

**ENFORCEMENT OF THE RIGHT TO FOOD IN KENYA: SHIFTING FOCUS FROM  
RURAL POOR TO THE URBAN POOR**

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**DECLARATION**

I, **VELLAH KEDOGO KIGWIRU**, do declare that this is my original work and it has not been submitted and is not currently being submitted for a degree in any other University.

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## TABLE OF CONTENTS

DECLARATION .....	i
ACKNOWLEDGEMENTS .....	ii
DEDICATIONS.....	iii
TABLE OF CONTENTS.....	iv
ACRONYMS.....	vii
LIST OF LEGAL INSTRUMENTS.....	viii
ABSTRACT.....	ix
CHAPTER ONE .....	1
INTRODUCTION .....	1
1.1 Background to the Study.....	1
1.2 Statement of the Problem.....	4
1.3 Conceptual Framework.....	5
1.4 Theoretical Framework.....	7
1.5 Literature Review.....	12
1.51 Introduction.....	12
1.52 Poverty and High Food Prices. ....	13
1.53 Right to Food Violations.....	17
1.6 Objectives of the Study.....	19
1.6.1 Main objective .....	19
1.6.2 Specific objectives .....	19
1.7 Justification of the Study .....	19
1.8 Research Hypothesis.....	20
1.9 Research Questions.....	21
1.10 Scope and Limitation .....	21
1.11 Research Methodology .....	21
1.12 Chapter Breakdown .....	25
CHAPTER TWO .....	26
THE RIGHT TO FOOD IN INTERNATIONAL HUMAN RIGHTS LAW .....	26

2.1 Introduction.....	26
2.2 The Philosophical Foundations of the Right to Food in International Human Rights Law .....	27
2.3 The Historical Background of the Right to Food.....	29
2.4 Human Rights Based Approach to Food.....	33
2.5 The Normative Content of the Right to Food .....	36
2.5.1 Availability .....	37
2.5.2 Adequacy .....	37
2.5.3 Cultural or Consumer Acceptability .....	37
2.5.4 Accessibility.....	38
2.6 Obligations of State Parties towards Realising the Right to Food .....	39
2.6.1 The Three Obligations .....	39
2.6.2 Progressive and Immediate Obligations.....	41
2.6.3 International obligations .....	41
CHAPTER THREE .....	43
A CRITICAL ANALYSIS OF KENYA’S LEGAL FRAMEWORK ON THE RIGHT TO FOOD: CHALLENGES FACING ITS REALIZATION .....	43
3.1 Introduction.....	43
3.2 Constitutional Protection of the Right to Food in Kenya.....	44
3.3 Achieving Right to Food in Kawangware Slum .....	45
3.4 The Right to Food Violations in Kawangware Slum .....	51
3.5 Impact of the Violations of the Right to Food in Kawangware Slum.....	53
3.5.1 Children.....	53
3.5.2 Women.....	55
3.5.3 Youth.....	57
CHAPTER FOUR.....	59
HOW TO PROGRESSIVELY REALISE THE RIGHT TO FOOD IN KENYA’S URBAN SLUMS .....	59
4.1 Introduction.....	59
4.2 Recommendations .....	60
CHAPTER FIVE .....	66
CONCLUSION.....	66
5.1Chapter Summary .....	66
5.2 General Conclusions .....	66

APPENDICES .....	68
BIBLIOGRAPHY .....	74

## ACRONYMS

CoK	Constitution of Kenya 2010
FAO	Food and Agriculture Organization of the United Nations
GC12	General Comment 12
ICESCR	International Covenant on Economic Social and Cultural Rights of 1966
KEBS	Kenya Bureau of Standards
MDG	Millennium Development Goals
NGOs	Non-Governmental Organizations
UDHR	Universal Declaration of Human Rights of 1948
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Commission
VAT	Valued Added Tax
VG	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
WFS	World Food Summit



## **LIST OF LEGAL INSTRUMENTS**

### **Kenya**

1. Government of Kenya, Constitution of the Republic of Kenya, 2010.
2. Government of Kenya, Value Added Tax Act, Legal Notice no 35 of 2013.
3. Government of Kenya, Basic Education Act, Legal Notice no 14 of 2013.
4. Government of Kenya, Social Assistance Act, Legal Notice no 24 of 2013.
5. Government of Kenya, Food Security Bill, 2014.

### **International Instruments**

1. The United Nations Committee on Economic, Social and Cultural Rights, General Comment 12, 1999.
2. United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966.
3. The United Nations, United Nations Charter, 1945.
4. The United Nations General Assembly, Universal Declaration of Human Rights, 1948.
5. FAO, Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security

## ABSTRACT

The right to food is a fundamental right recognised under international human rights law. From its inception in 1948, the right to food aimed at protecting the most vulnerable in the society. To counter hunger and malnutrition the world realised that a human right approach had to be adopted. However despite the increased attention that the right to food has received many people continue to suffer and die of hunger. This comes at the time when the world has enough food to feed its population.

The vulnerable in the society either lack the means to produce or procure food from the market. Poverty and hunger are no longer a predominately rural phenomenon. Due to lack of job opportunities and food shortages in rural areas there is massive migration of the rural poor to the urban areas. This has resulted into mushrooming of overpopulated slums, with residents living in extreme poverty in developing countries.

This research focuses on the urban poor. It studies urban poor in Kenyan slum. It looks at the challenges urban poor face in accessing that basic commodity; food. It identifies the right to food violations and the impact it has on that society. This paper finally discusses recommendations that should be adopted to ensure that the right to food amongst the urban poor is realised globally.

It is based on the assumption that amongst the vulnerable groups in the world; the urban poor have been neglected. Various states, stakeholders and Non-Governmental Organisations (NGOs) have focused so much on rural poor in the realization of the right to food. This research shall therefore focus on urban poor who either lack the resources to produce food or the income to procure it.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Study

The human right to food has been recognised in numerous texts at the international, regional and national level.<sup>1</sup> It was recognized for the first time under article 25 of the 1948 Universal Declaration of Human Rights (UDHR).<sup>2</sup> Since its inception in 1948 the right to food has received a lot of attention as a consequence of the food crisis in the world. It is also enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>3</sup>

The United Nations Commission on Human Rights (UNCHR) adopted a resolution on 11th April 1998 on the right to food.<sup>4</sup> UNCHR reaffirmed that hunger constituted an outrage and a violation of human dignity and, therefore, required the adoption of urgent measures at national, regional

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<sup>1</sup>At the international level the right to food has been recognized under the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. At the regional level, there are the 1981 African Charter on Human and People's Rights and the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador". At the national level, national constitutions either recognize explicitly the right to food or acknowledge other basic right that includes the right to food, such as the right to life.

<sup>2</sup>Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR). Article 25 UDHR provides that, "Everyone has the right to a 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 services, 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".

<sup>3</sup>International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR). Article 11, governments have committed themselves to taking all measures necessary to ensure, "the right of everyone to an adequate standard of living for himself and his family, including adequate food".

<sup>4</sup> United Nations Human Rights Commission, 'Fact Sheet 34 --The Right to Adequate Food' <<http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>> accessed 28 January 2014.

and international levels for its elimination.<sup>5</sup> It's upon this reality that this research is based. People die from starvation, not because there is no food, but because they cannot access the food.

The Committee on Economic, Social and Cultural Rights (CESCR) issued its General Comment 12 (GC12), which defined the right to food to imply the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.<sup>6</sup> In 2004, the United Nations Food Agricultural Organization (FAO) adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (VG), providing practical guidance to States in their implementation of the right to adequate food.<sup>7</sup> Although the guidelines are not legally binding, they however provide a practical way which, if adopted by states, will lead the way towards implementation of the right to food.

In spite of this growing recognition and also the solemn commitments made by leaders of the world at the World Food Summit (WFS) in 1996 and at the UN Millennium conference in 2000 to halve the number of hungry people, the stark fact is that there are more hungry people now than at the time of the WFS.<sup>8</sup> This is a stark indictment of the efforts made by world leaders to

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<sup>5</sup>University of Minnesota, Human Rights Library, 'Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003)' <<http://www1.umn.edu/humanrts/gencomm/escgencom12.htm>> accessed 13 November 2013.

<sup>6</sup> General Comment 12 <<http://www1.umn.edu/humanrts/gencomm/escgencom12.htm>> accessed 13 November 2013.

<sup>7</sup> The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food were adopted in 2004. The Voluntary Guidelines represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization. The objective of the Guidelines is to provide practical guidance to States in their progressive realization of the right to adequate food in the context of national food security.

<sup>8</sup> FAO, *The Right to Food in Theory and Practice* (Rome 1998).

fulfil their commitments and gives ground for doubt as to whether the commitments were seriously intended to be followed up on.

Those deprived of the right to food are normally the vulnerable groups and the hungry poor.<sup>9</sup> Poverty-stricken individuals living in urban areas lack access to food through market procurement. The high cost of living and high food prices poses as a major challenge and hindrance to this very basic of human needs. The urban poor have not been given attention by governments in protecting, fulfilling and respecting their right to food. There is an assumption that poverty is predominantly with the rural poor. The only resources available to the urban poor are capital and labour. This can only be harnessed through employment. Yet a majority of urban poor are unemployed and lack the income to procure food.

The right to adequate food and to be free from hunger has been recognised in the Kenyan constitution under Article 43 on economic and social rights.<sup>10</sup> The proposed research aims at translating the right to food from a paper-based right to a fully-fledged right. This research will be based on the core elements of the right to food under international law.<sup>11</sup> The question whether a human right based approach of eradicating poverty and addressing the freedom from hunger is an effective one will be inquired into.

The research will identify ways and measures that the government can implement to ensure that the urban poor access adequate food of good quality, nutritionally. It is expected that at the end of the study, a solution will be found in addressing the challenges facing the implementation of the right to food with regard to the urban poor.

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<sup>9</sup>U Kracht 'Who are the Poor?'(Background paper for Social Forum of the UN Sub-Commission on the Promotion and Protection of Human Rights, First Session, Geneva 25-26 July 2002).

<sup>10</sup>Its provided under Article 43 (1, c ), that every person has the right to be free from hunger, and to have adequate food of acceptable quality.

<sup>11</sup> The core elements of the right to food are accessibility, adequacy, acceptability and availability.

## 1.2 Statement of the Problem

A serious impediment to the full realisation of the right to food in Kenya is the pervasive economic and social inequalities and political exclusion of people suffering from food insecurity in the country.<sup>12</sup>The effects of hunger in urban areas are adverse hence the need for urgent measures to address them.

The urban poor struggle to feed themselves and their families. Yet they wake up every morning in search of that one basic commodity: food. They are forced to compromise enjoyment of other rights in order to afford food. Children miss school because the money that would have otherwise been used to pay fees is used to buy food. In some instances, children are used as labour to shore up their parents' incomes instead of going to school or they are simply not strong enough to attend school. In urban areas, it is not uncommon to find minors selling commodities by the roadside in order to help their parents procure food. In more serious cases, minors engage in prostitution in order to earn an income to enable them buy food.

The urban poor in Kawangware slum struggle to feed themselves and their families. Food prices are too high making it not affordable. It forces most of the urban poor to compromise their right to food in order to meet other basic needs such as shelter. The key challenge they face in accessing food is lack of enough income forcing some of them to change diet in order to buy the cheapest food. The cost of living is also high. Responded 23 stated that:

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<sup>12</sup> FIAN International and RAPDA: *Kenya's hunger crisis –The result of right to food violations* (Joint Report)(February2010)<[http://www.rtfn-watch.org/uploads/media/Kenya\\_s\\_hunger\\_crisis\\_-\\_the\\_result\\_of\\_right\\_to\\_food\\_violations.pdf](http://www.rtfn-watch.org/uploads/media/Kenya_s_hunger_crisis_-_the_result_of_right_to_food_violations.pdf)> accessed 13 November 2013.

The key challenge I face in buying food is the prices. The prices of food have really gone up. Even where you can buy some food, you need charcoal, kerosene or even water in order to prepare that food. The price of kerosene has also gone up. Despite all this we also have other needs to take care of. I have to pay fees for my children and take care of my family. One of my children is in class eight joining form one next year. High school fees in Kenya are expensive. Also house rent has increased. In this case I can no longer feed my family the way I would like. When you are paid salary every end month you have to budget fare, food, rent and other responsibilities. At the end of it all you can't save.

The slums are overpopulated. There is no land to cultivate. The cost of living is high. The state has failed to recognise this group of people; instead it has enacted laws that have increased the cost of living. Such policies and laws have denied the urban poor the ability to procure food. This research is based upon the realisation that the urban poor have been excluded from enactment of policies that affect them. The problems arising are as result of the gross effects of lack of food in slums. This has had negative impact on development of the country. The only way to right this wrong will be through a human right approach. This study is therefore important because the suggested reforms are intended to provide a legal and policy framework to govern these rights to food violations.

### **1.3 Conceptual Framework**

The term 'poverty' is a touch word, not only in Kenya, but around the world. There is no single definition of poverty. Poverty is a complex multidimensional phenomenon. The dictionary defines poverty as the state or condition of having little or no money, goods or means of support;

condition of being poor.<sup>13</sup> Definition of poverty and its causes vary by gender, age, culture, and other social and economic contexts. This research will be based on the World Bank definition of income poverty and the UN Economic and Social Council definition of human poverty.

World Bank Organisation describes poverty as:

The most commonly used way to measure poverty is based on incomes. A person is considered poor if his or her income level falls below some minimum level necessary to meet basic needs. This minimum level is usually called “poverty line”. What is necessary to satisfy basic needs varies across time and societies. Therefore, poverty lines vary in time and place, and each country uses lines which are appropriate to its level of development, societal norms and values.<sup>14</sup>

According to the World Bank, people living on less than US \$1 per day are living in extreme poverty, and people who earn less than US\$2 a day are in moderate poverty.<sup>15</sup> This type of poverty is referred to as ‘income poverty’. Income poverty is usually used to determine poverty threshold or poverty line.

Human poverty on the other hand encompasses the deprivation at material level such as lack of proper diet, clothing, shelter and work.<sup>16</sup> Whereas income poverty is based on only one indicator,

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<sup>13</sup> Ibid.

<sup>14</sup> World Bank, ‘Measuring Poverty at the Country Level’

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:22397595~piPK:2:>  
accessed 26 November 2014.

<sup>15</sup> World Bank, ‘Understanding Poverty’

<http://web.worldbank.org/WBSITE?EXTERNAL?TOPIC?XETPOVERTY/0,,contentMDK:20153855~menuPK:373757~pagePK:148956~piPK:216618~theSitePK:336992,00.html> accessed 26 November 2014.

<sup>16</sup> Ibid.



human poverty encompasses the multiplicity of dimensions associated with poverty.<sup>17</sup> The UN Economic and Social Council describe human poverty as:

... a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to, not having land on which to grow one's food or a job to earn one's living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation.<sup>18</sup>

#### 1.4 Theoretical Framework

This research will be underpinned by the natural law theory, the human rights theory and the interest theory. The natural law theory emphasizes law to be grounded in justice and the common good.<sup>19</sup> The defining characteristics of natural law theory derive from the nature of humanity and postulate that true law must not only reflect the nature of humanity and answer to a 'higher law' (the divine law), but it must also derive from and respect absolute fundamental rights inherent in humanity.<sup>20</sup> The natural law theorists identify law as universal, eternal and

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<sup>17</sup> Joseph Rowntree, 'Hunger and Poverty: Definitions and Distinctions' 2008.

<sup>18</sup> United Nations Economic and Social Council (ECOSOC), 'Statement of Commitment for Action to Eradicate Poverty Adopted by Administrative Committee on Coordination' May 1998, [www.unsystemceb.org/statements/eco5759](http://www.unsystemceb.org/statements/eco5759) accessed 26 November 2014.

<sup>19</sup> Nigel E Simmonds, *Central Issues in Jurisprudence: Justice, Law and Rights* (3<sup>rd</sup> edn, Sweet and Maxwell 2008).

<sup>20</sup> OJ Paul, *Key Issues in Jurisprudence: An In-depth Discourse on Jurisprudence Problems* (1st edn, Law Africa 2006).

unchanging.<sup>21</sup> The classical traditional natural law theory stemmed from Aristotle and Aquinas and its modern proponent was John Finnis.

Thomas **Aquinas** identified four different kinds of law: eternal law, natural law, divine law and human (positive) law.<sup>22</sup> To him natural law determines positive law. Positive laws which are just have the power of binding on conscience.<sup>23</sup> The right to food is currently codified in international instruments and national legislations, hence a positive law. The right to food is recognised as a fundamental right inherent in human beings.<sup>24</sup> States must aim at ensuring its realization by discharging its obligations under international law.

**John Finnis** argued that in doing legal theory one should not take the perspective of those who merely accept law as valid; the theory should assume the perspective of those who determine law as binding because they believe that valid laws create moral obligations.<sup>25</sup> Finnis came up with what he termed as “objective goods”.<sup>26</sup>

FAO has even recognised that the right to food can also be enforced through the VG that it enacted in 2004. It is a progressive right that requires every state to put in place adequate measures towards realizing it. The function of the positive law on the right to food only adds value to our set of moral obligation if the rules enacted are consistent with moral principles and promulgated by a party acting within its authority. The fact that the right to food has been legalised in international instruments and national constitutions does not mean that states will

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<sup>21</sup> Ibid.

<sup>22</sup> B Brix, *Jurisprudence: Theory and Context* (4th edn, Sweet and Maxwell 2006) 67.

<sup>23</sup> A just law is one which is consistent with natural law- that is, it is ordered for the common good.

<sup>24</sup> Article 11(2), ICESCR.

<sup>25</sup> JM Finnis, *Natural Law and Legal Reasoning* (38 Cleveland State Law Review 1990).

<sup>26</sup> John Finnis lists seven basic goods: these are life, knowledge, play, aesthetic experience, friendship, practical reasonableness and religion.

take steps to implement the right to food per se. Political will and the adoption of natural principles is vital.

The importance attached to the natural law theory is that it aims at protecting human dignity. Legal positivism which assumes that all authority stems from what the state and officials have prescribed argues that the source of human rights is to be found only in enactments of a system of law with sanctions attached to it.<sup>27</sup> Although the right to food has been codified in legal instruments justifying it some States have not ratified such instruments or constitutionalized the right to food yet right to food violations are rampant in their territories. An authority may embody concepts which do not further human rights, as legal positivism encourages the belief that law must be obeyed no matter how immoral it may be or however if it disregards individual human rights.<sup>28</sup> Although this research recognizes the importance of a legal framework on the right to food through legal positivism theory, State processes must be brought to bear an approach of protecting human rights. Positivism theory also undermines an international basis for human rights because of the positivist emphasis on the supremacy of national sovereignty without accepting the restraining influence of an inherent right above the state.<sup>29</sup> In this regard rules of international law are seen as merely rules of positive morality set or imposed by opinion.

The modern human right theory replaced the notion of natural law theory and natural rights theory in the twentieth century.<sup>30</sup> The focus of the human right theory is on the life and dignity of

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<sup>27</sup> Jerome M Shestack, 'The Philosophical Foundations of Human Rights' in Janusz Symonides *Human Rights: Concept and Standards* (Dartmouth Publishing Company Limited 2000).

<sup>28</sup> During the Nazi Regime in Germany the law against Jews was obeyed as a positive law despite its abhorrent to moral law.

<sup>29</sup> Ibid n 21.

<sup>30</sup> GJ Walters, 'Human Rights Theory and Practice' <<https://ustpaul.ca/upload-files/EthicsCenter/HumanRightsTheory&Practice-Walters.pdf>> accessed 10 January 2014.

human beings.<sup>31</sup> Human rights possess a number of important characteristics such as being universal, inalienable, legally binding, and based on the inherent dignity and equal worth of all human beings.

The human rights theory is the best theory that explains the right to adequate food. This is because the characteristics underlying the human right to food include accountability, non-discrimination, participation, transparency, human dignity, rule of law and empowerment.<sup>32</sup> The poor have to be empowered in order to be able to afford food and hence enjoy the right to food.

The human right to food is recognised as universal hence states have a legal and moral obligation to enforce it. The human rights theory requires states to take steps within their maximum available resources to ensure that human rights are enjoyed by persons within their jurisdiction. The human rights theory confers the state with the obligation to protect, respect and fulfil all human rights.<sup>33</sup>

Human rights theory encapsulates that each human right has specific content and claims. It is not just an abstract slogan. They are corresponding obligations of the duty bearer who has traditionally been considered to be the state.<sup>34</sup> In regard to the right to food, the state has the obligation to protect, respect, fulfil and guarantee without discrimination.<sup>35</sup>

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<sup>31</sup> Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers 2003).

<sup>32</sup> UN Commission for Human Rights 'Brief Note-- from Charity to Entitlement: Implementing the Right to food in Southern and Eastern Africa Brief Note by UN special rapporteur on the Right to Food' (2012) UN Doc/EN/BN.6/2012/5.

<sup>33</sup> M Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers 2003).

<sup>34</sup> Ibid.

<sup>35</sup> UNGA 'Report by the Special rapporteur of the Commission of Human Rights on the Right to food, Jean Ziegler' 57<sup>th</sup> Session (27<sup>th</sup> August 2002) UN DOC A/57/356.

The right to food is therefore based on the human rights approach for its effective realisation. This theory will be important in this study as it will explain the state's obligation to protect, respect and fulfil the right to food. The human rights theory will also explain the evolution of the right to food under the international human rights law. The universality of the human right to food will also be looked into through the prism of the various elements as propounded in the human rights theory.

The interest theory is grounded in the view that the notion of "equal freedom" is empty, and that it is impossible to derive any principles or rights from the bare idea of a realm where individuals' wills are jointly compatible.<sup>36</sup> It claims that the function of rights is to preserve the right-holder's interests.<sup>37</sup> The well-being of the right holder should be protected.

**Leif Wenar**<sup>38</sup> asserts that the interest theory holds that the function of rights is to promote right-holders' interests in the general case. Since the interest theory turns on the right-holder's interests instead of her choices, it can recognise rights as unwaivable claims such as the claims against enslavement and torture. The interest theory also has no trouble viewing children and incompetent adults as right-holders, since children and incompetent adults have interests that rights can protect.<sup>39</sup>

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<sup>36</sup> NE Simmonds, *Central Issues in Jurisprudence* (3rd edn, Sweet & Maxwell 2008).

<sup>37</sup> M Hastings, 'For an Interest Theory Conception of Human Rights' <[http://www.academia.edu/3023745/For an Interest Theory Conception of Human Rights](http://www.academia.edu/3023745/For_an_Interest_Theory_Conception_of_Human_Rights)> accessed 27 January 2014.

<sup>38</sup> L Wenar 'The Nature of Rights' (2005) <<http://eprints.whiterose.ac.uk/1619/1/wenar18.pdf>> accessed 27 January 2014.

<sup>39</sup> *Ibid.*

**Joseph Raz**,<sup>40</sup> on the other hand rejects the view that a right is a correlative of a duty: he regards rights as representing weighty interests that might justify the imposition or recognition of various duties, liabilities and other juridical consequences.

This study will be centred on the interest theory as opposed to the will theory as the interests of the urban poor will be emphasised. It focuses on the interests of the poor in accessing food through a human-right based approach. The right to food is intended to protect the interests of the vulnerable in the society. The will theory as expounded by HLA Hart equates rights with a party's being given by the law exclusive control, more or less extensive, over another person's duty so that in the area of conduct covered by that duty the individual who has the right is a small scale sovereign to whom the duty is owed.<sup>41</sup> The will theory however seems to exclude or treat as lesser forms of rights inalienable right or rights held by infants or other legally incompetent persons.<sup>42</sup> The will theory is grounded in Kantian picture of society, in which principles of justice and the rules of society can be derived from reason and all citizens have equal rights.<sup>43</sup>

## 1.5 Literature Review

### 1.51 Introduction

There exists a lot of literature in international law on what constitutes the right to food. Many of the scholars that propound for the right to food have defined what the right to food is and how to address its violations. However in Kenya most of the literature is based on food security. Very little has been written on the human-right approach in addressing hunger-related problems.

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<sup>40</sup> Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986).

<sup>41</sup> Brian Bix, *Jurisprudence: Theory and Context* (4<sup>th</sup> edn, Sweet and Maxwell 2006).

<sup>42</sup> Ibid.

<sup>43</sup> Nigel Simmonds (2008).

Kenya in adopting its constitution in 2010, it's the second country in Africa, after South Africa, to constitutionally recognise this right.<sup>44</sup> Despite its recognition in 2010, the right to food in Kenya has not been implemented and its violations persist. There exists a danger that Kenya may not reach the MDG target in eradication of poverty and hunger.<sup>45</sup> This study aims at providing the way forward in the progressive realisation of the right to food and enriching the attendant literature. The available literature only provides for evolution of right to food and its content. However it does not provide a practical guidance on how it can be implemented. It focuses so much on the rural poor neglecting the urban poor who in the first instance lack the resources to produce food.

### **1.52 Poverty and High Food Prices.**

In order to realise the enjoyment of the right to food people must be able to access productive land or natural resources to produce food. In cases where people cannot access productive land or other natural resources, then they should be in a position to procure it from the market. Kent<sup>46</sup>, recognises the right to food as a very fundamental right for the survival of the human being. He asserts that everyone should have a right to adequate food. Kent sees hunger as a deeply political problem. Too many people do not have adequate control over local resources and cannot create the circumstances that would allow them to do meaningful, productive work and be able to provide for themselves. He makes it clear that feeding people will not solve the problem of hunger, for feeding programmes can only be a short-term treatment of a symptom, not a cure.<sup>47</sup>

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<sup>44</sup> UN Commission for Human Rights 'Brief Note-- from Charity to Entitlement: Implementing the Right to food in Southern and Eastern Africa Brief Note by UN special rapporteur on the Right to Food' (2012) UN Doc/EN/BN.6/2012/5.

<sup>45</sup> Ibid.

<sup>46</sup> G Kent, *Freedom from Want; The human right to adequate food* (Georgetown University Press 2005).

<sup>47</sup> Ibid.

The real solution lies in empowering the poor. Governments, in particular, must ensure that their people face enabling conditions that allow citizens to provide for themselves. If, as Kent argues, everyone has a human right to adequate food, it follows that those who can empower the poor have a duty to see that right implemented, the obligation to be held morally and legally accountable and seeing to it that that right is realised for everyone, everywhere. This literature will be relied on to enrich this research. Kent focuses on the poor and this is what this research focuses on

Kent also asserts that a child may be born into a poor country, but not a poor world.<sup>48</sup> If global human rights are to be meaningful, they must be universal. He assesses the nature and depth of the global responsibility to provide adequate food to the world's population. While governments have a primary responsibility for assuring the right to food for people under national jurisdictions, the global community is also responsible. However Kent fails to show how global obligation can be realised. He fails to answer if a country that has excess food can be liable if it fails to provide that food to another nation that is starving. The question is who is obligated? Is that obligation legal and can you compel a state to provide food to another country as a global obligation? How can you force states that have not ratified the legal instruments on the realisation of right to food to be responsible? It is to these questions that this research will provide answers. This research also addresses the issue of global obligation for the right to food amongst urban poor.

Koenig asserts that, the defence and promotion of economic, social, and cultural rights must involve a comprehensive approach to human rights, including the human right to food and sound

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<sup>48</sup> G Kent(ed), *Global Obligations for The Right to Food* (Rowman & Littlefield Publishers 2008).



nutrition.<sup>49</sup> That there must be a systemic analysis of the necessary conditions for the progressive realization to the human rights to food, housing, health care, education and work. He argues that the right to be free from life-afflicting hunger is the most fundamental and the most obviously universal of all human rights; for if this human right is not guaranteed all others are *ipso facto* made irrelevant.<sup>50</sup> In his article he asserts that people, especially those whose human rights are in dire need of recognition, do not know that they can claim these rights, and much less establish procedures for advocacy and actions for social and economic justice.<sup>51</sup> He however does not provide an elaborate way in which these advocacy procedures can be established.

**Eide** explores the fundamental reason why current globalisation efforts have been opposed by so many: globalisation in its initial formulation meant concern for poor and oppressed people throughout the world, and not just reducing the barriers to trade and corporate investment.<sup>52</sup> The process of globalisation has become a major source of conflict. The major actors in the process to globalise the markets have failed to respect and ensure economic and social rights, including the right to food and the right to be free from hunger.<sup>53</sup> However he fails to address the role of the poor in the globalisation process. The right to food recognises the individual as the subject, not as the object. The state will only provide food in instances where individuals cannot provide for themselves.

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<sup>49</sup> S Koenig, 'Creation of Human Rights Communities as a Means to Fight Hunger and Malnutrition' <<http://www.worldhunger.org/articles/global/foodashumrgt/koenig.htm>> accessed 15 November 2013.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> A Eide, 'The Human Right to Food and Contemporary Globalization' <[http://www.worldhunger.org/articles/08/hrf/a\\_eide.htm](http://www.worldhunger.org/articles/08/hrf/a_eide.htm)> accessed 15 November 2013.

<sup>53</sup> A Eide 'The Importance of Economic and Social Rights in the Age of Economic Globalizations' in WB Eide and U Kracht(eds)*Food and Human Rights In Development*(Intersentia 2005).

Kracht<sup>54</sup> identifies that hunger and poverty are still a predominantly rural phenomena. That poverty is frequently concentrated in rural areas. He does not recognise that there is an increased trend of rural-to-urban migration. The poor are migrating from rural areas in search of better opportunities. Most of the cities' urban areas in developing countries are overpopulated. Those who are poor live in slums with no access to basic facilities such as food and shelter. This study will focus on the urban poor. It will establish that poverty and hunger are no longer a predominantly rural phenomenon.

Gordon<sup>55</sup> asserts that poverty can only be eradicated through promotion of economic, social and cultural studies. Through a case study of Panama, she identifies that poverty is due to violation of human rights. Poor families in Panama had specific socio-demographic and occupational characteristics: increased family size, a high proportion of minors, lower income per capita and higher levels of unemployment and underemployment.<sup>56</sup> The state should then mobilise a significant number of resources to address the problems faced by the people living in conditions of poverty and extreme poverty and respect human rights in order to strengthen the sense of solidarity and equity in society. She fails to identify an individual as an active subject, and not the object, of economic and social development. She stresses the obligation of the state and Non-Governmental Organisations (NGOs) in realising economic and social rights. This proposed research shall aim at refuting the claim that the state has the sole responsibility of realising the right to food.

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<sup>54</sup>U Kracht 'Whose Right to Food? Vulnerable Groups and the Hungry Poor' in WB Eide and UKracht (eds) *Food and Human Rights in Development* (Intersentia 2005).

<sup>55</sup>M Gordon 'The Promotion of Economic, Social and Cultural Rights as a formula to Face Poverty' in WV Genugten and CP-Bustillo (eds) *The Poverty of Rights: Human Rights and the Eradication of Poverty* (Zed Books Ltd 2001).

<sup>56</sup> Ibid 62.

It is therefore clear that poverty and the right to food are interlinked. The literature has expansively addressed how poor people are not able to enjoy the right to food because they lack access to the resources. Most of the literature has focused on the rural poor such as peasants, indigenous groups and the rural women. The literature has not addressed the key challenges the urban poor face in procuring food from the market.

### **1.53 Right to Food Violations**

States, private entities and individuals have the obligation to respect all human rights. States have the obligation to respect, fulfil and promote the human rights. When it breaches its obligation as the key duty bearer the right in question is violated. Rolf,<sup>57</sup> discusses instances when right to food violations occurs. He argues that violation of human rights is the breaches of state obligations under that right. He argues that a breach of respect-bound obligations occurs if the State (or the community of States through its specialized agencies or financial institutions) destroys a person's livelihood, access to work or food. A breach of protection-bound obligations occurs if a State does not prevent the destruction of a person's livelihood, access to work or to food by a third party (like large landlord, or corporation). A breach of a fulfillment-bound obligation entailing a violation of the right to feed oneself occurs when employment and social security programmes are not addressed. He recommends that in order for a state to fulfil the right to food it has to put in place fulfillment systems. He identifies the systems as a system of Self-Employment Programmes, Wage-Employment Programmes and Economic Security Policy. Self-employment programmes. He argues that the three elements of the fulfillment system are indeed not just a set of measures, but they are logically linked: States have to see to it (by an

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<sup>57</sup> R Kunneman, 'Violations of the Right to Food' (1995) 20 SIM Special 165.

Economic Security Policy) that every person without access to resources or a job to feed him/herself should be able to find a job, now and in the future, on the labour market of its country. If the State fails at this level there must be a self-employment programme offered to this person. If the person is unable or unwilling to participate in self-employment programmes then there must be a Wage-Employment Programme where this person can participate.

FIAN in its report<sup>58</sup> discusses form of right to food violations. FIAN argues that in order to identify human right to food violations a careful human rights analysis of the situation is required to identify the violations and to propose adequate changes in national policies. A case study analysis is also always needed to determine whether right to food violations exist or not.

FIAN and RAPDA,<sup>59</sup> in their report address the right to food violations in Kenya. They argue that food violations in Kenya have been caused by social and economic inequalities in the country. Kenya is one of the most unequal countries in the world and, despite increases in GDP over the past years, the discrepancies between the rich and the poor have been growing. The reports discusses extensively on food violations in the rural sector. The report identifies cross-cutting issues such as corruption, nepotism in the distribution of resources, access to information, gender issues, children and youth issues, HIV/AIDs, diversification of food crops, access to markets and high population growth as the key factors influencing the right to food violations.

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<sup>58</sup> FIAN International, 'Documenting the Right to Food Violations' <[http://www.rtfn-watch.org/uploads/media/documenting\\_violations.pdf](http://www.rtfn-watch.org/uploads/media/documenting_violations.pdf)> accessed 25 November 2014.

<sup>59</sup> FIAN International and RAPDA, 'Kenya's Hunger Crisis: The Result to Food Violations' 2010 <[http://www.rtfn-watch.org/uploads/media/Kenya\\_s\\_hunger\\_crisis\\_-\\_the\\_result\\_of\\_right\\_to\\_food\\_violations.pdf](http://www.rtfn-watch.org/uploads/media/Kenya_s_hunger_crisis_-_the_result_of_right_to_food_violations.pdf)> accessed 25 November 2014.

## **1.6 Objectives of the Study**

### **1.6.1 Main objective**

The main objective for my research is to identify measures that can be put in place to ensure that the right to adequate food is realised and fully enjoyed by the urban poor globally.

### **1.6.2 Specific objectives**

The first specific objective will be to identify the challenges facing the urban poor in accessing food and hence realising their right to food. The second is to find out if the urban poor are aware of the existence of the right to food. The third is to identify the violations of the right to food and the impact of the violations amongst the urban poor. Final objective will be to provide recommendations and the way forward to address violations of the right to food in slums.

## **1.7 Justification of the Study**

International conventions on the right to food have been ratified by many states yet many people still die of starvation. Just like many other countries, Kenya has ratified every single human rights treaty, yet the citizens know practically nothing about them or the fact that these international human rights laws must be enforced in their country. Thus, a basic premise of human rights education is the recognition that imposed ignorance is a human rights violation and must be redressed by informing the nation's citizens of their rights, agreed to by their government.

In Kenya the legal, institutional and policy framework that could be relevant to the right to food is fragmented. The policies put in place only focus on realising food security and there is little on

the right to food. Most Kenyans are not aware of the existence of their right to food. There is need to educate Kenyans on this human-right approach in addressing hunger. To educate them on the role of the state in protecting, fulfilling and respecting their right to food and their individual obligations. This research will provide scholarly literature on the realization of the right to food in Kenya.

Those who die due to lack of food are either marginalised or discriminated. The urban poor sleep hungry because food is not affordable. They lack the income to buy food. In instances where they can afford food, it is not of the best quality and is unsafe for consumption. School children fail to attend school hence having a negative impact on the quality of education they get. Children also engage in crime, prostitution and even child labour in order to be able to fend for themselves and their families. This study is therefore justified because it is going to propose the way forward. The study, through interviews, will provide an avenue for the urban poor to express their views. The urban poor do not directly participate in decisions that affect them in accessing food. At the end of the study, the government and other stakeholders will use the recommendations to draft policies and law that will lead to progressive realisation of this right to food. It will also add to the literature that addresses the human right to food approach in Kenya.

### **1.8 Research Hypothesis**

This research will be based on the hypothesis that: Firstly, the Kenyan urban poor are not aware of the existence of the right to food; secondly, eradication of poverty will address the issue of lack of food in slum; thirdly, the state of Kenya has failed in putting in adequate measures to ensure that citizens are free from hunger and can access adequate food, of good quality, slums; and finally, the high cost of living, lack of employment and social security should be addressed

by the state in order for the urban poor to access adequate food, which is of good quality and safe for consumption.

### **1.9 Research Questions**

The proposed research will answer two questions First, what right to food violations are rampant in Kawangware slums? Second, how has the Kenyan legal framework addressed the right to food violations? Finally, are the urban poor aware of the existence of the right to food in the CoK and the mechanisms in place to claim redress when the right to food is infringed?

### **1.10 Scope and Limitation**

This paper limits its research to women, youth and children living in urban areas. It recognises that these are the most vulnerable in the slums. It will also limit itself to Kawangware slum in Kenya which will be used as a case study. This study may also be biased to personal opinion as I have lived in Kawangware slums for more than a decade and interacted with the slum dwellers.

### **1.11 Research Methodology**

The methodology of this study was based on both primary and secondary sources of data. Primary data was collected through face to face interviews and observation. This mode of data collection was appropriate because the research aimed at eliciting information from the urban poor on the key challenges faced in accessing food from the market. To arrive at a reliable conclusion on the violations of the right to food in the slum, the residents' opinion was very important.

The research was carried out in Nairobi, Kenya. Purposive sampling was used to select Nairobi County since it has the largest number of slums, unlike other counties. Kawangware slum was purposively selected as the research location because it was easily accessible to the researcher. It comprises two villages, Kawangware 46 and 56. Kawangware 56 is a lower class slum. In this village most of the houses are made of iron sheets. Kawangware 46 is a middle class, and housing is quite expensive. Kawangware 56 was chosen as a research site because of its diversity and accessibility to the researcher. Its population comprises of people working in the informal sector and who face challenges in accessing food due to their low income. The researcher was also conversant with the slum as she has lived there and it was easy to approach the interviewees. The researcher made use of a social worker from the Christmas Trust organization that was also conversant with the slum.

The research design adopted was a case study design. It sought to describe Kawangware slum in detail. The rationale of choosing a case study design was to allow an in-depth analysis and investigation of the right to food violations in Kawangware slum and the impact of such violations on the society.

A sample size of 50 interviewees was initially selected for the interviewees using a stratified random sampling technique. The population was divided into three distinct groups out of which individual participants were selected at random to be part of the sample. The groups were categorised as women, children and youth. A child was anyone who had not attained the age of 18 years as defined by Article 260 of CoK. Youth was any female or male who had attained the age of 18 years but had not yet attained the age of 35 years as defined by Article 260 of CoK. Any female who was beyond 35 years was grouped under the 'women' category.



Women, youth and children were chosen as respondents because of their vulnerability in the Kenyan society. The CoK under Article 52 elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons. These groups include youth, children, and persons with disabilities, older members of society, minorities and marginalized groups. The women and youth approached were those who could understand and speak English and who possessed knowledge on the key challenges they faced in accessing food and the environment they lived in. Education background was also key in sampling the respondents. The rationale for this was to avoid language barrier because most of the slum dwellers speak sheng' which the researcher was not conversant with. The illiteracy level was also important in order for the researcher to elicit more information from the interviewees to answer the research questions adequately.

The key research instruments used were interview schedules and observation. Questionnaires were considered were considered inappropriate in this case because of the availability of the respondents. Most of the respondents because of their professions they could not find time to fill questionnaires. The literacy level was also low, hence they needed someone to guide and explain to them the key questions for clear understanding. A structured interview was used with eight key questions. The rationale of using a structured interview was to increase the reliability of information gathered because every interviewee was subjected to similar questions with the others. The aim of the research was to get in-depth information of the right to food violations in Kawangware slum; hence a structured interview was appropriate as it was systematic, time saving and comprehensive.

Out of the 50 interviewees approached only 38 consented to be interviewed. Before getting their consent the researcher explained to them the importance of the research and how it could be

beneficial to them. Four street children were also interviewed in the presence of a social worker. The interviews consented to voluntarily give out information in regard to the questions asked, and the information to be used for academic purposes. One of the greatest challenges faced was that because the questions asked related to food some of the interviewees asked for some money to buy food for their children.

Literary materials will also be relied upon. It will involve the reading, discussion and analysis of policy papers and publications of different institutions charged with policy formulation or the actual implementation of the human right to food. It is foreseen here that the United Nations and Human Rights Commission (UNHRC), Food and Agriculture Organization of the United Nations (FAO), publications by FIAN International and other NGOs whose mandate is to address issues of the right to food will be of utmost importance in this regard. Primary data will also include reports made by official bodies established by the government of Kenya to inquire into the situation under study as well as any other data with a government department, agency or other credible organisations that have conducted inquiry into the situation. The purpose of primary sources is that the data collected will be used as a basis of analysis into the situation under study and applied to come out with the appropriate position in international law with regard to the subject under study.

The secondary data collection technique will entail going through the relevant books, articles, journals, conference papers and information from the Internet on the subject of the right to food as a fundamental human right. The information from these sources will be applied in the analysis of the information from the primary sources.

## 1.12 Chapter Breakdown

This research will have five chapters. In chapter one the agenda of the study is set out in this chapter. This chapter introduces the topic under study. It sets out the research questions, problem statement, objectives, the methodology to be employed, hypothesis, and justification of the study, background of the study, scope and limitations.

Chapter two encapsulates the evolution of the right to food in international human rights law. The first part discusses the origin, meaning, theoretical framework and nature of the right to food. It summarises the evolution of the right to food in international human rights law. The second part discusses the concept of the right to food in international law. This will include the core elements of the right to food and states' obligations towards its realisation.

Chapter three will examine the violations of the right to food in the urban areas. It will examine the challenges that urban poor face in accessing food. It will discuss the effect of lack of food such as indulging into criminal activities and prostitution. The data collected in Kawangware slum will be analysed in this chapter. Kawangware slum is used as a case study.

Chapter four will provide the way forward in ensuring that urban poor enjoy the right to food at the global level. It will recommend ways in which the government, NGOs, and other stakeholders can play in ensuring that slum urban poor can enjoy the right to food.

Chapter five will give a conclusion remark on the importance of addressing the right to food among the urban poor. It analyses summary of findings and an overall summary.

## CHAPTER TWO

### THE RIGHT TO FOOD IN INTERNATIONAL HUMAN RIGHTS LAW

#### 2.1 Introduction

The right to food is a human right recognised under international law. It is defined as the right to be free from hunger and to have sustainable access to food in a quantity and quality sufficient to satisfy one's dietary and cultural needs.<sup>60</sup> It is a fundamental right whose fulfilment impinges on the realisation of most of other rights.<sup>61</sup> It is the only right in the entire ICESCR<sup>66</sup> that is recognised as fundamental right.<sup>62</sup> It is inherent in all human beings. However, in practice, it protects- first and foremost- the most vulnerable individuals and groups in society: those suffering from discrimination, women and children, landless rural workers, indigenous peoples and tribes, slum dwellers, the unemployed and others.

This chapter analyses the philosophical foundations of the right to food in international human rights law. It discusses the human rights based approach to the realization of the right to food. The discussions are based on human rights theory in analysing state obligation towards the realisation of the right to food. It then addresses the core elements of the right to food under international human rights law.

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<sup>60</sup> S Narula 'The Right to Food: Holding Global Actors Accountable under International law' (Working Paper No 7 Centre for Human Rights and Global Justice 2006).

<sup>61</sup> Article 11(2) of the ICESCR recognizes the right to be free from hunger as a fundamental right.

<sup>62</sup> Ibid.

## 2.2 The Philosophical Foundations of the Right to Food in International Human Rights Law

The philosophical foundations of human rights can be traced during the Age of Enlightenment in Europe and its rationalistic doctrine of natural law which recognized individual human beings as subjects endowed with rights against the society and placed them at the centre of legal and social systems.<sup>63</sup> The term ‘human rights’ was rarely used before the Second World War until when the UN declared in its UN Charter preamble its determination to reaffirm faith in fundamental human rights.<sup>64</sup> The natural law theory led to the natural rights theory, the theory mostly associated with modern human rights theory.<sup>65</sup> The chief exponent of the natural rights theory was John Locke, who developed his philosophy within the framework of seventeenth century during the Age of Enlightenment.<sup>66</sup> John Locke in his *Second Treatise of Government* claimed that everyone had natural rights to life, liberty and property and that government was a trust established to protect these rights through the rule of law.<sup>67</sup> John Locke envisaged the existence of human beings in a state of nature with freedoms, ability to determine their actions and in a state of equality where no one was subjected to the will or authority of another.<sup>68</sup>

The modern human rights theory expresses the totality of the dignity of the human person, having natural rights inherent in him. Historically human rights have been categorised into three generations. The first generation refer to civil and political rights; the second generation refer to

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<sup>63</sup> Manfred Nowak, *Introduction to the International Human Rights Regime* (The Raoul Wallenberg Institute of Human Rights Library Vol 14, Brill Academic Publishers 2003).

<sup>64</sup> Michael Freeman, ‘The Historical Roots of Human Rights Before the Second World War’ in Rhona KM Smith and Christien van den Anker (eds), *Essentials of Human Rights* (Hodder Arnold 2005).

<sup>65</sup> Jerome J Shestack, ‘The Philosophical Foundations of Human Rights’ in Janusz Symonides (ed), *Human Rights: Concept and Standards* (Dartmouth Publishing Company Limited 2000).

<sup>66</sup> Ibid.

<sup>67</sup> Smith and Anker (2005).

<sup>68</sup> Janusz (2000).

socio-economic rights; and third generation refer to the group rights.<sup>69</sup> The right to food fall under the generation of socio-economic rights.

Amartya Sen,<sup>70</sup> argues that a theory of human rights must address questions such as: what kind of a statement does a declaration of human rights make?; what makes human rights important?; what duties and obligations do human rights generate?; through what forms of actions can human rights be promoted, and in particular whether legislation must be principal, or even a necessary , means of implementation of human rights?; can economic and social rights (the so-called second generation rights) be reasonably included among human rights?; and last but not least, how can proposals of human rights be defended or challenged, and how should their claim to a universal status be assessed, especially in a world with much cultural variation and widely diverse practice?. If these questions are affirmed then that constitutes a human right theory.

The human right theory generates reasons for action for agents who are in a position to help in promoting or safeguarding of the underlying freedoms.<sup>71</sup> The normative element that constitutes rights is duties.<sup>72</sup> The state which is considered as the duty bearer is obliged to respect fulfil and protect all human rights.<sup>73</sup> The obligation to respect human rights refers to the obligation to refrain from state intervention, provided the latter is not admissible under any relevant legal limitations and reservations clauses.<sup>74</sup> The obligation to fulfil human rights refers to the states

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<sup>69</sup>Japhet Biegion, 'The Inclusion of Socio-Economic Rights in the 2010 Constitution: Conceptual and Practical Issues' in Japhet Biegion and Godfrey Musila (eds), *Judicial Enforcement of Socio-economic Rights in the 2010 Constitution: Conceptual and Practical issues* ( 10<sup>th</sup> Series of ICJ Kenya's Judiciary Watch Reports Series, Kenyan Section of the ICJ 2013).

<sup>70</sup> A Sen, 'Elements of a Theory of Human Rights' (2004) 32,4 *Philosophy and Public Affairs* 315.

<sup>71</sup> Ibid.

<sup>72</sup> R Martin and JW Nickel, 'Recent Work on the Concept of Rights' in CL Ten(ed) *Theories of Rights* (Ashgate Publishing Company 2006).

<sup>73</sup> M Nowak (2003).

<sup>74</sup> Ibid.

obligation to take legislative, administrative, judicial and practical measures to ensure that rights in question are implemented to the greatest extent possible.<sup>75</sup> The obligation to protect human rights requires positive state action aiming to avoid human rights violations by private persons.<sup>76</sup>

### **2.3 The Historical Background of the Right to Food.**

The historical background of the right to food can be mapped as legal obligation of states under international law or as a demand for access to food, as a means of survival.<sup>77</sup> The concept of food as a human right emerged along with the rest of contemporary international law in the aftermath of World War II. The “Four Freedoms” address of United States’ President Franklin D. Roosevelt, in January 1941, was of special importance in the preparation of the Declaration, which included freedom from want as one of those rights.<sup>78</sup> In the negotiations for the UDHR in 1947-1948, the United States delegation played a major role, emphasising that economic and social rights should be included as well.<sup>79</sup>

The right to food was initially codified in the UDHR as an element of the right to a standard of living.<sup>80</sup> The greatest contribution of the UDHR was that it extended the human rights platform to embrace the whole range of aspects of life, that is both civil and political aspects, and economic,

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> S Randolph and S Hertel, ‘The Right to Food: A Global Overview’ [1992] 19 University of Connecticut, Dept. of Political Science & Human Rights Institute <<http://www.serfindex.org/wp-content/uploads/2012/07/randolph-right-to-food-global-overview.pdf>>accessed 28 January 2014.

<sup>78</sup> A Aide, ‘The Human Right to Adequate Food and Freedom from Hunger’ in FAO, *Right to Food in Theory and in Practice* (Rome 1998).

<sup>79</sup> Ibid.

<sup>80</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)).

social and cultural aspects, and it made the different rights interrelated and mutually reinforcing.<sup>81</sup> Article 25 of the UDHR provides that:

Everyone has the right to a 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 services, 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.

In 1966 the right to food was reaffirmed in ICESCR.<sup>82</sup> Article 11(1) of ICESCR provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

In 1974 the Universal Declaration on the Eradication of Hunger and Malnutrition was adopted at the UN World Food Conference.<sup>83</sup> States recognised that it was the common purpose of all nations to eliminate hunger and malnutrition.<sup>84</sup> In 1976 the ICESCR entered into force.

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<sup>81</sup>Wenche Barth Eide and Uwe Kracht, 'The Right to Adequate Food in Human Rights Instruments: Legal Norms and Interpretations' in Wenche Barth Eide and Uwe Kracht (eds) *Food and Human Rights in Development: Legal and Institutional Dimensions and Selected Topics* (Vol 1, Intersentia 2005).

<sup>82</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>83</sup> Universal Declaration on the Eradication of Hunger and Malnutrition <<http://www.ohchr.org/EN/ProfessionalInterest/pages/EradicationOfHungerAndMalnutrition.aspx>> accessed 3 January 2014



In 1996 the WFS was held in Rome which reaffirmed the right to food.<sup>85</sup> States also pledged to halve the number of hungry people by 2015.<sup>86</sup> During the WFS the UNHCHR was entrusted with the mandate of better defining the rights related to food as set out in Article 11 of the ICESCR.<sup>87</sup> The WFS Plan of Action called upon the UN system to better define the rights related to food and to propose ways to implement and realise these rights, taking into account the possibility of formulating voluntary guidelines for food security for all.<sup>88</sup>

In 1999, in response, the UN CESCR adopted GC12.<sup>89</sup> GC12 helps governments to understand the different components of the right to food, and their own main obligations. Article 6 of the GC 12 defines the right to food as, “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”.

The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. GC12 elaborated the meaning and content of the right to adequate food, which held that state

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<sup>84</sup> A Pooja, ‘The Implementation of the Right to Food at the National Level: A Critical Examination of the Indian Campaign on the Right to Food as an Effective Operationalization of Article 11 of ICESCR’ (Working paper No 8 Centre for Human Rights and Global Justice NYU School of Law, New York December 2004).

<sup>85</sup> FAO, *The Right to Food in Theory and Practice* (Rome 1998).

<sup>86</sup> C Golay, ‘The Right to Food and Access to Justice: Examples at the National, Regional and International Level’ in FAO *The Right to Food Studies* (Rome 2009).

<sup>87</sup> Ibid.

<sup>88</sup> Rome Declaration on World Food Security and World Food Summit Plan of Action <<http://www.fao.org/ag/againfo/programmes/en/lead/toolbox/indust/romedec.pdf>> accessed 15 February 2014.

<sup>89</sup> FAO, *Guidance Note: Integrating the Right to Adequate Food into food and nutrition security programmes* (Rome 2013).

parties are obliged to ensure “physical and economic access at all times to adequate food or means for its procurement.”<sup>90</sup>

In 2000, the mandate of the Special Rapporteur to the right to food was established.<sup>91</sup> In the same year, the U.N. General Assembly (UNGA) adopted the Millennium Development Goals (MDGs) that recognised eradication of poverty and hunger as the first goal.<sup>92</sup> It targeted to reduce the number of people suffering from hunger by half by 2015.<sup>93</sup>

In 2004, an Intergovernmental Working Group established under the auspices of FAO agreed to adopt comprehensive voluntary guidelines on implementing the right to adequate food.<sup>94</sup> The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (VG) were adopted.<sup>95</sup> They are a practical tool to help implement the right to adequate food. While they are not legally binding as such, they seek to reflect existing human rights standards and provide useful guidance to States on how they can implement their existing obligations.<sup>96</sup> Recently in 2012 the Food Assistance Convention was adopted, becoming the first binding treaty on food aid.<sup>97</sup>

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<sup>90</sup> AR Ganesh ‘The Right to Food and Buyer Power’ (2010) 11. German Law Journal.

<sup>91</sup> OD Schutter UN Special Rapporteur on Right to Food ‘Meaning of the Right to Food as a Human Right’ <[http://www.wunrn.com/news/2010/02\\_10/02\\_01\\_10/020110\\_right.htm](http://www.wunrn.com/news/2010/02_10/02_01_10/020110_right.htm)> accessed 18 February 2014. The mandate of the Special Rapporteur on the right to food was established by the Commission on Human Rights by resolution 2000/10 of 17 April 2000.

<sup>92</sup> Millennium Development Goals <[http://www.un.org/millenniumgoals/pdf/MDG\\_FS\\_1\\_EN.pdf](http://www.un.org/millenniumgoals/pdf/MDG_FS_1_EN.pdf)> accessed 1 March 2014.

<sup>93</sup> Ibid.

<sup>94</sup> MJ Cohen and MA Brown ‘Access To Justice And The Right To Adequate Food: Implementing Millennium Development Goal One’ (2005) 6 Washington College of Law 52, 56.

<sup>95</sup> FAO, ‘*Right To Food: Making it Happen*’ (Rome 2013).

<sup>96</sup> UN Commission on Human Rights, “Factsheet 34- The Right to Adequate Food’ <<http://www.ohcr.org/Documents/Publications/FactSheet34en.pdf>> accessed 2 February 2014.

<sup>97</sup> The Food Assistance Convention <[https://treaties.un.org/doc/source/signature/2012/CTC\\_XIX-48.pdf](https://treaties.un.org/doc/source/signature/2012/CTC_XIX-48.pdf)> accessed 2 February 2014.

## 2.4 Human Rights Based Approach to Food.

GC12 paragraph 23 stipulates seven human rights principles which should guide the formulation and implementation of national strategies for the right to food. These seven principles include accountability, transparency, people's participation, non-discrimination, decentralization, legislative capacity, independence of the judiciary and good governance.<sup>98</sup> This echoes the concept of human rights based-approach to development cooperation.

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.<sup>99</sup> Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves especially the most marginalized to participate in policy formulation and hold accountable those who have a duty to act.

There are two main rationales for a human rights-based approach: (a) the *intrinsic* rationale, acknowledging that a human rights-based approach is the right thing to do, morally or legally; and (b) the *instrumental* rationale, recognizing that a human rights-based approach leads to better and more sustainable human development outcomes.<sup>100</sup>

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<sup>98</sup> Good governance is essential to the realization of human rights, including the elimination of poverty and ensuring the satisfactory livelihood for all.

<sup>99</sup> UNCHR, 'Frequently Asked Questions on a Human Rights Based-Approach to Development Cooperation' <<http://www.ohchr.org/Documents/Publications/FAQen.pdf>> accessed 4 February 2014.

<sup>100</sup> Ibid.

According to the UNCHR, the practical value of human based approach to development is:<sup>101</sup>

- a) A human rights-based approach focuses on the realization of the rights of the excluded and marginalized populations, and those whose rights are at risk of being violated, building on the premise that a country cannot achieve sustained progress without recognizing human rights principles (especially universality) as core principles of governance. Universality means that all people have human rights, even if resource constraints imply prioritization. It does *not* mean that all problems of all people must be tackled at once.
- b) A programme guided by a human rights based approach takes a holistic view of its environment, considering the family, the community, civil society, local and national authorities. It considers the social, political and legal framework that determines the relationship between those institutions, and the resulting claims, duties and accountabilities. A human rights-based approach lifts sectorial “blinkers” and facilitates an integrated response to multifaceted development problems. Specific results, standards of service delivery and conduct are derived from universal human rights instruments, conventions and other internationally agreed goals, targets, norms or standards. A human rights-based approach assists countries in translating such goals and standards into time-bound and achievable national results.
- c) Accountabilities for achieving these results or standards are determined through participatory processes (policy development, national planning), and reflect the consensus between those whose rights are violated and those with a duty to act. A human rights-based approach seeks both to assist in the participatory formulation of the needed

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<sup>101</sup> Ibid.

policy and legislative framework, and to ensure that participatory and democratic processes are institutionalized locally and nationally (including through capacity-building among families, communities and civil society to participate constructively in relevant forums).

- d) A human rights-based approach helps to formulate policy, legislation, regulations and budgets that clearly determine the particular human right(s) to be addressed—what must be done and to what standard, who is accountable—and ensures the availability of needed capacities (or resources to build the lacking capacities). The approach helps to make the policy formulation process more transparent, and empowers people and communities to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated.
- e) A human rights-based approach to development supports the monitoring of State commitments with the help of recommendations of human rights treaty bodies, and through public and independent assessments of State performance.
- f) A human rights-based approach leads to better sustained results of development efforts and greater returns on investments by: Building the capacity of prime actors to engage in dialogue, meet their own responsibilities and hold the State accountable; Strengthening social cohesion through seeking consensus with participatory processes, and focusing assistance on the excluded and most marginalized; Codifying social and political consensus on accountabilities for results into laws, policies and programmes aligned with international conventions; Anchoring human rights entitlements within a framework of laws and institutions; Institutionalizing democratic processes; and Strengthening the

capacities of individuals and institutions to carry out their obligations as expressed in local, national and international laws, policies and programmes.

## 2.5 The Normative Content of the Right to Food

The normative content of the right to food is defined in GC12 as:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.<sup>102</sup>

The UN Special Rapporteur on the right to food in 2002 defined the right to adequate food as follows:

Right to adequate food is a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.<sup>103</sup>

The main concepts used in the definition of the right to food are food availability, adequacy, and accessibility.

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<sup>102</sup> GC12 para 6.

<sup>103</sup> UN Commission on Human Rights 'Report by the Special rapporteur on the Right to food' (2001) UN Doc E/CN.4/2001/53 .

### 2.5.1 Availability

Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.<sup>104</sup>

### 2.5.2 Adequacy

Adequate food requires that it be sufficient and adequate in quantity and quality.<sup>105</sup> Food can be defined as adequate when it satisfies dietary needs throughout the life cycle, by taking into account needs related to gender, occupation and culture.<sup>106</sup> Children food must contain the sufficient nutrients necessary to their physical and mental development. The food should also be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs.<sup>107</sup> It should not contain adverse substances at higher levels than those set by international standards.

### 2.5.3 Cultural or Consumer Acceptability

It implies the need to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.<sup>108</sup> These values are perceived by informed consumer concerns and include freshness, taste, cooking features and palatability as well as cultural acceptability.

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<sup>104</sup> General Comment 12 para 12.

<sup>105</sup> C Golay 'The Right to Food and Access to Justice: Examples at the National, Regional and International Levels' [2009] FAO.

<sup>106</sup> General Comment 12 para 9.

<sup>107</sup> General Comment 12 para 10.

<sup>108</sup> General Comment 12 para 11.

Muslims consider pork as unclean, hence against their religion and taboo. Forcing a Muslim to take pork is not culturally acceptable, hence a violation of his right to food.

#### 2.5.4 Accessibility

Accessibility of food entails both economic and physical accessibility.<sup>109</sup> Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.<sup>110</sup> It must be at a level to satisfy the dietary needs of the individual and the household all year round.

Physical accessibility means that the food must be accessible to everyone, including vulnerable individuals and groups such as infants, small children, elderly people, the physically disabled, the terminally ill or those with persistent medical – including mental - problems and prisoners. The food must also be accessible everywhere to people in remote areas.<sup>111</sup> Food must also be accessible to victims of natural or human-made disasters, armed conflicts and wars, as well as to indigenous peoples and ethnic groups.<sup>112</sup>

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<sup>109</sup> General Comment 12 para 13.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> S Narula 'Reclaiming the Right to Food as a Normative Response to the Global Food Crisis' (Working Paper No 260 New York Public Law and Legal Theory Working Papers January 2011).



## 2.6 Obligations of State Parties towards Realising the Right to Food

### 2.6.1 The Three Obligations

The right to food, like any other human right, imposes obligations on state parties: the obligations to respect, to protect and to fulfil.<sup>113</sup> The ICESR<sup>66</sup> requires state parties to take steps towards progressive realisation of the right to food. States that are bound by instruments protecting the right to food or have incorporated the same into their domestic legal framework have an obligation to respect, protect and fulfil the right to food.

#### 2.6.1.1 *Obligation to Respect the Right to Food*

The states have to respect people's existing access to food and means of obtaining it.<sup>114</sup> The obligation to respect human rights refers to the obligation to refrain from state intervention, provided that the latter is not admissible under any relevant legal limitations and reservations clauses.<sup>115</sup> The state has to respect the resources owned by the individual and the individual's freedom to find a job of preference, to make optimal use of her or his own knowledge and to take the necessary actions and use the necessary resources – alone or in association with others – to satisfy his or her own needs.<sup>116</sup> The obligation to respect the right to food is essentially a duty of non-interference with existing access to adequate food.

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<sup>113</sup> General Comment 12 para 15.

<sup>114</sup> Ibid.

<sup>115</sup> Manfred Nowak (2003) 49.

<sup>116</sup> FAO, *The Right to Food in Theory and in Practice* (FAO 1998).

### *2.6.1.2 The Obligation to Protect the Right to Food*

The obligation to protect requires the adoption of specific legislative or other measures regulating third parties' activities so as to ensure that they do not negatively affect peoples' enjoyment of the right to food.<sup>117</sup> The obligation to protect also includes ensuring that food put on the market is safe and nutritious.<sup>118</sup> States must therefore establish and enforce food quality and safety standards and ensure fair and equal market practices. The obligation to protect aims to avoid human rights violations by private persons. The state as part of their obligations to protect people's resource base for food, should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.<sup>119</sup>

### *2.6.1.3 The Obligation to Fulfil the Right to Food*

The obligation to fulfil means that States Parties must take positive measures to facilitate and provide for individuals' enjoyment of their rights.<sup>120</sup> It refers to the state's obligation to take legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the greatest extent possible.<sup>121</sup> The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security. However, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

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<sup>117</sup> Ibid.

<sup>118</sup> UN Commission on Human Rights, 'Factsheet 34- The Right to Adequate Food' <<http://www.ohchr.org/Documents/Publications/Factsheet34en.pdf>> accessed 2 February 2014.

<sup>119</sup> General Comment 12, Para 27.

<sup>120</sup> General Comment 12 Para 15.

<sup>121</sup> Manfred Nowak (2003).

## 2.6.2 Progressive and Immediate Obligations

### 2.6.2.1 Progressive obligations

This is an implicit recognition that States may have resource constraints and that it may take time to fully implement the obligations towards the right to food.<sup>122</sup> However, this does not mean that States do not need to do anything until they have sufficient resources. On the contrary, it means that States must lay down a roadmap towards the full realisation of the right to food immediately and demonstrate that they are making every possible effort, using all available resources, to better respect, protect and fulfil the right to food.<sup>123</sup>

### 2.6.2.2 Immediate Obligations

While some obligations are progressive, there exist immediate obligations that states must fulfil. These include elimination of discrimination, obligation to take steps, prohibition of retrogressive measures and protection of minimum essential level of the right to food.

## 2.6.3 International obligations

In a globalised world, structural causes of food insecurity have international dimensions beyond the control of one State. For example, the international trade in foodstuffs is making domestic prices of food increasingly dependent on the international market, the impact of climate change is affecting people's capacity to produce food, and international development cooperation may

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<sup>122</sup> Article 2 (1) of ICESR66.

<sup>123</sup> FAO, *Guidance Note: Integrating the Right to Adequate Food into Food and Nutrition Security Programmes*(FAO 2012).

negatively affect the right to food of marginalised groups when a human rights perspective is not integrated.<sup>124</sup>

Under the ICESCR, States have obligations to take steps to realise rights recognised in it, including the right to food individually, as well as through international assistance and cooperation.<sup>125</sup> Article 11 (2) of the Covenant specifically obliges State parties to take measures, including through international cooperation, to improve methods of production, conservation and distribution of food and to ensure an equitable distribution of world food supplies. States parties should recognise the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realisation of the right to adequate food.<sup>126</sup> In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.<sup>127</sup> States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end.<sup>128</sup>

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<sup>124</sup>UN Commission on Human Rights 'Factsheet 34- The Right to Adequate Food'

<sup>125</sup>Article 11(2) of the ICESCR

<sup>126</sup> General Comment 12 Para 36

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

## CHAPTER THREE

### A CRITICAL ANALYSIS OF KENYA'S LEGAL FRAMEWORK ON THE RIGHT TO FOOD: CHALLENGES FACING ITS REALIZATION

#### 3.1 Introduction

Uwe Kracht argues that hunger and poverty are still a predominantly rural phenomenon.<sup>129</sup> He however identifies food insecurity vulnerable groups in the urban marginal populations to include school dropouts, unemployed, motorcycle taxi drivers, recently arrived migrants, slum dwellers in urban periphery, construction workers, workers in informal sector, homeless people, orphans, street children, people living on small fixed incomes (elderly, pensioners, widows, widowers, divorcees, invalids, handicapped people) and beggars.<sup>130</sup> People living in poverty cannot fully enjoy the right to food because they cannot afford to buy the food nor the means to grow it themselves. The high rates of unemployment in rural areas and lack of opportunities have led to mass migration to the urban centres where the peasants find work in the informal sectors. However, pay is low and irregular, which does not allow the purchase of nutritious food for a healthy and balanced diet.

For the purpose of this research Kawangware slum (referred to hereinafter as 'the slum') will be used as a case study. Through the data collected, the right to food violations will be analysed. The impact of the right to food on the vulnerable groups- that is the women, children, and youth - will be analysed too. The questions asked gives the urban poor an opportunity to recommend

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<sup>129</sup>U Kracht, 'Whose Right to Food? Vulnerable Groups and the Hungry Poor' in WB Eide and U Kracht (eds) *Food and Human Rights in Development* Volume 1 (Intersentia 2005) 125.

<sup>130</sup>The Millennium Project's Hunger Task Office suggests that on a global basis approximately 20% of the vulnerable hungry are urban households.

ways in which right to food violations can be addressed. The recommendations from the interviewees are dealt separately under chapter four.

### **3.2 Constitutional Protection of the Right to Food in Kenya.**

Kenya is a contracting party to the international instruments that recognise the right to food. It has ratified both the UDHR and the ICESCR. Under article 2(6) of the Kenyan Constitution, Kenya recognises any treaty or convention ratified as one forming part of the law of Kenya.<sup>131</sup> Kenya has justified the right to food by explicitly including it in its Constitution. Article 43(1, c) of the constitution justifies the right to food.<sup>132</sup> It provides that everyone has the right to be free from hunger, and to have adequate food of acceptable quality.<sup>133</sup> Kenya has an obligation to fulfil the implementation of the right to food under its international obligation to protect, fulfil and respect human rights. Article 21(4) provides that the State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.<sup>134</sup>

Kenya, being a signatory to the international instruments governing the right to food, has an obligation to ensure that the urban poor enjoy their right to food. The state has to put in place mechanisms that will promote access to food. Justifying the right for Kenyans to be free from hunger and to have adequate food of acceptable quality is not enough. The practical implementation of the right to food is what is required. The Bill of Rights provides in Article 19(1) that the Bill of Rights is an integral part of Kenya's democratic state and is the framework

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<sup>131</sup>Article 2(6), 2010 Constitution of Kenya.

<sup>132</sup>Article 43(1, c), 2010 Constitution of Kenya.

<sup>133</sup> Ibid.

<sup>134</sup>Article 21(4), 2010 Constitution of Kenya.

for social and cultural policies.<sup>135</sup> The state shall also take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43 of the constitution.<sup>136</sup> All state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.<sup>137</sup>

### 3.3 Achieving Right to Food in Kawangware Slum

Kawangware is one of the fastest growing and poorest slums in Nairobi with a population of over 300,000.<sup>138</sup> The majority of the residents live in extreme poverty. They survive on casual labour (*vibarua*), day work and low income jobs in the city. The job opportunities available include security jobs, casual labourers on construction sites, domestic workers, drivers, conductors, and cooks amongst others.<sup>139</sup> The informal sectors in which the residents work in provide them with poor wages. The jobs are not permanent, hence no job security. In fact one wakes up in the morning in search of casual labour; in some cases they are not lucky to get one.<sup>140</sup> Interview number 33 stated that:

My work is not permanent. I don't even know where I will get another job after this construction is over. Sometimes the boss will just fire you and you can't complain to anyone because he is the boss. I am paid a total of Ksh. 2100 every Saturday of the week.

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<sup>135</sup> Article 19(1), 2010 Constitution of Kenya.

<sup>136</sup> Article 21(2), 2010 Constitution of Kenya.

<sup>137</sup> Article 21(3), 2010 Constitution of Kenya

<sup>138</sup> Vapour Centre, 'Kawangware' <<http://www.vaporsports.org/about-us/our-centers/kawangware?format=pdf>> accessed 28 February 2014.

<sup>139</sup> Most of the interviewees worked as security guards, cooks, house helps, construction workers, drivers amongst other positions in the informal sector.

<sup>140</sup> Interview no.33, a casual labourer on building sites (Kawangware 20<sup>th</sup> March 2014).

Yet I have to use this money to pay rent, pay fees for my children, buy food and many other things. Life is really hard. When I have not even found a job on a particular day, I don't even have savings that can help me push on.<sup>141</sup>

Some women seat near Kileleshwa Police Station the whole day, waiting for anyone who has some work for them.<sup>142</sup> It is not always certain that they will find a job on that particular day and earn some money to buy food. As one respondent put it:

Every day I wake up not knowing what my two children will feed on. I walk to Kileleshwa roundabout sit there from morning. Sometimes am lucky to get a client who will ask me to do for them cleaning for an amount of Ksh.300. sometime I am not lucky and I return home with nothing. In Nairobi we survive. You only eat what you can afford and sometimes you don't even have the money to buy that cheapest food.<sup>143</sup>

Individuals interviewed had all experienced lack of food.<sup>144</sup> As net consumers of food they are dependent on the market and have been adversely affected by the increase in food prices. They attributed the high cost of living and high food prices to the enactment of the VAT Act. Interview 9 argued that, 'The VAT has led to all commodities been taxed hence even house rent was increase making life in Nairobi expensive'.<sup>145</sup> Interview 12 on the hand was bitter with the enactment of the VAT Act:

Who doesn't know the VAT.? It has increased the cost of living. For example flour, sugar and other commodities are very expensive. The poor like us have to struggle to live. The

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<sup>141</sup> Ibid.

<sup>142</sup> Interview with interview no.14 (Kileleshwa round about, near Kasuku Centre 15<sup>th</sup> March 2014).

<sup>143</sup> Ibid.

<sup>144</sup> Interview no. 10, 11 and 12, (Kileleshwa Round About, 3<sup>rd</sup> April 2014).

<sup>145</sup> Interview 9, (Kawangware 3<sup>rd</sup> April 2014).



little money you get you doesn't even know how to divide it. The government should find ways to address this issue.

The urban poor were of the view that this had been contributed by legislation and poor policy framework that Kenyan government had put in place.<sup>146</sup>

According to ICESCR, the enjoyment of the right to food should not affect the enjoyment of other rights.<sup>147</sup> The urban poor have compromised the right to food in order to meet other needs such as high bus fares, purchase of water and paying of school fees amongst others. Most of the urban poor residing in Kawangware walk to and from work.<sup>148</sup> The rationale for this is to save bus fare and buy food. One of the respondent argued that boarding a bus to work was a luxury:

Whatever I get the first thing I think of is my stomach then my rent. Bus fares are expensive and increase now and then. So one is forced to walk to work. Getting a job is not easy and once you get one you cannot miss to go to work because you don't have fare. You will walk. The money you get you save. In fact the City is not far. You just pass through Kangemi, then Westlands and you are in town. The only challenge is the shortcut we use to go to Kangemi which is called MauMau is insecure. I cannot buy expensive food or live in a good house because the money I get is too little to live such a life.<sup>149</sup>

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<sup>146</sup> Interview No. 9, (Kawangware 3<sup>rd</sup> April 2014).

<sup>147</sup> OXFAM, 'The Food Dialogue Project' <<http://www.oxfam.ca/sites/default/files/food-dialogue-2012-workbook.pdf>> accessed 28 March 2014; General Comment 12, para 8.

<sup>148</sup> Interview no. 34a construction worker walks to and from town every day in order to save the fare and buy food to feed his family.

<sup>149</sup> Ibid.

While Kenya through National Social Security Fund aims at providing the right to security to its people, the unemployed urban poor do not enjoy this right. The income they earn is too little to save.<sup>150</sup> Most of the income they get is used to buy food.<sup>151</sup> In fact the right to education is the most violated. Children drop out of school or do not attend school to take a more active role in the provision of food through casual employment in the informal sector.<sup>152</sup>

Due to the high cost of living in the city and lack of enough income to purchase food, there is change in what most families consume. Families have been forced to change their diets in order to buy what is affordable. Proteins being the most expensive are less consumed leaving most families to consume starch which is cheaper. According to the right to food rapporteur, Olivier De Schutter, food adequacy means that the food must satisfy dietary need taking into account the individual's age, living conditions, health, occupation, sex, etc.<sup>153</sup> The food should also be safe for human consumption and free from adverse substances.<sup>154</sup> The change of diet to procure the cheapest food in the market has made families not to feed on nutritious food. Interviewee number two a hotelier in a restaurant stated that:

I try my best to provide a balanced diet to my family. However I have had to change diet. We rarely feed on fish, maybe once in a while. I can only afford one packet of milk a day for breakfast to make tea for six people. Food like bread is expensive, I will rather buy

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<sup>150</sup> Interview no. 2 Kawangware, 3<sup>rd</sup> April 2014.

<sup>151</sup> Most of the urban poor contended that they feed from spoon to mouth. There is no savings they make. The income they get from the informal sector is mainly used to put food on the table and meet other basic needs.

<sup>152</sup> Interviewee 4; Interviewee 5 and Interviewee 6, Kawangware, 3<sup>rd</sup> March 2014. The interviewees were minors of school going age. They had never attended school. They collect scrap metals and sell them to metal dealers instead of attending school in order to buy food.

<sup>153</sup> OD Schutter, 'From Charity to Entitlement: Implementing the Right to Food in Southern and Eastern Africa' Briefing Note 05, June 2012.

<sup>154</sup> See chapter two on the elements of the right to food.

mandazis which is cheaper. So I cannot really say I can afford a balanced diet because I am the sole breadwinner in this family.<sup>155</sup><sup>156</sup>

Fish has been replaced by omena,<sup>157</sup> which is cheaper. The price of milk is also high with a packet of milk going at 45 Kenya shillings.<sup>158</sup> Although the government of Kenya banned the sale of roadside milk,<sup>159</sup> the urban poor still purchase due to its lower prices.<sup>160</sup> In most of the households milk is not consumed. Food stuffs are also prepared in open air notwithstanding the poor sanitation.<sup>161</sup> These includes; boiling maize; deep frying fish, French fries; githeri;<sup>162</sup> cereals and other food stuffs. Adequacy of food does not only mean a balanced diet but also entails safety of food consumed.<sup>163</sup> Through direct observation I found out that there were some foods in the market that were not certified by the Kenya Bureau of Standards (KEBS).<sup>164</sup> These food stuffs were very cheap hence affordable. The safety of these food stuffs is questionable. Families only feed on what they can afford and dietary needs are given secondary consideration or are simply not adhered to.

The individuals interviewed were not aware of the existence of the right to food. Human rights awareness is key to the implementation of the right in question. Ignorance of human rights is an impediment to the realization. The Kenya National Human Rights and Equality Commission a

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<sup>155</sup> Interview 2, (Kawangware 10<sup>th</sup> February 2014).

<sup>156</sup> Interview 2 (Kawangware 10<sup>th</sup> February 2014).

<sup>157</sup> Omena is small fish found in Lake Victoria. Also referred to as 'dagaa' in Tanzania.

<sup>158</sup> Observation, PBK Supermarket Kawangware 3<sup>rd</sup> March 2014.

<sup>159</sup> MR Mulford, 'Smallholder Market Participation and Welfare Effects: Evidence from the Kenya Dairy Sector' <<https://dspace.library.cornell.edu/bitstream/1813/34177/1/mrm339.pdf>> accessed 29 September 2014.

<sup>160</sup> Observation, Kawangware market 3<sup>rd</sup> March 2014.

<sup>161</sup> Observation, Kawangware 10<sup>th</sup> February 2014.

<sup>162</sup> Mixture of beans and maize. It is a Kenyan delicacy. The urban poor prefer this because it's cheap and ready cooked.

<sup>163</sup> General Comment 12.

<sup>164</sup> Observation (Kawangware, 28<sup>th</sup> March 2014).

body mandated by the Constitution of Kenya, has a role to create awareness on the right protected under the constitution.<sup>165</sup> The urban poor were only conversant with the fact that the new constitution protected a vast number of rights but could not pinpoint a particular right.<sup>166</sup> The CoK has for the first time recognized the protection of socio-economic rights under article 43. In order to protect and implement human rights the various stakeholders must create its awareness.<sup>167</sup>

The CoK grants the High Court of Kenya with mandate to uphold and enforce the Bill of Rights and grant reliefs to those whose rights are violated.<sup>168</sup> Ignorance of the content of the right to food and states obligation towards its realization is rampant in slums. The urban poor have no knowledge of redress mechanisms available when the right to food is violated.<sup>169</sup> This issue was exacerbated by a lack of information from the central and county governments on the components of rights available. In fact to the slum dwellers the government had failed in keeping their campaign promise of reducing the cost of living by lowering prices of food in the market.

Youth and children also engage in sexual activities in exchange for sexual favours such as money to purchase food.<sup>170</sup> A report by RAPDA and FIAN International, indicated that in Kisumu some of the interviewees confirmed that it had also become commonplace for women

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<sup>165</sup> Article 59, Constitution of Kenya 2010.

<sup>166</sup> Interview no. 33 stated that the only right he knew was the right to vote. However he did not know the content of the right.

<sup>167</sup> FAO, 'Nutrition, Education and Awareness Raising for the Right to Adequate Food' Working Paper 6, 2014. <<http://www.fao.org/3/a-i3895e.pdf>> accessed 29 September 2014.

<sup>168</sup> Article 23, Constitution of Kenya.

<sup>169</sup> Most of the interviewees were surprised to learn that indeed there was a term like right to food. Interview 35, 36, 40, 30 exhibited the passion to know what the right to food was and the role they could play in realizing it.

<sup>170</sup> Interview 37 and 38 were sex workers. They argued that they were forced by circumstances such as unemployment, high cost of living to engage into prostitutions. They claimed that they had to do this in order to provide food for their children, pay rent and pay school fees.

even young girls to exchange sexual favours for food or other forms of support.<sup>171</sup> The scenario is the same in Kawangware slum. Due to poverty children who engage in sexual activities in order to get money to buy food are paid as low as 50 Kenyan Shillings.<sup>172</sup>

### **3.4 The Right to Food Violations in Kawangware Slum**

The State as a duty bearer has failed in discharging its obligations to respect, fulfil and promote the right to food at the national level exacerbating the vulnerability of hunger amongst the urban poor. Though the right to food in Kenya is justiciable through constitutional recognition<sup>173</sup> and judicial enforcement<sup>174</sup> its implementation is not foreseeable. Like other socio-economic rights before the court, the right to food faces challenges of enforcement. Though there has been no case in the Kenyan court on the violation of the right to food, it does not mean that right to food violations do not exist. The government of Kenya has failed to put in place measures to address lack of food in slums. Article 23 of the CoK mandates the State to implement rights and fundamental freedoms as provided for in the CoK.

The government has failed to adopt a legal framework on the right to food. The Food Security Bill before the parliament encompasses the right to food as an element of food security.<sup>175</sup> Food

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<sup>171</sup> RAPDA and FIAN International, 'Kenya's Hunger Crisis-The Result of Right to Food Violations' Report of a Joint International Mission by RAPDA and FIAN International February 2010.

<sup>172</sup> Interview no.26 (Kawangware BoraBora Bar 3<sup>rd</sup> April 2014).

<sup>173</sup> Article 43, Constitution of Kenya 2010.

<sup>174</sup> The High Court of Kenya has been granted with the jurisdiction to uphold and enforce the rights in the Bill of Rights. Subordinate courts shall only be granted with original jurisdiction in appropriate cases once the Parliament enacts legislation.

<sup>175</sup> Right to food is defined as the right of everyone to have regular, permanent and free access, at all times, either directly or by means of financial purchases, to quantitatively and qualitatively adequate, sufficient and safe food corresponding to his or her cultural traditions and which ensures a physical and mental, individual or collective fulfilling and dignified life free of fear of hunger and under nutrition. It adopts the definition of the right to food rapporteur, Olivier De Schutter.

Security Bill analyses the right to food, the obligations of national and county government and if adopted it will provide a legal framework for the realization of the right to food.

The government has failed to provide the necessary budgetary allocations to implement the right to food and ensure resources are not diverted to recurring costs of the ministries involved. Such budgetary allocations should cater for the provision of food to the vulnerable in the slums such as school-going children, the disabled and the elderly. The implementation of socio-economic rights faces challenges due to the allocation of limited resources.<sup>176</sup> However the government must distribute its resources as it has the duty to ensure that the vulnerable groups within society are addressed.<sup>177</sup>

A lack of information is a further hindrance to the ability to claim the right to food by the general public. The obligation of the state to fulfil the right to food means that the state must pro-actively engage in activities intended to strengthen people's access to and utilization of resources. Lack of awareness on the content of the right to food and failure to allow urban poor to participate in the policies affecting access to food is a violation.

The government has not put in place mechanisms that would address the safety of the food that gets into the market. The failure to address issues affecting lack of employment among the youth is a right to food violation. The government has failed to put in place mechanisms that would enable youth engage in self-employment projects. Although the government has launched the Youth Fund, Uwezo Fund among others, the process of accessing such funds has been characterised by claims of corruption.

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<sup>176</sup> Attiya Waris, *Tax and Development: Solving Kenya's Fiscal Crisis through Human Rights* (LawAfrica 2013) 143.

<sup>177</sup> Article 23, Constitution of Kenya 2010.

### 3.5 Impact of the Violations of the Right to Food in Kawangware Slum

The violations of the right to food have a negative impact on the society. The impact may be so adverse that it would lead to malnutrition and death. In other cases it may lead to the decay of social values with the population engaging in vices that would enable them access food. Sometimes the availability of the food would not be a problem. In the slum discussed above right to food violations have led to the following impacts amongst the vulnerable groups;

#### 3.5.1 Children

Children are the most vulnerable people in any given society. They cannot work or produce their own food. In essence the needs of children must be provided by their parents, family and the state. The rights of children are provided for under Article 53 of the Constitution of Kenya.<sup>178</sup> Poor children in the slum are forced by circumstances to go out and work in order to buy food.<sup>179</sup> They provide cheap labour in the informal sector.<sup>180</sup> Such kind of labour includes washing, fetching water, and selling food stuffs amongst others. They are forced by their parents, immediately after school to go to the city centre to sell some commodities such as groundnuts.<sup>181</sup> The money is then used to buy food and offset other bills. Cases of children coming from the rural areas to look for job opportunities are also rampant in the slum.<sup>182</sup> When they get to the city the only jobs they get are as domestic workers. Another form of labour is where children loiter

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<sup>178</sup> Article 53 2010 Constitution of Kenya.

<sup>179</sup> Interview 15; 18; 19; 27, (Kawangware 3<sup>rd</sup> march 2014).

<sup>180</sup> Cheap labour includes baby sitting and collecting scrap metals for metal dealers. Children as low as the age of 8 years were either helping a neighbor in taking care of their young ones or fetching water.

<sup>181</sup> Interview no.30, (Kawangware 3<sup>rd</sup> April 2014).

<sup>182</sup> Interview no. 5, a minor in Kawangware (Kawangware 56 10<sup>th</sup> March 2014) The minor dropped out of school at the tender age of 13. She came to the city in search of a job opportunity and she got one as a house girl.

around collecting metals and plastics.<sup>183</sup> They later sell this to metal dealers at a small fee and use the money to buy food. This is child labour.

Children who go to school hungry cannot concentrate, leading to poor school performance. Head teachers in the schools interviewed recognized the negative impact lack of food has on academic performance.<sup>184</sup> Respondent number nine, a teacher in a local school in Kawangware stated that:

The effects of lack of food are enormous. Youth are engaging in criminal activities and prostitution in order to earn a living. In this school only those who have paid lunch fees are able to have lunch here. But very few parents have paid lunch fees. Most of the students go home during lunch time or bring lunch to school. As a school we would like to put in place a feeding programme but due to inadequate finances we have not been able to. Lack of food has led to poor academic performance. Sometimes when teaching there are some students who sleep during class lessons and when asked they say they didn't have food or breakfast. We have also handled cases of young girls who have been impregnated. They are always seduced in exchange of sexual favours. In this regard students end up dropping from school. Most of them help parents procure food.<sup>185</sup>

In most schools visited students were required to pay a certain fee to cater for lunch meals.<sup>186</sup> However very few student were able to raise that fee forcing them to go home during lunch time or come along with food in school. In most homes children carried their own lunch while others rushed home during lunch time to have lunch. Those whose parents could not afford lunch would

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<sup>183</sup> Observation, (Kawangware March 2014).

<sup>184</sup> Interview 9, (Kawangware 10<sup>th</sup> February 2014).

<sup>185</sup> Interview 9.

<sup>186</sup> Such schools included Kawangware primary, Gatina primary and Hope academy.



return to school hungry.<sup>187</sup> The government should address this issue by providing mid-day meals to school-going children.

Children also drop out of school due to lack of school fees. The money that would be used to pay fees is used to provide for other needs such as housing.<sup>188</sup> The cost of housing is expensive with a simple *Mabati* (iron sheet) shanty going for around KSh.2, 000 per month. Children also drop out of school in order to help their parents with domestic work such as taking care of their young ones as their parents go to work.

Children in the slum engage in prostitution at a tender age in exchange of sexual favours. This has led to rampant childhood pregnancies as well as associated risks such as sexually transmitted diseases.<sup>189</sup>

### 3.5.2 Women

In most households, food is largely a woman's issue. In most families it is women who go to the farms and prepare the meals at home. In most cases they eat last after ensuring everyone has had their fill. They sacrifice the little food they have for their children and family. In the labour sector, women minimum wage is generally lower than men's minimum wage for the same work. This weaker economic position makes women susceptible to hunger and malnutrition. The extra strains of pregnancy and child rearing also undermine women's food security.

In most of the homes visited, women were the sole breadwinners.<sup>190</sup> While some of them were widows, others had men who were not responsible, preferring to stay out in the *busaa* (local

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<sup>187</sup> Interview 15, (Kileleshwa Roundabout, 2<sup>nd</sup> April 2014).

<sup>188</sup> Interview 36, (Kawangware 4<sup>th</sup> April 2014).

<sup>189</sup> Interview 8, (Kawangware 2<sup>nd</sup> April 2014).

alcohol) dens.<sup>191</sup> In other families the mother had children from different men hence bearing the sole responsibility of providing for the family.<sup>192</sup> Most of women did not have enough income to enable them buy food. Respondent ten stated that:

The challenge I face in getting food is lack of enough money to buy food. My salary as a house girl is kshs. 5,000 per month and it is not enough. I have to send money to my mother upcountry as she lives with my daughter. My daughter is also in school. What I do is to use as little money as possible on food. My husband who is a construction worker does not have enough money. He is a casual worker. Sometime he can go for a week without getting any work.

Women who become pregnant and realise that they cannot be able to feed another member of the family opt to abort. In some cases children born from unwanted pregnancies are dumped in pit latrines or left by the roadside.<sup>193</sup> The chief of the area has handled numerous cases of small babies that were dumped in pit latrines or bins.<sup>194</sup>

Cases of domestic violence are rampant. Men who are unemployed and drunkard are not able to provide for their families. This has led to fights erupting. Domestic violence has led to breaking of marriages. Some women confessed of taking their men to FIDA (Federation of Women

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<sup>190</sup> Interview 10, (Kawangware 3<sup>rd</sup> April 2014).

<sup>191</sup> Interview 26, (Kawangware 3<sup>rd</sup> April 2014).

<sup>192</sup> Ibid.

<sup>193</sup> Interview 25, (Kawangware 3<sup>rd</sup> April 2014).

<sup>194</sup> Government Official (Kawangware Chief Camp, 29<sup>th</sup> March 2014).

Lawyers) in order to compel them to buy food for their children.<sup>195</sup> This violates their right to a family.

Prostitution is a common vice in the slum. Women engage in prostitution in order to provide for their families. Prostitution is practiced within the slums and in the city of Nairobi. Engagement in prostitution is primarily caused by lack of job opportunities and women empowerment. They not only take to prostitution in order to buy food for their families but also to pay other bills such as housing and education for their children.<sup>196</sup>

### 3.5.3 Youth

The youth have been recognised in the Kenyan Constitution for the first time and their rights encapsulated under Article 45 of the Constitution.<sup>197</sup> The government of Kenya has also put into place policies that would enable the youth gain employment. Lack of employment has been the greatest challenge facing the youth.<sup>198</sup>

Due to lack of employment and income youth engage in criminal activities in order to get money to buy food and other basic needs.<sup>199</sup> Cases of mugging and stealing are common in the slum.<sup>200</sup> Most houses in the slum are broken into during the day when the owners have left for work. The people interviewed said that the youth steal things like electronics, beddings and clothing. They later sell the stuff at a cheaper price as second-hand goods. The youth have formed gangs under

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<sup>195</sup> FIDA is a Non-Governmental Organization located adjacent to Kawangware leaders that advocates for the rights of women.

<sup>196</sup> Interview 29, (Kawangware 3<sup>rd</sup> April 2014).

<sup>197</sup> Article 45, 2010 Constitution of Kenya.

<sup>198</sup> Interview 24, (Kawangware 3<sup>rd</sup> April 2014).

<sup>199</sup> Interview 23, (Kawangware 3<sup>rd</sup> April 2014).

<sup>200</sup> Most of the interviewees indicated that security in the region had deteriorated.

which they carry out these criminal activities.<sup>201</sup> In many cases gates are closed at 10pm for security reasons. However due to poor housing most plots do not have gates and hence are prone to theft at night. The security personnel in the area admitted to the insecurity in the area and recommended that government should address the problem of unemployment amongst youth.<sup>202</sup>

The youth engage in prostitution as a way of fending for themselves. Some youth who are educated but unable to secure jobs engage in sexual activities in exchange for sexual favours.<sup>203</sup> This they get from older men and women who pay them well, and even help them in paying for their house rent. In fact in a single-roomed house a group of ladies stay together and at night they go to the city or the clubs in the area to get men who pay them for their sexual favours.<sup>204</sup> The reason they give is that, there are no jobs in the city, and prostitution is the only job left that can help them put food on the table.

Due to lack of occupation young men and women spend most of their time at pool-table halls and in bars using the little money earned to buy drugs and alcohol.<sup>205</sup> They drink cheap alcohol whose safety is questionable.

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<sup>201</sup> Interview 8, (Kawangware 10<sup>th</sup> February 2014).

<sup>202</sup> Ibid.

<sup>203</sup> Interview 23, (Kawangware 3<sup>rd</sup> April 2014).

<sup>204</sup> Ibid.

<sup>205</sup> Interview 30, (Kawangware 3<sup>rd</sup> April 2014).

## CHAPTER FOUR

### HOW TO PROGRESSIVELY REALISE THE RIGHT TO FOOD IN KENYA'S URBAN SLUMS

#### 4.1 Introduction

In international law, states exercise the principal law making and executive functions proper of any legal order.<sup>206</sup> Over the past years, significant progress has been made in implementation of the human right to food, the co-construction of issues by civil society, social movements and governments.<sup>207</sup> The increasing recognition of the importance of a legal and policy framework grounded on the right to food reflects a growing understanding among states that hunger is not simply a problem of supply or demand.

States have realised that hunger is primarily a problem of lack of access to productive resources: limited economic opportunities for the poor; a failure to guarantee living wages to all those who rely on waged employment to buy food and the gaps in social protection.<sup>208</sup> States should therefore take the initial step in realising the right to food at the national level. This chapter provides recommendations which, if adopted in Kenya, can help in realising the right to food at the national level for the urban poor.

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<sup>206</sup> A Cassese, *International Law* (2<sup>nd</sup> edn, Oxford University Press 2005).

<sup>207</sup> P Ahluwalia, 'The Implementation of the Right to Food at the National Level: A Critical Examination of the Indian Campaign on The Right to Food as an Effective Operationalization of Article 11 of ICESCR' (Working Paper No 8 Centre for Human Rights and Global Justice 2004).

<sup>208</sup> UNGA, 'Report of the Special Rapporteur on the Right to Food' (7<sup>th</sup> August 2013) 68<sup>th</sup> Session (2013).

## 4.2 Recommendations

The Kenyan legislature should adopt a framework legislation ensuring that the right to food is justiciable before national courts or other forms of redress are available. Framework laws grounded in the right to food were adopted in rapid succession in Argentina in 2003(Law creating the National Nutrition and Food Program), in Guatemala in 2005(National Nutrition and Food Security System Law), in Ecuador in 2006 (Nutrition and Food Security Law) and in Venezuela in 2008 (Nutrition and Food Security Law).<sup>209</sup> Such framework laws should set targets to be achieved by government, allocating responsibilities for taking action to different branches of government and coordinating their actions. The Food Security Bill currently before parliament should be enacted in time.

The biggest challenge the urban poor living in slums face in accessing food is the high cost of living. In order to address this problem the Parliament should review the VAT Act again. Basic needs such as food, housing and water should not be overtaxed. This will reduce the cost of living. The government should also through the Ministry of Planning and Devolution promote the creation of job opportunities to the youth. The rate of unemployment in Kenya is alarming.

The judiciary should ensure that it enforces the bill of rights taking into account the protection of the most vulnerable. When violations of the right to food are litigated, the reliefs granted should aim at protecting the human dignity of the litigants. The Bill of rights for the first time recognizes the inclusion of economic and social rights. In articulating these rights under Article 43 of the Constitution the state has the obligation to ensure that they are enforced.

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<sup>209</sup>Ibid n 20.

One of the objects of devolution as articulated under Article 174 of the constitution is to facilitate the decentralization of State organs, their functions and services from the capital of Kenya.<sup>210</sup>

Implementation of devolution will ease the rural urban migration. Job opportunities in the rural areas will lead to the urban poor moving back to their communities to indulge in the developments project. Devolution will also ensure that the county government puts in place policies that will foster the production of food. In this case the rural poor will have no reason to migrate to the cities in search of better jobs. Implementation of devolution is therefore a key catalyst in addressing lack of food in urban areas.

There is need to create awareness on what constitutes the right to food and its violations by media, civil societies and the Kenya Human Rights and Equality Commission. The individual is a subject to the realization of the right to food. Intensive awareness by the State, NGO's and other stakeholders will help in alleviating hunger. Currently the urban poor only know that the new constitution provides extensive rights to them that are enforceable. However they do not know of the specific rights such as right to food, the content and the enforcement mechanisms in place. The civil society in Kenya should capacitate themselves to strengthen their work on the right to food through advocacy and capacity building. They should also support victims to launch complains on the right to food violations. Civil society and social movements have played a great role in the legal developments of the right to food. Civil society and the media have the responsibilities of promoting formal and non-formal education to advance public awareness of human rights. All actors require education and training, including government officials at all levels, members of the professions, and representatives of the private sector and civil society. Civil society actors can develop their own monitoring methods whose legitimacy can allow them

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<sup>210</sup> Article 174 (h)

to become an interlocutor with the authorities.<sup>211</sup> Civil societies can also play a big role in disseminating information and creating awareness on the components of the right to food. They can be instrumental in scaling up anti-hunger social protection networks and play an active role in support of the adoption of food and nutrition security laws. Civil societies should then form broad-based national networks to enable them to contribute more effectively to policy making and monitoring, including through representation in inclusive national right to food and nutrition security councils.

The Ministry of Education should establish feeding programmes in schools. Special focus should be put to ensure the right of children to food so as to enable the fulfillment of the rights of children. Feeding programs providing nutritionally balanced food should be put in place. The safety, acceptability and dietary needs should be considered. Constitutional recognition of the right to food is not enough. In order to expedite the enforcement and implementation of the right to food Kenya must institute monitoring mechanisms. The monitoring must ensure that the urban poor participate in the process of addressing the right to food violations. The recognition of the right to food in legal orders is of symbolic value. It allows constitutional courts to strike down laws that violate right to food or sanction such violations that may result from administrative mechanisms.

In Kenya the Kenya Human Rights and Equality Commission is the body mandated to monitor the implementation of human rights. This commission should monitor the compliance of the Kenya with its international obligations in the area of human rights These will ensure that

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<sup>211</sup> Civil societies such as FIAN International, the Centre for Economic and Social Rights or the Social Collective for the Right to Food have produced immense reports assessing the implementation of the right to food reports in various countries.



government take measures guided by the need to support the most vulnerable; that they abstain from action that has a detrimental impact on the enjoyment of the right to food, and that they move at a reasonable speed towards the full eradication of hunger and malnutrition.<sup>212</sup> In cases where the right to food violations is beyond control the commission should seize judicial authorities or trigger action.

The first MDG is eradication of extreme poverty and hunger.<sup>213</sup> Under this goal the targets are; halve the proportion of people whose income are less than a dollar a day by 2015; achieve full and productive employment and decent work for all, including women and young people and to halve the proportion of people who suffer from hunger by 2015.<sup>214</sup> The government of Kenya should strive at meeting the MDG one. Eradication of poverty among the urban poor through creation of jobs with reasonable pay will enable them procure food.

The National Social Security Fund (NSSF) should invent a way of ensuring that the urban poor enjoy their right to social security. Health care, unemployment insurance, food aid, disability benefits: all of these services aim to ensure the right to an adequate standard of living for everyone, including the right to food.<sup>215</sup> The right to social protection is deeply linked with the right to food. Social protection can play a vital role in increasing the ability of individuals to have access to food. Economic access implies that individuals have the purchasing power and the means to acquire food from markets. When individuals are unable to secure sufficient income for reasons of disability, unemployment, health or poverty, the State must step in to provide support,

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<sup>212</sup> Ibid n 9.

<sup>213</sup> UN Commission for Human Rights 'The Millennium Development Goals and Human Rights' <<http://www.ohchr.org/Documents/Publications/HRAndMDGsInPractice.pdf>> accessed 15 February 2014.

<sup>214</sup> Ibid.

<sup>215</sup> Olivier DS and Magdalena S, 'Underwriting the Poor: A Global Fund for Social Protection' <[http://www.ohchr.org/Documents/Issues/Food/20121009\\_GFSP\\_en.pdf](http://www.ohchr.org/Documents/Issues/Food/20121009_GFSP_en.pdf)> accessed 18 February 2014.

thus discharging its obligation to fulfil the right to food. Article 43 of the CoK also guarantees the right to social security. By fulfilling the right to food through social protection, the government can ensure that hunger is not stigmatising and that individuals are able to lead lives with dignity, where they make choices about their lives and their food consumption and live without fear of hunger. National social protection systems should be established to redefine benefits as legal entitlements so that individual beneficiaries are informed about their rights under the social programmes and have access to effective and independent grievance redress mechanisms.

The government of Kenya through the Ministry of Agriculture States should also adopt the right based approach in fighting hunger. The rights based approach involves a paradigm shift, from one that emphasizes charity, benevolence, and voluntary government action to a viewpoint in which people are empowered to demand a policy environment that enables them to meet their needs and participate in policy design. A human rights approach encompasses the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law. This in turn will promote good governance. This ensures that policies designed for the poor are not designed without them and the situation of the most vulnerable is improved.

The government of Kenya through its various institutions should aim at fulfilling the right to food in the urban areas. Natural disasters such as fire tragedy are rampant in slums. In such cases the government should directly provide food to the victims. The obligation to fulfil requires states to directly provide food for those who are not able to provide for themselves. National food assistance programmes are crucial in cases of natural disasters. Provision of cooked mid-day meals for all children in government and government-aided schools ensures that the right to

food amongst children is realised. The duty to facilitate means that governments must take steps to assure that food-insecure people have access to productive resources and employment. In the case of people who are unable to feed themselves, for example by reason of disability, the duty to provide requires establishment of social safety net programs. Eligibility must be based on need, but programme design and implementation should also incorporate human rights principles.

The obligation to promote requires governments to foster knowledge of the right to adequate food and the rights based approach amongst the residents of their territory. Citizens have a right to information on any aspect affecting them. Creation of awareness should cover the components of the right to food; duties and obligations attached in realising the right to food; violations and mechanisms for redress in place. People should also be informed of the policies, strategies and legislation that the government has put in place in protecting their access to food. This promotes accountability by the state which has the obligation to promote, protect and fulfil the right to food.

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Chapter Summary

The background to the study, problem statement, research questions and research methodology were identified in chapter one. Chapter one summarised what the research project would cover. Chapter two discussed the concept of the right to food at international law. It analysed the theoretical framework and historical background of the right. The aim of chapter two was to give a clear understanding of the core elements of the right to food and state's obligations towards its realization.

Chapter three which formed the basis of case study discussed the right to food amongst the urban poor. Based on the data collected from Kawangware slums, it identified the right to food violations amongst the urban poor and its effect on the overall population. Chapter four basing on the findings in chapter three provided the way forward by recommending measures that should be adopted at national level in realizing the right to food. Finally chapter five gives a conclusion remark on the importance attached in realizing the right to food among the urban poor.

#### 5.2 General Conclusions

The right to food is a fundamental right inherent in human beings upon which the realization of other rights is impinged. The urban poor are vulnerable in any given society. It is therefore the role of states, international community and other stakeholders to ensure that the right to food is

enjoyed by this group of people. Food as basic commodity for the survival of any human being should be prioritised.

This research based on the hypothesis that there exists right to food violations amongst the urban poor has recognised that the right to food has been violated amongst the urban poor. The impacts of such violations affect the whole world and not just victims of hunger. The increased mushrooming of slums in the urban areas is devastating. Insecurity is an issue of global concern.

However lack of food has led to individuals indulging in crimes leading to insecurity that has spread across borders. In order to deal with the problems of the day, then the right to food must be addressed and implemented. A hungry nation cannot develop if the subjects of developments cannot engage in gainful employment. This is why the African countries are grappling with issues of development. The fight over resources that produce food such as land, water, animals amongst others has led to conflicts or wars and should be comprehensively addressed.

This research concludes that a human right approach should be adopted to address hunger and the effects of hunger. The focus should shift to the urban poor and measures should be put in place that would ensure that the right to food is progressively realised. Governments should realise that international law can only be implemented if states take the initial effort to do so. However laws will be legislated, the final implementation remains with the states. They enjoy international legal personality. They should take the initial steps to fast track the progressive realisation of the right to food amongst its citizens.

## APPENDICES

### Appendix 1: Interview Schedule

#### 1. PART A

##### a) Introduction

My name is VELLAH KEDOGO KIGWIRU, a student at the University of Nairobi. As part of my masters of law degree I am carrying out a project on the Right to Food under International Human Rights Law: A Case Study of the Urban Poor. In that case I would like to ask you some questions that would enable me comprehend your accessibility, availability and adequacy of the food you consume in Kawangware slum. I intend to use the information gathered to come up with recommendations to the government, key stakeholders and the international community. These recommendations will be intergraded into policies and legal frameworks that would address the violations and enjoyment of the right to food among the urban poor globally.

#### 2. PART B

a) Name.....

b) Sex.....

- c) Age.....
- d) Designation/Work.....

3. PART C

a) Interview questions to women and youth

- I. Can you tell me the challenges that you face in accessing food?
- II. What do you think are the key reasons why you cannot access food?
- III. Do you think the food you feed on is a balanced diet?
- IV. Have you on any occasion missed a meal?
- V. What has been the impact of the Value Added Tax Act that the government enacted in 2013 on affordability of food in the market?
- VI. Can you identify some of the effects of inaccessibility of the right to food among individuals i.e. children, women and youth?
- VII. The constitution of Kenya provides for the right to adequate food of acceptable quality. What do you understand by this right?
- VIII. What do you think the government and other stakeholders should put in place to ensure that people in Kawangware are able to afford food and feed themselves with dignity?

b) Interview questions to children

- I. How old are you?
- II. Are you going to school? If not, why?
- III. Do you help your parents in buying food in the house?
- IV. Do you know of other children who have dropped out of school in order to help their parents buy food?



## Appendix 2: List of Interviews

1. Interview No 1: Housewife, 10th February 2014, Kawangware.
2. Interview No. 2: Hotelier, 10<sup>th</sup> February 2014, Kawangware.
3. Interview No. 3: minor, street child, 3<sup>rd</sup> March 2014, Kawangware.
4. Interview No. 4: minor, street child, 3<sup>rd</sup> March 2014, Kawangware.
5. Interview No. 5: minor, street child, 3<sup>rd</sup> March 2014, Kawangware.
6. Interview No. 6: minor, school dropout, 3<sup>rd</sup> March 2014, Kawangware.
7. Interview No. 7: minor, street child, 3<sup>rd</sup> March 2014, Kawangware Market.
8. Interview No. 8: Anonymous 10<sup>th</sup> February 2014, Kawangware.
9. Interview No. 9: Teacher 10<sup>th</sup> February 2014, Kawangware.
10. Interview No. 10: house girl, 3<sup>rd</sup> April, Kawangware.
11. Interview No. 11: house girl, 3<sup>rd</sup> April, Kawangware.
12. Interview No. 12: unemployed, 2<sup>nd</sup> April, Kileleshwa round about.
13. Interview No. 13: unemployed, 2<sup>nd</sup> April, Kileleshwa round about.
14. Interview No. 14: unemployed, 2<sup>nd</sup> April, Kileleshwa round about.
15. Interview No. 15: unemployed, 2<sup>nd</sup> April, Kileleshwa round about.
16. Interview No. 16: unemployed, 2<sup>nd</sup> April, Kileleshwa round about.
17. Interview No. 17: unemployed, 3<sup>rd</sup> April, Kawangware.
18. Interview No. 18: unemployed, 3<sup>rd</sup> April, Kawangware.
19. Interview No. 19: unemployed, 3<sup>rd</sup> April, Kawangware.
20. Interview No. 20: unemployed, 3<sup>rd</sup> April, Kawangware.
21. Interview No. 21: unemployed, 3<sup>rd</sup> April, Kawangware.
22. Interview No. 22: unemployed, 3<sup>rd</sup> April, Kawangware.

23. Interview No. 23: unemployed, 3<sup>rd</sup> April, Kawangware.
24. Interview No. 24: unemployed, 3<sup>rd</sup> April, Kawangware.
25. Interview No. 25: unemployed, 3<sup>rd</sup> April, Kawangware.
26. Interview No. 26: bar attendant, 3<sup>rd</sup> April, Kawangware.
27. Interview No. 27: bar Waitress, 3<sup>rd</sup> April, Kawangware.
28. Interview No.28: security guard, 3<sup>rd</sup> April, Kawangware.
29. Interview No. 29: security guard, 3<sup>rd</sup> April, Kawangware.
30. Interview No. 30: security guard, 3<sup>rd</sup> April, Kawangware
31. Interview No. 31: house girl, 3<sup>rd</sup> April, Kawangware
32. Interview No. 32: Construction worker, 4<sup>th</sup> April 2014, Kileleshwa.
33. Interview No. 33: Construction worker, 4<sup>th</sup> April 2014, Kileleshwa.
34. Interview No.34: Construction worker, 4<sup>th</sup> April 2014, Kileleshwa.
35. Interview No. 35: Construction worker, 4<sup>th</sup> April 2014, Kileleshwa.
36. Interview No. 36: Construction worker, 4<sup>th</sup> April 2014, Kileleshwa.
37. Interview No. 37: unemployed, 4<sup>th</sup> April 2014, Kawangware.
38. Interview No. 38: unemployed, 4<sup>th</sup> April 2014, Kawangware.

### Appendix 3: Observations

1. Children selling by the roadside at night around 10pm East African Time.
2. Food stuff cooked by the road side in open places amidst dust.
3. Food stuff in mini supermarkets lacking KEBs safety mark.
4. Street children picking metal and plastic equipment's to sell to buyers located at strategic places in the slum.
5. Youth idling in bars and by the roadside. In particular at Congo stage, Stage 2 and Stage 56.
6. Women, youth and men drinking busaa from a busaa den at a place called Muslim.

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