

Regulating Food Prices in Tanzania; Free Market against Human Rights

Adrian .F Ndunguru¹

Assistant Lecturer at College of Business Education in Dodoma , Tanzania and Senior Legal Officer Clients and Corporate Affairs at Haki Kwanza Advocates in Tanzania

“The liberalist says competition and price decides in marketplace in principle. No, say the socialist, if that is allowed free rein it places at the disadvantage those of those who do not have very much or who are no longer able to hold their own as well as other can: the old, the weak. This is why the economy cannot be allowed to purely oriented to the market but must also be bound to social obligations”²

I. General Overview

The role of the state in regulating market dynamic is becoming very limited for the reason of ‘*Free market/market led economy policy*’ which requires minimum or no state intervention in commerce. This principle seems to be putting too much pressure on the governments to respect business interests at the expenses of human rights like right to life and food as basic need for survival. Free market policy is becoming a very big challenge in answering the question of the World Summit on Food security which is ‘How to feed the world in 2050 with a population of 9 billion people?’³ This question is relevant to be answered in Tanzanian context because the problem of food security is projected to hit more on developing countries and Sub Sahara Africa because of the fast growing population in those countries.⁴ The Tanzania Human Rights report for 2012 points out that about 1,062,516 in different regions in Tanzania were experiencing food insecurity⁵

The main issue of this article is to examine the balance of interests between free market policy and human rights laws specifically in regulating food prices. The ultimate goal is to see the possibility of having the laws which respects free market economy without affecting human rights like the right to life and food security. In other words, this article will examine the possibility of using human rights as an exception to strict application of the principles free market economy when it is necessary to regulate food prices at the time of critical shortage of food. The states need to respect free market policy and at the same time ensure that its people’s life is protected by ensuring access to basic food.

It is important to examine the legal options for state interventions to free market policy in regulating food prices so as to guarantee poor people access to basic food at the time of critical shortage of food in order to protect their right to life.

II. Conceptual Overview of Free Market and Human Rights

The key words that may not be familiar to some of the readers of this article includes ; free market policy and human rights.

Free market policy is the policy which requires the price of goods to be determined by demand and supply but not the state.⁶ The market itself could determine when to sale goods and what price. For example; when the supply of maize is high in the market the price may be low and when the supply of maize is low the price will be higher.

This Free Market Policy is the brainchild of the super powers through International Monetary Fund (IMF) and the World Bank. It was introduced during the Structural Adjustment age in 1980’s with the view of limiting states control over its market, reducing non tariff barriers in international trade and liberalizing home markets.⁷

¹ LL.B from Iringa University (Tanzania) , LLM in International Trade and Finance Laws from St. Augustine University of Tanzania.

² Joachm Peter, *A Country and Its People; An Introduction to the Federal Republic of Germany*, Altes Schulhaus, Sulzbach, German, pg 34, 35

³ World Summit on Food Security in 2009 at Rome at www.fao.org/wsfs/world-summit/wsfs-challenges

⁴ ‘*Food Security : The Challenges*’ a paper published by Cargill available at www.cargill.com/wcm/group/public

⁵ The Tanzania Human Right Report for 2012 pg 215

⁶ www.investopedia.com/term/f/freemarket

⁷ www.who.int/trade

Human Rights, these are things which every human being deserves to be given by virtue of being born human. i.e. the right to life and protection of one's life, the right to freedom of opinion, the right to freedom of association, the right to equality to mention just few.⁸ Human Rights are also defined as rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.⁹ This article is more concerned with the right to life and its protection.

III. The concept of Human Rights as an Exception to Market Led Economy Policy

There has been a great debate about the co-relation between business and human rights with no success. However, some international trade laws like the General Agreement on Tariff and Trade (GATT 1947) seem to have a little reflection of human rights. It allows flexibility in application of international trade laws and principles to accommodate human rights. According to this convention, a state member to GATT can disregard the principles contained in the convention if it is for the purpose of protecting human life. In other words a state can make internal arrangements to restrict freedom of trade for the view of safeguarding human rights. **Article XX provides that**

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) Necessary to protect public morals;
- (b) *Necessary to protect human, animal or plant life or health* “¹⁰

The existence of this provision can be justified by reference to human right instruments like Universal Declaration of Human Rights which emphasizes on the need to respect and protect the right to life in the following words...

“Every person has the right to life, liberty and security of person”¹¹

The provision of Article 3 stated above provides for the general framework of the right to life. However, for the purpose of protection and enforcement, this right, is interpreted in multiple dimensions. It can be interpreted to mean the right to food, the right to clean water, the right to clean and health environment, the right to protection from natural disasters. In this context, this right will be interpreted to mean the right to food and food security. For the purpose of this article, Article 3 will be read together with Article 25 which reads

“Everyone has the *right to standard of living adequate for the health* and well being of himself and of his family *including food*, clothing, housing and medical care and necessary social service and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”¹²

The provision of Article 25 seem to provided more protection of the right to life, it requires every person to be given the basic amenities like food , shelter and closing in order to survive. All states are called upon to ensure that these things are available to everyone in the community in order to protect the right to life, the question is how?

Tanzania incorporated the Bill of Rights in the Constitution of United Republic of Tanzania in 1984. The constitution of Tanzania also provides for the need to respect the right to life and protect it. According to the constitution...

“Everyone has the right to life and equal protection of one's life under the laws “¹³

The question is, should Tanzania use this right and those created under the Universal Declaration of Human Rights to limit food prices when it is necessary to safeguard the right to life? If yes, the next question is how and

⁸ The Universal Declaration of Human Rights of 1945

⁹ High Commission for Human Rights available at www.ohchr.org

¹⁰ Article XX of the General Agreement on Tariff and Trade (GATT) of 1947

¹¹ Article 3 of the Universal Declaration of Human Rights (UDHR) of 1945

¹² Article 25 of the UDHR

¹³ Article 14 of the Constitution of United Republic of Tanzania

to what extent and what will be the implication to the country profile before the World Bank, International Monetary Fund and the World Trade Organization?

IV. The Area of Divergence between Free Market Economy and Human Rights

The area which brings a contradiction between free market economy and human rights lies in a very complex point that in a normal trade curve, when supply of goods is low demand increases and the price of goods becomes high.¹⁴ This notion implies that, at the time of critical shortage of food the market price should be souring taking into account that there is low supply of food. This is absurd because that is the moment when people are highly in need of food. Interesting question to ask is ‘Can free market policy ensures sustainable supply of food to the poor people at the time of critical shortage of food in order to protect their right to life? This question is interesting in order to answer the World Summit on Food Security question as to ‘How to feed the world in 2050 with a population of 9 billion people?’¹⁵

The policy (Free Market Policy) in a nutshell have tendency of operating on the market forces irrespective of humanitarian points of view. The freedom of doing business based on demand and supply should not be allowed to override every aspect of human rights because if it does, it will even defeat itself because there cannot be trade if human rights are ignored. Trade depends on market who is the people.

In other way round, if free market policy operates at the expense of human rights, states will be defeating their own vow to abide and protect human rights as embodies in several international human rights instruments like the Universal Declaration of Human Rights and their own constitutions which requires them to protect their people.

V. Tanzanian Laws and the duty of the State ensure Food Security

The Constitutions of United Republic of Tanzania imposes a primary duty to the state to protect the right to life. Protection of the right to life has multiple dimensions which includes guarantee of food security, ensure that people have access to clean water and the right to clean and health environment. All these aspects are important to every human being for survival.

The Tanzanian government have adopted number of strategies’ to ensure food security in country. These strategies include making policy and laws which regulates food security in Tanzania. This part will examine the important national laws that Tanzania can justify to intervene free market policy at the time of critical shortage of food to ensure that there is access to basic food by its people.

a) The Food and Nutrition Policy for Tanzania

This is the policy that was made by the government to provide for the general framework in regulating nutrition and food security in the country at large. This policy has clear policy statement about food security issues and the possible causes of food insecurity in Tanzania.

The policy highlights the major causes of food insecurity and points out poor economic situation of the common people in Tanzania as a main cause of shortage of food in the country. People cannot afford to buy food because of extreme poverty.¹⁶ This implies that if demand of food is high price will be souring to the extent that these poor people cannot afford to buy food for their daily meal.

On the other side the policy contains the government strategies to approach the problems of food and nutrition in the country. The policy states that, according to the analysis of various causes of food and nutrition problems, it is clear that their solution requires cooperation and coordination among various sectors concerned with social-economic development in the country. This approach points out to conclusion that it is fair for the government to intervene the economic dynamics through other means apart from the control of demand and supply chain because who ever does business in Tanzania undertakes to bare with state strategies on implementation of its policies on social-economic development happening in the country.

b) The National Health Policy of 2007

This policy puts in place various government policies to monitor and strengthen health services in the country. One of the policy strategies to monitor health services is to ensure availability of adequate food to overcome nutrition related diseases. The policy states that “the ministry of health in collaboration with other sectors shall support action aimed at promoting food security”.¹⁷ This policy states the duty of the government to make every effort to guarantee availability of food to its citizens by involving stakeholders who may include food suppliers in the country. The government can use this policy statement to require stake holders adhere to its demand of

¹⁴ ‘*Food Security: Challenge*’ by Cargill available at www.cargill.com

¹⁵ World Summit on Food Security in 2009 at Rome at www.fao.org/wsfs/world-summit/wsfs-challenges

¹⁶ Statement 29(C)(i) of the Food and Nutrition Policy for Tanzania of 1992

¹⁷ The Tanzania National Health Policy of 2007 statement 3.6 at pg 16

maintaining reasonable prices to guarantee availability of food to its citizens during critical shortage of food rather than let's free market policy to push the prices high while people are in need of food.

c) **The Constitution of United Republic of Tanzania of 1977**

The constitution as a mother law contains some provisions which impose liability on the state to protect people's right to life by ensuring the security of their life on some basic needs like food though not expressly stated. This is construed from the provision which states the right to life in the following words....

“Everyone has the right to life and equal protection of one's life under the laws”¹⁸

The two policies (Food and Nutrition Policy for Tanzania of 1992, National Health Policy of 2003) and the Constitution of Tanzania implies that, it is the duty of the state to take all necessary actions aimed at regulating food prices in order to ensure availability of food to its citizens at every given time so as to protect their right to life as stated in article 14 of the Constitution of United Republic of Tanzania.

VI. The Logic behind Controlling Food Prices in Exceptional Circumstances

Although it is hard to convince the economists that it is possible to have profit with state intervention into free market economy world, I will make few comments which justifies the importance of interrupting the concept of free market policy for the sake of food security during shortage of food.

To protect the right to life

The right to life is paramount of any interest whatsoever. There is no meaning of living if the right to life is not guaranteed even business itself cannot exist. All the human right documents insist on protection human life ranging from the UDHR, ACHPR and the Constitution of United Republic of Tanzania. Even the international trade instruments like the GATT recognise human rights as an exception to strict application of trade rules and principles.¹⁹ All these justify the legality of state intervention to commercial principles like free market policy to guarantee availability of food in protecting human life.

Literatures categorize food as essential goods for human existence. Saleemi, A. defines goods necessary for existence as things essential for preservation of life. According to him,

“These are things essential for preservation of life. Though we cannot make a list of necessities, but what we mean is those things which are absolutely necessary for bare existence. Those necessities are a minimum of food, clothing and a shelter to protect from sun, wind and rain. We cannot exist without those necessities.”²⁰

There are instances in which people loses life in some of the third world countries despite of the fact that they are countries which supplies food to other countries in Africa and the world at large.

To control unfair competition in food service business

Practices of unfair competition are commonly observed in market places to win customers. These practises include creating food scarcity to raise food prices so as to win the market. These practises operate to the disadvantage of customers who are the common poor people. The role of the state here can be to set the laws which allow the state to restrain higher prices which results from unfair practises intended to create scarcity of food to maximize profit.

To Control food prices fluctuations which is not reflected by the change of people's economy

Frequent change of food prices makes availability of foods insecure. The rapid changes in food prices are not reflected with the economic changes, that is to say while food prices are soaring the common people's economy is stagnant. This is a challenge to poor people whose economy is not stable. They may afford food today with no guarantee of whether or not they will be able to afford the same food in the next day. States are therefore obliged to control food prices in order to guarantee sustainability of availability of food to people with unstable economy in order to make them adopt frequent changes of food prices. Many sources points out poor economy to be the source of food insecurity²¹

Saleemi, N.A comments that market price of goods is determined by demand and supply of goods in the market at a given moment. According to him those influences are temporary hence the market price fluctuates from day to day.²² Saleemi goes further when he, observes that ‘the price of agricultural commodities fluctuates rapidly as compared to industrial goods because of the fact that those goods are seasonal hence their supply cannot be adjusted for a long run’. This means that it is dangerous to allow market to control itself in a dynamic environment where we need constant supply of food despite of the fluctuating supply which frequently changes price of goods.

¹⁸ Article 14 of the Constitution of United Republic of Tanzania

¹⁹ Article XX of GATT 1994

²⁰ N.A Saleemi, *Economics Simplified*, Saleemi Publications Ltd, Nairobi, 2010, pg 10

²¹ Statement 29(C)(i) of the Food and Nutrition Policy for Tanzania of 1992

²² *Ibid*, 56

Poor economic situation of Tanzanians

Market led economy policy is very hard to be implemented in a country with poor economy like Tanzania because of extreme poverty which makes people unable to keep abreast with the changing food prices to make them sustain their living. Speaking of extreme poverty, a German author **Lennart Bage** comments that 'sub Sahara Africa is the home of more than 75% of the worlds ultra poor; those living on less than \$ 0.50 a day.²³ This situation is hard for people to afford enough money to buy subsistence food from the free economy market where the prices can raise to an abnormal curve at the time of high demand of food to the extent of necessitating state intervention to regulate the rising food prices.

High Inflation rates

Inflation is one of the factors which affects demand and supply to a greater extent. Inflation refers to falling of the value of the currency of a particular country if compared to the international currency like US dollar. Once this happens, it becomes much cost full to import goods into the country because of the high exchange rates hence pushing prices high.²⁴ This have the impact of affecting food supply in a particular country since the factors of production becomes expensive. This can lead to scarcity of some food products to necessitate the state intervention. The Tanzania Human Rights Report for 2010 shows that Tanzania level of inflation is raising with time from 2006 when it was 4.30 to 2010 when the level of inflation rose to 12.30.²⁵

VII. The Strategies that can be used to Control Food Prices in Tanzania

After establishing the legal and practical justification on the need to regulate food prices to protect human rights, the next question is on the viable method which the state can adopt to perform this task. There are so many criticisms over controlling price by setting price on sell of goods because this amounts to maximum control over the market operation. However, the following mechanisms can be adopted to save the same purpose as longer as the target is accomplished

Enacting a law which imposes special restriction in sale and distribution of food products in Tanzania

The practical implementation of the Food and Nutrition Policy for Tanzania on food security in Tanzania is to enact the Food Security Act which will impose special restriction to those who are dealing with sell and distribution of food products in the country. Since law has binding force, no business man or supplier of food will be above the law which is intended to impose special guideline on sell and distribution of food in Tanzania in order to protect right to life when there is critical shortage of food. The Act imposes special restriction on the food sellers to sell food at a reasonable price when there is scarcity of food or in state of emergence requiring urgent supply of food.

Supporting Farmers to ensure adequate supply of Food in the Country

The law of demand and supply tells us that, when supply of goods in the market is high, the price of goods tends to lower. This is a starting point for the state to guarantee food security in the country. There must be a policy which imposes obligation to the state to support farmers so that they can produce more in order to have enough food supply in the market.

The state can support farmers through subsidies or tax exemption in farm imputes so that farmers can have agricultural tool at affordable cost to boost food production in the market. Also the state can impose legal obligation for every household to have a plot of food crops which can effectively grow within the climatic condition of the particular area.

Economic empowerment of the poor people in the Country

Free market policy can properly work in a country with people whose purchasing power allows them to survive during the demand and supply price adjustment tides. If people have purchasing power, they are able to purchase food whenever prices rise in season of high demand of food. This can be done by taking action of alleviating extreme poverty to the poor people, raising salaries while cutting down taxes to the working class, creating more opportunities for the general community to engage in productive projects to boost their purchasing power.

The Food and Nutrition Policy for Tanzania points poor economic situation of the people at house hold to be one of the factors for food insecurity in the country. The World Development Report for 2014 has listed Tanzania in a low income country some thing which implies that most of its population are living below 1 USD therefore it is hard for them to afford decent meal for their survival.²⁶

Controlling Inflation Rates

²³ B. Lennart, 'Feeding a growing population' in *Development and Cooperation International Journal*, Volume 35, Issue No. 5 of 2008

²⁴ <http://www.investopedia.com/university/inflation/inflation1.asp> accessed on 26 May 2014

²⁵ The Tanzania Human Rights Report for 2010 at pg 147

²⁶ The World Development Report for 2014

Inflation is one of the important factors which affect food prices in many countries. When inflation is high, the food prices also rise because the costs of production become high. The role of the state here is to make workable monetary policies which will keep inflation low so that the money value and supply of goods in the market can correspond to ensure that food prices are reasonable.

In Tanzania, the Tanzania Human Right Report for 2010 indicates that the level of inflation rate has been rising for five years since 2006 (4.30), 2007 (5.9), 2008 (7.0), 2009 (10.30) to 2010 (12.30).²⁷ This trend shows the probability of the level of inflation growing worse with time to the extent of affecting the purchasing power of people in some years to come. The government must revisit its monetary policies in order to control the rate of inflation so as to ensure that food products are available at reasonable prices.

Integrating the right to food in the Constitution of United Republic of Tanzania

The right to food security is not expressly stated in the constitution of United Republic of Tanzania hence there is no pressure on the government to implement this right. If the right to food was incorporated in the constitution, could have been enforced by requiring the state to monitor food prices so that it can meet its obligation of guaranteeing the right to food. Currently, the state can supply food during state of emergency just as privilege to the victims but not as their right.

VIII. Conclusion

The right to food is paramount in protecting right to life. The right to life is meaningless if there is no guarantee of food security. This can be justified from the fact that, food is considered as essential goods for human existence. This is observed by Saleemi. A., when he observed that essential goods are “things essential for preservation of life. Though we cannot make a list of necessities, but what we mean is those things which are absolutely necessary for bare existence. Those necessities are a minimum of food, clothing and a shelter to protect from sun, wind and rain. We cannot exist without those necessities.”²⁸

The state has a primary obligation of protecting right to life by ensuring adequate supply of food to its esteem citizens. This can be done by using several means, one of the possible methods is by controlling food prices through enacting laws and policy which imposes special restrictions to the food suppliers requiring them to maintain reasonable prices during the time of critical shortage of food. Also this can be done by empowering people economically to improve their purchasing power, to control inflation rates, and integrating the right to food security in the constitution of united republic of Tanzania.

Human Right protection is an exception to strict application of the principle of free market policy. States can interfere the law of demand and supply in order to guarantee the right to life. This can be proved by Article XX of GATT which allows states to interfere with trade principles when it is necessary to protect human and plant life, Article 14 of the Constitution of United Republic of Tanzania which requires Tanzania to take necessary measures to protect right to life as protecting right to food.

It is impossible for Free Market policy to exist on its own for the purpose of protecting human rights like the right to food because some people in developing countries like our does not have the economic capability to adjust themselves with the changes of demand and supply especially when the law of demand and supply pushes prices high. This is properly observed by Joachim Peter when he says “The liberalist says competition and price decides in marketplace in principle. No, say the socialist, if that is allowed free rein it places at the disadvantage those of those who do not have very much or who are no longer able to hold their own as well as other can: the old, the weak. This is why the economy cannot be allowed to purely oriented to the market but must also be bound to social obligations”²⁹

Since Tanzania has background of socialism ideology, it fits in the exception explained by Joachim Peter in the preceding paragraph. According to those who criticises strict application of free market policy, if demand and supply is allowed to adjust prices in the market, it operates to the disadvantage of the poor who cannot afford to keep pace with the changes of demand and supply. Their conclusion is that economy cannot be allowed to purely oriented to the market but must also be bound to social obligations”³⁰

IX. Recommendation

The state is the one with primary obligation of ensuring adequate food supply in the country so as to protect human life at the time of critical shortage of food. This can be achieved by the following recommendation;-

²⁷ The Tanzania Human Right report for 2010

²⁸ N.A Saleemi, *Economics Simplified*, Saleemi Publications Ltd, Nairobi, 2010, pg 10

²⁹ Joachim Peter, *A Country and Its People; An Introduction to the Federal Republic of Germany*, Altes Schulhaus, Sulzbach, German, pg 34, 35

³⁰ Ibid, pg 34, 35

- a. Incorporating the right to food in the constitution of United Republic of Tanzania so that it can be used to justify state intervention during critical shortage of food by regulating food prices through the methods stated in the main text
- b. Making a law in the name of Food Security Act which states special guideline to the state and food supplier for the purpose of controlling free market police to protect the right to food security in the country
- c. Economic empowerment of farmers to ensure adequate supply of food in the market so as to ensure adequate supply of food to the general community at all time, empowerment can be done by ensuring employment to the people, subsidies to farm inputs or tax exemption to farm inputs and implementing measures of alleviating poverty in the country .
- d. To use Human rights as exception of controlling food prices during critical shortage of food as per article XX of GATT

Bibliography

Books

- Arthur, O.S., *Urban Economics*, (4th E.d), Irwin McGraw-Hill, San Francisco, 2000
Bradly, R.S., *The Economy*, (5th E.d), McGraw-Hill Inc, New York, 1991
Campbell.R.M. & Stanley.L.B., *Economics: Principles, Problems , Policies.*, (16th E.d), McGraw-Hill Irwin, New York, 2005
Joachm Peter, *A Country and Its People; An Introduction to the Federal Republic of Germany*, Altes Schulhaus, Sulzbach, German
Michael,P.T., *Economics for a Developing World*, (2nd E.d), Longman Group Ltd, Essex Uk, 1982
Michael.P.T & Stephen. C.S., *Economic Development*, (10th E.d), Pearson Education, , Essex, 2009
Robert. F & Ben. B., *Principles of Economics*, McGraw –Hill Irwin, New York, 2001
Saleemi. N.A , *Economics Simplified* , Saleemi Publications Ltd, Nairobi ,2010

Articles

- Lennart. B , ‘Feeding a growing population’ in *Development and Cooperation International Journal* , Volume 35, Issue No. 5 of 2008

Laws and Policy

- The Constitution of United Republic of Tanzania of 1977
The General Agreement on Tariff and Trade (GATT) of 1947
The Universal Declaration of Human Rights of (UDHR) of 1945
Tanzania National Health Policy of 2007
The Food and Nutrition Policy for Tanzania 1992

Reports

- Tanzania Human Right Report for 2010
Tanzania Human Right Report for 2012
The World Development Report for 2014