated as the main coordinating agent for implementing policies at the local level. Furthermore, due to the impact of school feeding programmes on health and child learning outcomes, expansion of these programmes in Kenya are vital to realising the RtF. In South Africa, improving access to early childhood development centres (ECDs) is recommended as the route to expansion. Lastly, there is an argument to consider increasing social grants to enhance the RtF for both countries.

¹ This summary is based on the working paper, "Mapping the state's activities regarding the Right to Food in Kenya and South Africa" / (link). It provides an overview of the ways the Kenyan and South African governments respond to their constitutional mandates for the Right to Food, focusing specifically on the third pillar: fulfilment. The working paper has been drafted by Luke Metelkamp.

² The paper focuses on what states are doing to ensure the RtF by presenting a compendium of policies and programmes currently underway. This presents what is arguably an unrealistically positive assessment of the state's coverage as it infers a greater level of coverage than exists in practice. We stress that this positive framing does not vindicate the Kenyan and South African governments of the need for further and more effective action. However, it does attempt to recognise and celebrate what has been achieved so far and, in so doing, to build an improved understanding of where further resources, multi-sectoral collaboration, and renewed efforts might yield the best results.



INTRODUCTION

Poverty and social and economic inequality are the structural reasons for the prevalence of hunger and malnutrition. Exclusive decision-making processes contribute to the persistence of inequalities. The increase in global hunger in 2021 reflects exacerbated inequalities across and within countries due to an unequal pattern of economic recovery among countries and unrecovered income losses. Food insecurity is less about lack of food and more about livelihood challenges, exclusive development patterns, global trade dynamics, internal military conflicts, poor service delivery, and lack of inclusive food governance processes. These inequalities hinder the realisation of the human right to adequate food which is widely understood as the right to feed

oneself in dignity and requires that food be available, accessible, and adequate for everyone at all times.

In Kenya and South Africa, governments have launched several programmes and initiatives as steps toward ensuring the Right to Food (RtF), but prevailing high levels of food insecurity suggest that a number of critical programmatic and legislative gaps remain (Kimani et al., 2023). In the following, a conceptual framework for the RtF will be examined in detail and an overview of the implementation of RtF policy measures by the governments of South Africa and Kenya will be provided. An analysis will identify existing gaps and discuss recommendations for strengthening policies related to the RtF in both countries.

**FOOD INSECURITY IS LESS ABOUT LACK OF FOOD
AND MORE ABOUT LIVELIHOOD CHALLENGES,
EXCLUSIVE DEVELOPMENT PATTERNS, GLOBAL
TRADE DYNAMICS, INTERNAL MILITARY CONFLICTS,
POOR SERVICE DELIVERY, AND LACK OF INCLUSIVE
FOOD GOVERNANCE PROCESSES.**



● **Figure 1** The Right to Food is closely linked to other human rights.
Source: Singlee, 2023

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THE RIGHT TO FOOD

The RtF is an international human right enshrined within the International Covenant on Economic, Social and Cultural Rights (ICESCR; UN General Assembly, 1966). It is widely understood as the right to feed oneself in dignity and requires that food be available, accessible, and adequate for everyone at all times. The state's role in this has generally been interpreted as needing to ensure that a stable supply of food is available in sufficient quantities at an affordable price and to provide food

directly to individuals or groups who, for reasons beyond their control, cannot feed themselves. The interpretation of the RtF has since evolved to include nutrition as a fundamental component to realising a person's human right to food (FIAN International, 2016). Nutrition includes the quality of the food being consumed and how it is sourced and produced and is linked directly with the aim of ensuring that people live dignified lives (Global Network for the Right to Food and Nutrition [GNRTFN], 2021).

The three pillars of the state's obligations with respect to the RtF

1

RESPECT

Governments must refrain from interfering with people's existing access to food. Governments cannot undertake measures that result in people's loss of access to food.

2

PROTECT

Governments must put measures in place to ensure that third parties do not deprive others of their right to access adequate food.

3

FULFIL

Governments must proactively engage in activities intended to strengthen people's access to food. If an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food, governments must provide access to that right, directly.



● **Figure 2** The Right to Food is enshrined in South Africa's constitution.
Source: Singlee, 2023

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CONSTITUTIONALLY ENSHRINED: THE RIGHT TO FOOD IN KENYA AND SOUTH AFRICA

The RtF is enshrined in **South Africa's** constitution, under sections 27 and 28. Section 27 (1) (b) states that “everyone has the right to have access to sufficient food”. It also includes a provision for children in Section 28(1) (c) which states that “every child has the right to basic nutrition” (Constitution of the Republic of South Africa, 1996).

Despite repeated calls from civil society, South Africa has yet to enact a legal framework for the implementation of the RtF as recognised in their constitution to guide policy efforts and budgetary allocations (Joala & Gumede, 2018). Because of this, the RtF and the responsibilities of the state and private sector actors in upholding the RtF is not legally defined, thereby limiting the

ability to hold these actors accountable. The UN Committee on Economic, Social and Cultural Rights (CESCR) made specific recommendations to South Africa on how to strengthen and fulfil the RtF for all South Africans, including the need for a legal framework to implement and protect the RtF. The CESCR recommended that South Africa adopt framework legislation protecting the right to adequate food and nutrition, taking into account the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security and the Committee's general comment No. 12 (1999) on the right to adequate food. Despite these efforts, a clear legislative framework has not yet been developed. Constitutionally, the

THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS CESCR MADE SPECIFIC RECOMMENDATIONS TO SOUTH AFRICA ON HOW TO STRENGTHEN AND FULFIL THE RTF FOR ALL SOUTH AFRICANS, INCLUDING THE NEED FOR A LEGAL FRAMEWORK TO IMPLEMENT AND PROTECT THE RTF.

RtF has yet to be explicitly implemented (De Visser, 2019); however, other socioeconomic rights, such as the right to housing or education, have been the focus of intensive legal action at a constitutional level, underscoring the need for greater citizen awareness of their RtF.

In contrast, the RtF became part of the conversation in **Kenya** when the International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified and incorporated into domestic constitutional law in 2010. Article 43 (1c) of the Kenyan constitution of 2010 (Constitution of Kenya, 2010, p.24) stipulates that “every person has the right to be free from hunger and to have

adequate food of acceptable quality”. Article 53 further provides for child nutrition as a right to adequate food.

In 2011, **Kenya** enacted the National Food and Nutrition Security Policy. The policy’s preamble aligns with the constitutional provision on the RtF and states that, subject to the availability of necessary resources, the government will ensure that every Kenyan is free from hunger and has an adequate supply of food of acceptable quality (Republic of Kenya, 2011a). This policy is instrumental in realising the RtF but cannot be implemented in the absence of a parliamentary act on the subject. The Food Security Bill was drafted in response to this obligation, but was tabled in parliament in 2014 and 2017 and has not yet been enacted. The Bill’s purpose is to create a legal framework to enact Article 43 (1c) of the Kenyan constitution by establishing a legal framework for the RtF. The Bill encourages food production, establishes a mechanism for the National Food Policy and other food security programmes and promotes the eradication and prevention of discrimination in food access and distribution. However, because the Bill has not yet been passed into law, Kenya lacks a legal framework to implement the constitutionally guaranteed RtF.

Table 1. Comparison of the legal framework for the RtF in South Africa and Kenya

	CESCR signatory	RtF enshrined in Constitution	Legal framework	Implemented constitutionally
South Africa	Yes	Yes	No	No
Kenya	Yes	Yes	In progress	No

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THE FULFILMENT OF THE RIGHT TO FOOD IN SOUTH AFRICA AND KENYA

Relative to GDP, **South Africa** has one of the most progressive social assistance spending programmes in the world. This food security social expenditure constituted around nine percent of South Africa's total national budget in 2022 (National Treasury, 2022a). This includes expenditure on agricultural support programmes, direct food aid such as the NSNP and ECDs

subsidies, social grant transfers, and health programmes implemented by the Department of Health (National Treasury, 2022b). Three quarters of all state expenditure relating to the RtF in South Africa takes place through direct cash transfers which are paid to almost 30 million South Africans monthly.

Kenya has a modest, but growing, food and nutrition spending programme across a range of departments. This spending equated to between 1.2 and 2 percent of the 2021/2022 national budget (NTP, 2022). Several policies recognise school meals as a vital social safety net for learners and their families. The Food and Nutrition Security Policy identifies

SEVERAL POLICIES RECOGNISE
SCHOOL MEALS AS A VITAL
SOCIAL SAFETY NET FOR
LEARNERS AND THEIR FAMILIES.

14 priority interventions in nutrition, of which school feeding was one of them (Republic of Kenya, 2011a). Similarly, the National Nutrition Action Plan (2012–2017) commits to improving learners' nutrition through school feeding (Republic of Kenya, 2018). The National Social Protection Policy provides a framework for implementing Article 43(3) of the constitution which mandates the state to provide social protection to vulnerable people and their dependants (Republic of Kenya, 2011b).

While there has been steady growth in Kenya's cash transfer programmes, they are not without challenges: grants being far below the poverty line, budget limitations (particularly in times of crisis), limited population coverage, barriers to registration, and long breaks in coverage due to administrative breakdowns.

Historically, national-level food security policies supporting the RtF in southern Africa focused on the availability dimension of food security rather than



Figure 3 The Right to Food is enshrined in Kenya's constitution.
Source: Mutua, 2023

food access or utilization. This drove a raft of agriculturally orientated policies aiming to increase production among those affected by hunger, predominantly rural communities. Over the past two decades, the **Kenyan** and **South African** policy landscapes have shifted substantially from this approach. In meeting their constitutional obligations toward the RtF, the overwhelming thrust of Kenyan and South African policy has been moving away from farming in favour of providing a good daily meal to children at schools and Early Childhood Development (ECD) centres and putting cash directly into vulnerable citizens' pockets. In South Africa, agricultural budget allocations seeking to address food insecurity accounted for just 6% of the national food security expenditure, while grants and school feeding accounted for at least 90% (National Treasury, 2022b). Social grants are important to mention as it is estimated that about 70% of social grants are spent on food in South Africa (National Treasury, 2022b). On the other hand, Kenya's expenditure on agriculture remains higher at between 21% and 26% of the 2021/22 food security expenditure, with cash transfers, school feeding, and economic inclusion accounting for the balance (NTP, 2022).

These extensive state interventions, along with the efforts of a wide swath

of civil society, academic, community, and private-sector players, appear to be yielding some results. The Global Hunger Index (GHI) which tracks hunger and malnutrition worldwide based on undernutrition, child nutrition, and child mortality reflects a substantial drop in food insecurity in South Africa from a score of 18.1 in 2000 and to 12.9 in 2021 (GHI, 2022). Despite this decline in severe acute malnutrition and overall child hunger, malnutrition rates have remained stubbornly high (at around 27%) and obesity rates are rapidly rising (GHI, 2022). This suggests an increase in access to high-calorie foods and a decrease in dietary diversity.

Kenya, similarly, has made inroads and faces similar challenges. In 2021, Kenya's Global Hunger Index score was 22.2, indicating a moderate level of hunger. In spite of significant climate fluctuations, the country's score has improved over the past 20 years, from 38.1 in 2000 to 22.2 in 2021, indicating progress in reducing hunger and malnutrition (GHI, 2022). Kenyan data mirrors this finding. But, as in South Africa, the prevalence of overweight and obesity in Kenya is rising. These increases in overweight combined with the stubbornly high persistence of undernutrition in both countries implies the need for an evolution in the framing of the RtF to address hidden hunger and the double burden of disease.

While the figures are indicative of the growing efforts underway in South Africa and Kenya to ensure the RtF is enjoyed by all, by international standards **levels of food insecurity remain exceptionally high and suggest that several serious programmatic and legislative gaps remain** (GHI, 2022; Kimani et al., 2023).



Figure 4 The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. Source: Singlee, 2023

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MAPPING THE RIGHT TO FOOD IN KENYA AND SOUTH AFRICA: FURTHER FINDINGS

Cash-transfer social grants now account for most of both Kenya and South Africa's spending relating to the RtF.

In responding to the RtF, Kenya and South Africa have shifted from agriculturally focussed policies promoting food availability, to social welfare approaches which promote access to food and nutrition. In the process, national departments responsible for social security along with their implementing agencies have come to replace agricultural departments in the central role they occupy in the national food security landscape. In assessing the fulfilment of their mandates in relation to the Right to Food, this group of actors needs to be evaluated based on the quality of

the services they deliver in ensuring that social welfare payments are a) efficiently targeted at the intended beneficiaries, b) reliable in delivery, and c) effectively resourced.

Budget allocations relating to the RtF have been increasing steadily. Of the three pillars of the RtF, fulfilment accounts for the majority of state's efforts in both countries.

Relatively few protection measures are in place. Of those involved in activities of protection, the South African Competition Commission and Revenue Service played a role in South Africa through the regulation of anticompetitive behaviours by food retailers and the implementation of sugar taxes. The bureaux of standards

of both countries also played a minor role via food standards implementation.

In alignment with international best practice relating to the RtF, the programmes and policies in place in South Africa and Kenya assume a child-centred approach. While Kenyan and South African approaches to the RtF have differed significantly, both countries rely on strong collaboration between all three spheres of government. They also both rely heavily on the support and participation of local community members, particularly women. Childcare is often undertaken by women and tends to be unpaid (Brooks, 2021). However, investment into early education, which is often driven by women in communities,

is advantageous in numerous ways such as child protection and development, increasing women's labour participation, and creating decent work (Brooks, 2021). Alongside actors involved in social welfare payments, actors involved in the provision of meals at schools and ECD centres have seen the biggest gains in terms of budget allocations.

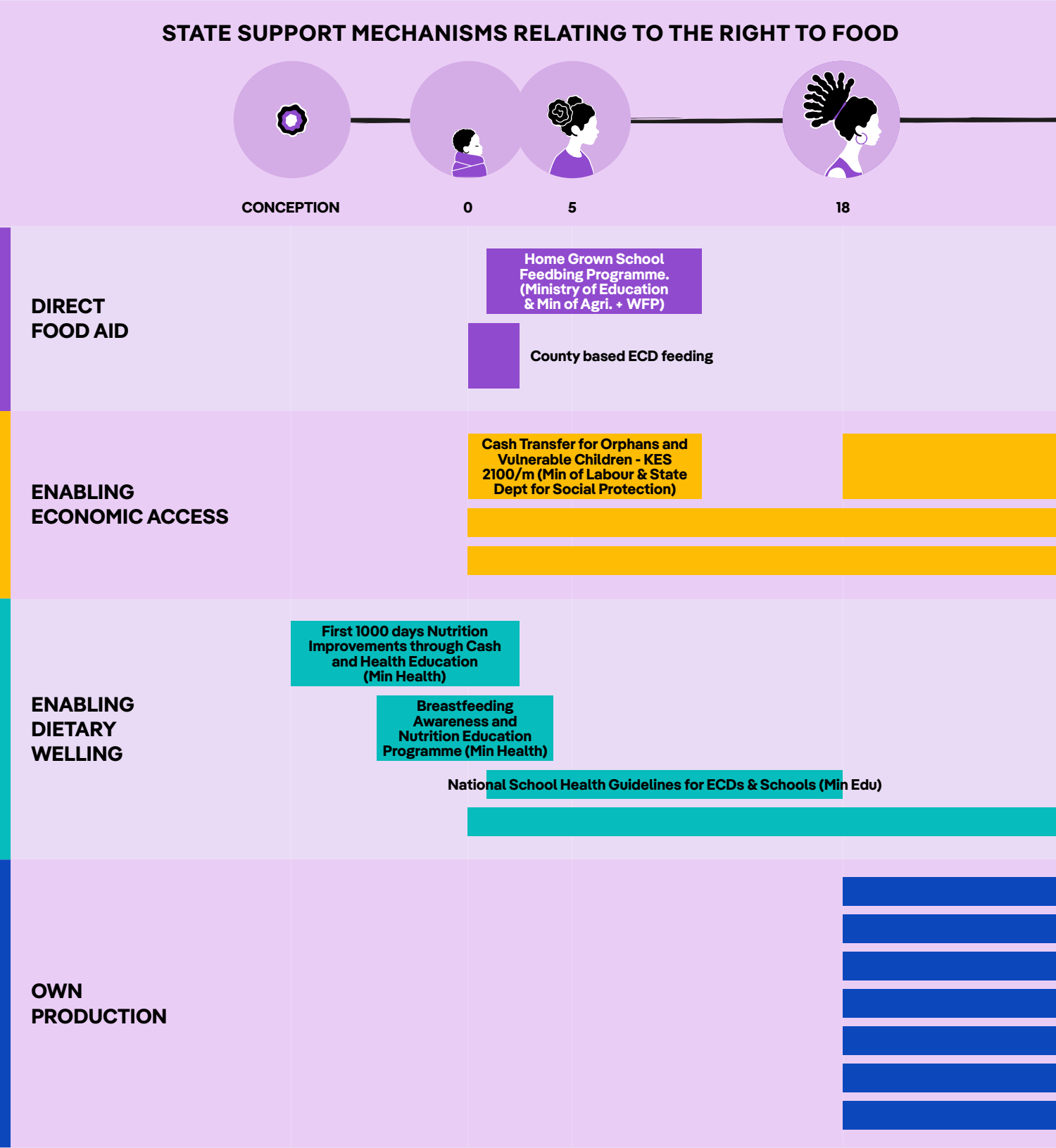
Compared to other social-cultural rights such as housing and education, the RtF has been the focus of very limited social mobilisation and legal action in southern Africa.

The reasons for this are not clearly understood; however, its absence may call into question the immediate utility of expanding legal frameworks for the RtF.



Figure 5 Urban Food Futures' community workshops to better understand the Right to Food.
Source: Redmond, 2023

BREAKDOWN OF STATE INITIATIVES RELATED TO THE RIGHT TO FOOD ACROSS THE COURSE OF A CITIZEN’S LIFE IN KENYA



STATE SUPPORT MECHANISMS RELATING TO THE RIGHT TO FOOD



35



60



DEATH

Cash Transfer for people with disabilities
- KES 2100/m
(Min of Labour & State Dept for Social Protection)

Cash Transfers to Elderly Persons -
KES 2100/m (Min of Labour & State
Dept for Social Protection)

Hunger Safety Net Programme 5400/household/m

National Drought Emergency Fund

Food Quality standards - Kenyan Bureau of Standards checks food safety

National Agricultural and Rural Inclusivity (Min of Agri)

Small Scale Irrigation and Value Addition (Min of Agri)

Food Security and Crop Diversification Programme (Min of Agri)

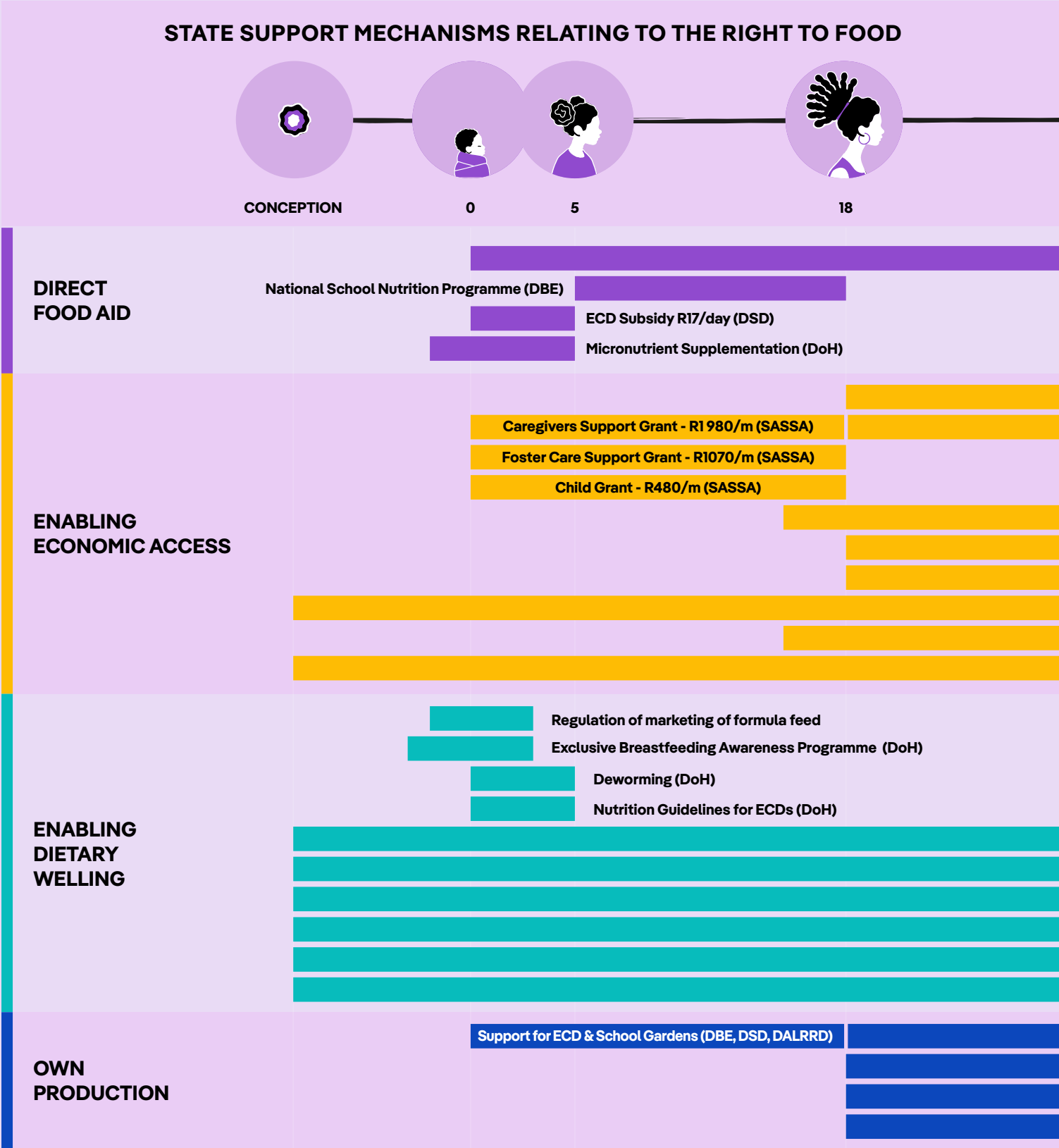
Farm input subsidy e-voucher (Min of Agri)

Kenya Cereal Enhancement Programme (Min of Agri)

Agricultural Extension Services (Min of Agri)

Emergency Locust Response Programme (Min of Agri)

FROM CONCEPTION TO DEATH: STATE SUPPORT MECHANISMS FOR THE RIGHT TO FOOD IN SOUTH AFRICA



STATE SUPPORT MECHANISMS RELATING TO THE RIGHT TO FOOD



35



60



DEATH

Household Food & Nutrition Support Programme (DSD) - Food hampers/vouchers

Social Relief of Distress Grant - R350 (SASSA)

Disability Grant R1980/m (SASSA)

Pension Grant R1980/m (SASSA)

Student Living Allowance - R1500 (NSFAS)

Community Works Programme

Extended Public Works Programme

Zero VAT rating on Basic Foods

Unemployment Insurance Fund

Competition Commission

Basic foods fortification programme

Various WASH related initiatives (DoH, DWS, Local Govs)

Free household basic water 6000L/m

Free household basic electricity 50 kwh/m

Health Promotion Levy (HPL) on sugary beverages (SARS)

Food & Beverage Standards - South African Bureau of Standards

Small-scale fisheries allocations (DFFE)

Comprehensive Agricultural Support Programme, Ilima/Letsema and (DALRRD)

Land & Water Reform Policies (DALRRD, DWS)

Fetsa Tlala (DALRRD)

6

FOOD FOR THOUGHT

Considering legal frameworks on the RtF: Neither Kenya nor South Africa have developed a legal framework around the RtF. In South Africa, no claimants have attempted to take the state to court for failing to uphold their RtF at a constitutional level and no legal precedent has been established

(De Visser, 2019). Given that politics in South Africa and Kenya take place beyond the reach of the constitution, is investing into a rights-based legal framework the best strategy for ensuring the RtF is met? Or would taking a tough stance on corruption and focusing on strengthening the broader social



Figure 6 Urban Food Futures' approach is to progressively realising the Right to Food through a strengthened informal sector in Cape Town and Nairobi.
Source: Singlee, 2023

mechanisms of accountability be a better strategy than opening up an additional avenue for further litigation against the state? While this is certainly not an either-or question, it places the emphasis on the execution of the basic provisions of existing law before the active proliferation of new legal frameworks in an already under-performing legal system.

Localising inclusive governance around the RtF:

Much work lies ahead in localising the current food policies within provincial and municipal governments by including diverse voices such as from civil society as part of a wider conceptualisation of governance. This includes supporting city-level governments to ensure that food system outcomes are considered within ostensibly non-food-related planning activities (Haysom et al., 2022). Local governments have the critical power of planning and managing land use. Guiding the way in which spatial planning takes place and its sensitivity to food and nutritional outcomes could have a profound impact on hunger, particularly in cities (Haysom et al., 2022).

Increasing the child support grant

in South Africa: While multiple studies have shown that children receiving a child support grant benefit from improved nutritional and health outcomes (Conradie et al., 2020), other competing household economic needs need to be covered by the child support grant. The child support grant shields households from the kind of food insecurity which is deeply rooted in wider issues of structural poverty, marginalisation, and inequality. This has led to widespread calls to increase the child support grant to match the food poverty line.

Expanding early childhood

development coverage: The nutritional support programme targeting children under the age of five in South Africa is administered via registered ECD centres; however, 50% of children in this age group nationally do not attend ECDs. Compounding this, the majority of ECDs in operation across the country (and particularly those serving the most vulnerable children) are not formally registered with the Department of Basic Education (Thorogood et al., 2020). Recent statistics on children accessing early learning suggest that one third of children attend an early learning programme that is subsidised by the government (Department of Basic Education, 2021). These administrative and planning hiccups create highly significant gaps in the state's obligations toward the fulfilment of the RtF for the most vulnerable South Africans.

Extend school feeding coverage

in Kenya: Kenyan school feeding programming is limited and not always free. In 2020, the Kenyan school meals budget stood at a very modest USD 18 million. This budget enables nine percent of children under the age of 18 to access a meal at school. Because of budgetary restrictions, that meal is often very limited in terms of dietary diversity and rarely offers fruit, vegetables, or animal proteins (with the exception of milk in some counties). As school meals are a globally recognised pillar to ensure children's RtF, Kenya must rapidly and radically expand its school meal budget. Given the high number of learners living and attending unregistered school in vulnerable informal settlements across Kenya, urgent policy reform is needed to ensure that learners in unregistered schools are not left behind as Kenya expands its school nutrition programmes.

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