

DRAFT REPORT ON THE SEMINAR:
***Critical issues in the realisation of the right to food in
South Africa***

**Hosted by the Socio-Economic Rights Project, Community Law
Centre, University of the Western Cape**

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1. INTRODUCTION

The Socio-Economic Project convened a seminar entitled 'Critical issues in the realisation of the right to food in South Africa' on 14 November 2003, in Cape Town, South Africa.

The seminar was attended by representatives from civil society organisations, community-based organisations and public institutions. It was particularly honoured by the participation of Ms. Margret Vidar, a Legal Officer in the United Nations Food and Agricultural Organisation (FAO, Rome).

1.1 Objectives of the seminar

The seminar's objectives were to provide a platform for:

- exploring the implications of international developments relating to the right to food;
- reviewing progress made in various sectors to realise the right to food in South Africa;
- exploring the role and the potential of national framework legislation as a driving tool for implementing the right; and
- identifying areas for further research and advocacy intervention.

1.2 Summary of key themes

The following key themes emerged at the seminar:

- The right to food is recognised as a justiciable human right under the South African Constitution. However, there is a gap between this recognition and the reality. A large proportion of the population is suffering from extreme poverty, hunger and malnutrition.
- Yet, ironically, South Africa appears capable of producing sufficient food to meet the basic needs of its population. It is in the *accessibility* of that food that problems are encountered.
- The right to food is a difficult and complex right to isolate for purposes of enforcement. As it is a fundamental human right, it has a knock-on effect on other rights. For example, without food, the right to dignity, education, health care services, and even to life itself could be prejudiced.
- It seems that many people do not think of access to food as a human right, perhaps because of its inextricable relationship with other socio-economic rights or because of its too 'obvious and basic' nature. The assumption is exemplified by the fact that the South African Human Rights Commission has not received *any* complaints relating to the violation of

the right to food, despite clear evidence that people are indeed suffering chronic hunger and malnutrition in South Africa.

- The complexity in realising the right stems from the fact that other socio-economic rights, such as water, health and education, are viewed as essentially 'public' issues or responsibilities whereas the procurement (and production) of food is more of a private activity. Food is primarily produced by private entities and purchased by private transaction in the market place.
- There is a need for greater collaboration and co-ordination between relevant government organs and different sectors of society to realise the right to food. For example, there is need to review and integrate policies and food related programmes. In this regard, there is particularly a need to adopt framework legislation to drive the implementation of the right to food in a holistic and co-ordinated manner.

The following speakers made presentations at the seminar:

Prof. Julia Sloth-Nielson, Faculty of Law, University of the Western Cape:
Welcoming address

Ms. Margret Vidar, UN Food and Agricultural Organisation: The right to food in international law

Prof. Obeng Mireku, Director, Ismail Mahomed Centre for Human & Peoples' Rights, University of Venda: 'The right to food in the Constitution'.

Mr. Sibonile Khoza – Project Co-ordinator, Socio-Economic Rights Project, Community Law Centre (UWC): Role of framework legislation in realising the right to food

Dr. Edward Lahiff, Researcher, Programme for Land Reform and Agrarian Studies (PLAAS), (UWC): Land reform and access to food

Ms. Isobel Frye, Project Manager, Black Sash: Social assistance and the right to food

Ms. Chantell Witten, Researcher, School of Public Health (UWC): Access to health care, sufficient water and nutrition

Ms. Charlotte McClain-Nhlapo, Commissioner, South African Human Rights Commission: Monitoring the realisation of the right to food

Prof. Johann Kirsten, Chairperson, Food Price Monitoring Committee: The affordability of food: Monitoring trends in food prices

Ms. Jacqueline Gallinetti, Project Co-ordinator, Children's Rights Project, Community Law Centre: Closure

The following were the facilitators:

Mr. Danwood Mzikenge Chirwa, Researcher, Socio-Economic Rights Project, Community Law Centre (UWC)

Mr. Navy Simukonda, Director, Transkei Rural Land Service Organisation

Mr. Eric Waltikson, Researcher, South African Human Rights Commission

2. PROCEEDINGS

2.1 Welcoming address

In her official opening address, Prof. Julia Sloth-Nielson of the Faculty of Law, University of the Western Cape (UWC), regarded the seminar as important in examining the extent to which South Africa has progressed in implementing the right to food. She said this examination is premised on the following factors:

- The Constitution guarantees everyone the right of access to sufficient food. It also provides that every child has a right to basic nutrition and every prisoner, to adequate nutrition. These provisions are collectively known as the right to food.
- The right to food and other socio-economic rights enhance the enjoyment of the constitutional rights to, and the values of, dignity, equality and freedom.
- Yet, in practice, the prevalence of widespread hunger and malnutrition suggests that a large proportion of South Africa's population is deprived of the enjoyment of the right to food and dignity.
- The lack of fulfilment of the right to food materially affects the proper fulfilment of other socio-economic rights, as well as civil and political rights.

Prof. Sloth-Nielson noted that the right to food needs an examination of a range of inter-sectoral issues, including tariffs, land, social security, VAT and so on, and that the seminar intended to conduct this kind of an examination. She stressed that it should be done within the context of the Constitutional Court judgments in *Government of South Africa v Grootboom* (2000) (*Grootboom*) and *Minister of Health v Treatment Action Campaign* (2002) (*TAC*). She said that even though the Court has rejected the minimum core obligation (in *TAC*) to give direct relief for individual claims when a life is at stake because of lack of food, the two judgments provide a persuasive argument for immediate relief for people in desperate conditions.

2.2 An introduction to the right to food

2.2.1 The right to food in international law

Ms. Marget Vidar, Legal Officer in the UN Food and Agricultural Organisation, presented a paper on the right to food in international law and the latest developments in “the voluntary guidelines to support the progressive realisation of the right to adequate food in the context of national food security”.

She noted that the right to food is one of the founding principles of the United Nations. The founders of the United Nations identified freedom from want as fundamental in human existence.

She mentioned that the right to food has since been expressly recognised in a host of international instruments. This right is crucial for human existence, the violation of which can constitute a crime against humanity. She also noted the definition of, and obligations surrounding, this right, as enunciated by the UN Committee on Economic Social and Cultural Rights in their General Comment 12 (1999), Art. 11, (the right to adequate food).

Giving an elaborate account of developments with regard to the right to food, Ms. Vidar noted that this right has increasingly received attention at international, regional and national levels with aim of delineating its meaning, nature and scope. Accordingly, she noted, a range of events has since taken place. The World Food Summit of 1996 (WFS) is regarded as crucial. At this event, opponents to the concept of a 'right to food' questioned what this right actually is. It was agreed that the human rights community should work on clarifying it. The High Commissioner for Human Rights was given a lead role and was instructed, in rather weak wording, to take into account the possibility of formulating voluntary guidelines. She also noted that NGOs were disappointed by the tentative language of the WFS and decided to draft their own code of conduct.

Following the WFS, a series of expert consultations and studies on the issue have taken place. These eventually resulted in the UN Committee generating what is known as General Comment 12 (GC12) in 1999. This document is an authoritative interpretation of the right to food. Ms. Vidar also highlighted some of the contents of GC12, such as the definition, core contents, states' obligations, what constitutes violations and measures regarding implementation.

Acknowledging the complexity of the right to food and the multi-sectoral implications in its implementation, she noted that the FAO has advocated the need for national framework legislation on this right for a long time.

During the 2002 WFS, five years later, the Intergovernmental Working Group on the Voluntary Guidelines was established within the FAO. This body, also known as the Bureau, is tasked with drafting voluntary guidelines to support the progressive realisation of the right to adequate food within the context of national food security.

Ms. Vidar noted that difficulties are being experienced in the discussions on the voluntary guidelines, among them:

- a. ***The nature of the right to food and its ensuing obligations:*** Some argue that the voluntary guidelines should focus on the typology of state obligations, to respect, protect and fulfil. Others feel that the guidelines

- should use the term 'progressive realisation', which is an existing language of the legally binding treaty.
- b. **The status of GC12:** Some states do not agree with the interpretation given to the right to food in GC12 and feel that reference to it in the voluntary guidelines would lead to its legitimisation.
 - c. **The international dimensions of the right to food:** Although international co-operation is articulated in the international human rights instruments as an obligation, many richer states have never accepted it as such. Attempts to incorporate a provision dealing with international co-operation have sparked very heated and tensions.

Ms. Vidar said that the FAO's position on the voluntary guidelines process is to see the bringing together of the practical and legal issues in the debate. The guidelines should also be geared to those states actually interested in implementing them (and not to the lowest common denominator).

On the concern about the retrogressive step of the guidelines, Ms. Vidar said that it would be premature to speculate on the precise form the guidelines will take at the end.

2.2.2 The right to food in the South African Constitution

Prof. Obeng Mireku, Director of Ishamail Mohamed Centre for Human and People's Rights (University of Venda), examined the constitutional obligations with regard to the right of access to sufficient food.

He noted that unless the right to food is fulfilled, the protection of other human rights becomes a mockery. Without food, the founding values of the Constitution such as dignity, life and equality become meaningless.

Providing an observation on food rights, Prof. Mireku noted that the right to food is provided for in various provisions of the Constitution, which can be categorised as those that are direct and those that are indirect. The direct provisions are the right of access to sufficient food (s27(1)), basic nutrition (s28(1)(c)) and adequate nutrition (s35(1)(e)).

In terms of section 27, the key word is 'access' to sufficient food. The state does not always have to *provide* everyone with food. But, it is obliged to provide the 'enabling environment' for people to get (to access) food for themselves. It also has a duty to provide food to detained persons (s35(1)(e)), children (s28(1)(c)) and victims of famine and other natural disasters and others who are unable to acquire food for themselves.

In canvassing the state's obligations, Prof. Mireku pointed out that it has a duty to provide an enabling framework for realising the right to food progressively, to the extent that resources are available (section 27(2)). Section 7(2) of the

Constitution imposes a duty on the state to respect, protect, promote and fulfil all fundamental rights. He thereafter teased out the meaning of these obligations.

In examining the enforcement mechanisms, he pointed out that the Constitution enjoins various institutions to enforce and monitor the realisation of the rights in the Bill of Rights. These institutions include the judiciary (courts) and the South African Human Rights Commission. He applauded their achievements: the Constitutional Court for its progressive and landmark constitutional jurisprudence on socio-economic rights, especially in the *Grootboom* and *TAC* cases, and the SAHRC for developing comprehensive 'protocols' (set of questionnaires) for their reporting cycles. He also highlighted the important role of civil society organisations in supporting these institutions in executing their mandates.

In conclusion, Prof. Mireku made the following recommendations:

- That an institution that will drive the process of realising the right to food in South Africa is established.
- The state's obligations to realise the right to food fall within the administrative action as defined by the Promotion of Just Administrative Action (Act 3 of 2000). Therefore, the procedures and remedies provided therein should be invoked to seek compliance with constitutional obligations.
- The Food Security Bill should be taken forward without further delays.
- There should be better collaboration between the three spheres of government to ensure vulnerable groups have access to food. Government must show clearly how it caters for these marginalised groups.

2.2.3 The role of framework legislation in realising the right to food

Sibonile Khoza, Project Co-ordinator and Researcher, Socio-Economic Rights Project, Community Law Centre (UWC), explored the role of framework legislation in realising the right to food in South Africa. He asserted that framework law has a great potential to address the food situation in a reasonable, effective and comprehensive manner, thereby contributing significantly to compliance with constitutional obligations.

Echoing the previous speakers's contentions, he pointed out that the Constitution enjoins the state to take reasonable legislative and other measures to realise the right to food (section 27(2)). The *Grootboom* case established that a 'reasonable review' is the acid test. To be reasonable, the state's adopted measure must be comprehensive and co-ordinated, flexible and balanced and must attend to the urgent needs of those in desperate circumstances.

Mr Khoza also pointed out that *Grootboom* requires different state organs to co-operate, allocate responsibilities among themselves, and undertake such responsibilities with the aim of executing the duties imposed by a constitutional

right. There must also be clear accountability and operational mechanisms to drive the implementation process. *Grootboom* suggested that, at the national level, there has to be a framework legislation to support a comprehensive programme. Mr. Khoza thus asserted that all these requirements point to the necessity of the law – a comprehensive legislation.

He pointed out that the Constitution mandates the courts to consider international law in interpreting the Bill of Rights. He then went on to examine the notion of framework law as recommended by the UN Committee in its General Comment 12. He sketched out the nature and scope of this law, as well as its content, aims and benefits for South Africa and in so doing, demonstrated a resemblance of the framework law elements to the *Grootboom* principles. Framework law provides, among other things:

- a firmer political commitment;
- a comprehensive legislative response to rectify the current piecemeal legislative measures;
- better co-ordination among different government organs;
- better accountability, transparency and participatory mechanisms; and
- recourse mechanisms for individual claims.

On the process towards framework law, he outlined four possible phases:

1. human rights mobilisation;
2. stock-taking (or an evaluation of existing food related laws and policies);
3. legislative drafting; and
4. implementation and monitoring phases.

He said that the absence of this framework legislation could be partly responsible for the lack of success in eradicating hunger and food insecurity. On the scepticism during the discussion that followed about the real difference the law would make in eradicating hunger, it was noted that the law is not in and of itself enough to address the food problems. However, it sets a strong foundation upon which operational measures must rest. It also establishes political will, which is necessary for the law and other measures to work. It was expressed that the lack of clear progress in the Food Security Draft Bill is an evident indication of a lack of political will. Framework legislation needs to be supported by operational measures such as policies and strategies.

2.3 Implementing the right to food in selected sectors

2.3.1 Land reform and access to food

Dr. Edward Lahiff, Senior Researcher in the Programme for Land Reform and Agrarian Studies (PLAAS), UWC, examined the role and potential of land reform

in the accessibility of food. He began by noting the common lack of reference to access to food in land reform debate and asserted that it nonetheless has the potential to assist food accessibility.

Laying a foundation for his presentation, Dr. Lahiff provided an overview of the challenges and statistics in the distribution of land. The Constitution sets the legal basis for the land reform policy in South Africa. The objective of the land reform programme is to achieve equity in regard to access to and ownership of land, and improved efficiency in respect land use.

In examining the land reform programme, Dr. Lahiff demonstrated the absence of a 'pro-food poor' focus. Since 1999 the land policy has explicitly rejected the concept of land ownership for food consumption or 'subsistence farming'. It does not promote subdivision of land into smaller plots for producing food for own consumption. Instead, it encourages large-scale farming or commercial farming to boost economic efficiency.

He provided a comprehensive analysis of the progress made in the delivery of three categories of the land reform policy: restitution, redistribution and tenure reform. He also examined the budget allocation and targets in respect of these categories. The following are some of the key points:

- **Restitution:** The Government is unlikely to meet its set targets for redistribution and restitution. Whites still own 68% of the land. Claims lodged for restitution significantly outnumber those settled. A huge number of rural claims (about 25 000) remain unresolved. These are often in respect of prime agricultural land. Most claims resolved are those in urban areas for which monetary compensation is paid.
- **Redistribution:** Since 2001 there has been a significant shift in approach with the promotion of commercial objectives, resulting in larger land sizes. The earlier emphasis on the poorest of the poor has been replaced with questions of commercial viability.
- **Tenure reform:** This category of the land reform programme has come under fire, with the Communal Land Rights Bill being seen as giving too much control to traditional leaders at the expense of occupiers. The Extension of Security of Tenure Act has also not been as successful in preventing illegal evictions as initially hoped.

Dr. Lahiff pointed out that it is clear that a radical restructuring of the agricultural sector is not on the agenda. Instead, the strategy is to try and fit emerging black farmers into the existing set up, which offers little or nothing to the rural poor who are also voiceless in national politics. No influential political party advocates for their needs. Nor is there any institution that could attend to their grievances. In

their absence, it is likely that grievances will be addressed in informal or extra-legal ways.

In conclusion, Dr. Lahiff asserted that access to land is crucial for supporting the welfare project of eradicating chronic poverty in this country. He called for a more innovative approach to encourage the transfer of substantial tracts for land for redistribution. He singled out two possibilities:

1. basing the compensation paid to land owners on the 'productive value' of their land and not the maximum market price; and
2. implementing a land tax system.

During the discussion, an additional proposal was made to reduce compensation paid to land owners by considering the subsidies previously given to the farmers. It was also suggested that the history of acquisition of the land could be taken into account as a way of reducing the price. These approaches, it was argued, would not fall foul of the Constitution's property provisions. With sufficient political will, they could be explored.

2.3.2 Access to social assistance and the right to food

Ms Isobel Frye, Project Manager at Black Sash, noted that the Constitution guarantees both the right to food and the right of access to social security, including social assistance for those who are unable to support themselves.

While acknowledging the government's commitment to addressing the problem of poverty, Ms Frye argued that the state's long-term structural transformation was adopted and implemented at the expense of those in immediate need. The failure of macro-economic policies such as GEAR to alleviate the plight of the poor is but one example. While commendable, current initiatives and commitments outlined at the June 2003 Nedlac Summit on Growth and Development are also aimed at achieving medium- to long-term results and not to addressing immediate need.

Ms Frye noted that it is widely acknowledged that the best method of poverty relief is to give social assistance in the form of cash, such as social grants for children up to the age of nine and special needs grants (e.g. disability). Eligibility for the grants is determined by a strict means test. However, Ms Frye expressed concern at the fact that a considerable number of unemployed people receive no benefit at all. Some of these qualify for social assistance but due to the logistical or administrative difficulties in the means testing system, they do not get their grants.

Ms Frye noted that the Taylor Report (report of the Committee of Inquiry into a Comprehensive Social Security in South Africa) moved from the concept of 'social security' (social insurance coupled with state funded assistance) to that of

'social protection'. The idea behind social protection is to support people in society in a 'developmental' way instead of only targeting people once they fall outside of the social security system.

A key recommendation of the Taylor Report was a universal income grant for all in South Africa. It was argued that it would provide immediate relief more effectively than structural change could, that most people who experience asset and capabilities poverty are likely to experience income poverty, and finally, that the pressure on government to realise the other socio-economic rights would be lessened if people were able to access their right to social assistance.

Ms Frye noted that the state has a number of flagship feeding or food support programmes, (such as the Primary School Feeding scheme), as well as a number of programmes aimed at promoting people's ability to provide their own food. These are administered by different departments, including Agriculture, Health and Education. This, she argued, highlights the complexity of the right to food and the need for effective co-ordination, both cross-sectorally and across the three spheres of government.

She also pointed out that the sustainability and reach of these programmes is limited and the problem of meeting immediate needs remains.

She argued that a basic income grant would meet the immediate needs of those in severe poverty. The grant could also be targeted by ensuring it is recovered through the tax system from those earning above a particular threshold. On concerns around the potential abuse of the basic income grant, Ms Frye said that cash transfers enables poor families to exercise personal choices and prioritise their needs. Also, experience has shown that the system of food vouchers is not inviolable to abuse. Food vouchers also limit spending power to particular retailers, which limits people's ability to maximise their spending power as consumers.

Providing food parcels, she suggested, is both a logistical nightmare and inherently patronising to the poor.

In conclusion, Ms Frye argued that social assistance through direct cash transfers is the most effective state policy to date in addressing the immediate needs of the poor. The introduction of a universal income grant would simultaneously address these needs, and deliver on the state's constitutional obligations to provide for social security and social assistance.

2.3.3 Access to health care, sufficient water and nutrition

Ms Chantell Witten, Researcher at the School of Public Health (UWC), noted the apparent lack of political will to place nutrition on the agenda, and welcomed the seminar as a step in the right direction.

She noted the various international declarations relevant to health and human rights, and also dealt with the question of who in South Africa is food insecure and why. An illustrative case study was presented and the role of research and advocacy in improving nutrition management and the need for inter-sectoral collaboration to promote food security was discussed.

In highlighting the importance of nutrition she noted that:

- the immediate and long-term biological effects of malnutrition are extensive;
- eliminating mild to moderate malnutrition would reduce child mortality by 50%;
- malnutrition accounts for more disease burden than any other condition globally;
- the effects of malnutrition are intergenerational;
- early malnutrition affects educability; and
- adequate nutrition is a human right.

A first step in dealing with the issue, as identified at the World Food Summit, is to target those in need. A good indicator is the rates of infant mortality. She pointed out that the World Health Organisation has set 'acceptable' standards at under 20 deaths per 1000 births in children up to the age of five. She noted that that certain areas in South Africa fall way outside these parameters – an indicator of severe poverty.

Ms. Witten also identified stunting (being too short for the child's age) and wasting (weighing too little for the age) as other indicators of chronic malnutrition. Not surprisingly, the poor experience the highest incidences of stunting and wasting. She also noted that the poorer a household is, the greater percentage of its income is spent on food.

The results and findings of a case study conducted in Mount Frere Health District, Eastern Cape, were presented by Ms Witten as an example of a successful approach to fighting a high infant mortality rate by an integrated nutrition programme. She explained that the area had an extremely high rate of infant mortality (99 out of 1000) and experienced high levels of poverty.

The 10 Steps Protocol for the Management of Severe Malnutrition (WHO's Protocol) has been implemented and various measures have been put in place to effectively assist malnourished children at the hospital, including heating wards, increasing vitamins and minerals, training staff on the various steps necessary to counter severe malnutrition, and so on. The results of the project were significant – a 50% drop in infant mortality at the hospital.

Ms Witten also noted that a serious problem was that children who would qualify for the child support grant are not accessing it. The reason is people's inability to obtain birth certificates or identity documents from Home Affairs. After some considerable media attention, urgent measures have been put in place to redress the situation and assist those in need to fill out the necessary forms. However, Ms Witten noted with concern that the children most in need were the very ones not able to access the grant.

In the discussion following the presentation, it was strongly felt that the Mount Frere study should be taken further given the detailed information it revealed. The possibility of a test case and the involvement of the Human Rights Commission were suggested.

Ms Witten identified major problems as being a lack of political commitment, a lack of trained support, a lack of money and a lack of inter-sectoral/Ministerial linkages.

2.4 Institutional monitoring and right to food

2.4.1 Institutional monitoring mechanisms for the realisation of the right to food

Commissioner Charlotte McClain-Nhlapo, South African Human Rights Commission (SAHRC), opened her presentation by noting the significance of including socio-economic rights (including the right to food) in the Bill of Rights. She pointed out that these rights are for everyone, including non-nationals living in South Africa.

She discussed the role of the SAHRC in promoting and monitoring the realisation of all human rights in the Constitution and its strategic focal points, such as investigating complaints of human rights abuses, researching, creating awareness of human rights etc.

The SAHRC has not yet received any complaint relating directly to the right to food. It has received many complaints regarding other socio-economic rights such as the right to education, to health, to social security, to water and so on.

She speculated that perhaps the right to food seems so 'obvious' that people feel there is probably nothing that can be done about it or there could be no tangible recourse. She noted that there certainly appears to be a lack of awareness of the right to food as a stand-alone right.

In responding to a query from the floor, Ms. McClain-Nhlapo confirmed that the SAHRC is not intended to operate only reactively (i.e. in response to complaints); it is also intended to be proactive in investigating potential human rights

violations. This is hampered somewhat by the sheer number of complaints received, which naturally tend to be given priority treatment.

She outlined a list of recommendations regarding the right to food:

1. There is a need for better co-ordination. Right to food programmes need to be more effective.
2. The responsibility for the right should not fall solely on the Department of Agriculture. There is a need for collaboration with other government departments.
3. Food-related programmes and projects need to be urgently reviewed and audited. This specifically includes school feeding schemes.
4. Employment must be created to assist poverty alleviation.
5. There need to be incentives to reduce food prices.
6. The state needs to address implementation difficulties.
7. Proper information gathering systems need to be established and better efforts are needed for pro-active mapping of vulnerability and those in desperate need.
8. Progressive realisation must be *planned* for by Departments.
9. Internal monitoring should be put in place.
10. There needs to be better co-ordination in provinces.
11. There needs to be better participation by vulnerable groups.
12. Better financial management is required and the roll over of funds needs to be addressed.

2.4.2 Economic accessibility of food: Monitoring trends in food prices

Professor Johann Kirsten, Chairperson of the Food Price Monitoring Committee, noted that in 2001/2002 there was a dramatic increase in the price of the so-called 'food basket' – the basket of selected items used to monitor the price of food over any period of time. The cost increased by 25% and, given the high numbers of South Africans living in extreme poverty, led to the government establishing the Food Price Monitoring Committee. The Committee, he explained, was tasked with investigating this sudden price increase and to establish if there had been any collusion, unfair business practices or monopolistic tendencies.

He noted that the affordability of food is naturally a crucial concern and, after the big price increase, there was considerable suspicion regarding the role of manufacturers and retailers.

Prof. Kirsten elaborated on the difficulty of trying to identify what an 'unjust price' is. He posed the question: How do you prove a price is unjust? He pointed out that this must also be seen in the context of liberal market capitalism where it is believed that with a free market and no intervention, the 'legitimate' price will be dictated by the market. However, it is accepted, he argued, that capitalism does

not always have a fair result and can end up failing to satisfy the basic needs of the poor and vulnerable.

Although it is generally thought that agribusiness is inherently 'good' and ethical (i.e. it is producing food), the reality is that there are many ethical issues that can arise in the process (e.g. child labour, corruption, unfair labour practices etc.) and Prof. Kirsten elaborated on these during the course of his presentation.

The Committee looked at the chain from farmer to consumer and attempted to factor in all costs in the system. He said that it appears unlikely from this initial investigation that there was any extreme profiteering and there was no immediate evidence of a widening price margin.

He said that it did appear there was potentially some unethical conduct on the part of commodity traders and manipulation of the agriculture futures market of the Johannesburg Securities Exchange (SAFEX). Actual manipulation was difficult to prove but as a preventative measure the JSE took the step of introducing position limits.

Prof. Kirsten noted that people can make the mistake of looking at too short a time period when monitoring food prices. Ideally the graph should be looked at over a few years.

It is one thing to monitor, he argued, but this is a different issue to that of attempting to make food more affordable. He reminded the Seminar that the Committee was not tasked with assessing the actual affordability of the food basket. He warned that involving government in the price of food is a difficult and potentially dangerous issue. Even the awareness that government is merely *looking* at prices (by creating the Committee) may already have had an influence on the market.

2.5 Closure

Ms Gallinetti, Project Co-ordinator, Children's Rights Project, Community Law Centre, identified certain emerging themes) in her closing address (see "Summary of Key Themes"). Apart from these general themes, on a more specific subject – the possibility of a test case on the Mount Frere study She however warned that there could be a risk of perpetuating the confusion regarding the interrelation of children's rights and other socio-economic rights in this case (as was the case in the *Grootboom* case). Also, the case would be about the right of access to food. But if people cannot even access food, how, she asked, will they access the right to litigate about the violation of that right? It is clear that there needs to be a high level of co-ordination between the legal and research fraternity.

She suggested that another possibility is to use the power of the media to highlight the problem. They have a potentially valuable role to play. Ideally they would be able to shift some of the ethical 'blame' to business and retailers so that it becomes a 'social' problem as opposed to just a government one.