



# KENYA'S HUNGER CRISIS – THE RESULT OF RIGHT TO FOOD VIOLATIONS

Report of a joint international mission  
by RAPDA and FIAN International





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# 1. Executive Summary

Although Kenya suffers from recurring drought, the situation during the past three years has reached levels unparalleled in living memory. In order to investigate the right to food situation in some parts of the country, an international delegation of the African Network on the Right to Food (RAPDA) and FIAN International undertook a research mission September 20-26, 2009. The team visited various parts of the country and spoke to representatives of various communities affected by the hunger situation as well as to policy makers, NGOs and CBOs and individuals at the national and local levels

The mission found that, although the severity of the famine was exacerbated by a lack of rainfall as well as the after-effects of the post-election violence of 2007, there are a number of underlying structural problems that ensure that drought and man-made emergencies lead to famine. These include the high level of inequality in Kenya, exclusion of the poor and vulnerable groups from the social, economic and political spheres, widespread corruption and nepotism, a lack of investment in sustainable agriculture and a fragmented and contradictory legislative and policy framework. In these contexts, the Kenyan government is failing to adhere to its obligations to respect, protect and fulfil the right to food as enshrined in the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights and other international and regional human rights instruments.

The report provides a background to the current famine revealing the underlying failures to address the country's food insecurity. A brief overview of the international, regional legal and policy frameworks relating to the right to food is provided. A view of the confused legislative and policy climate in Kenya is given. Certain policy developments at the national level that could provide a way forward if followed-up are highlighted. Challenges to the fulfilment of the right to food are illustrated through four case studies from different areas of the country. The findings point to the extensive nature of food insecurity in the country leaving few communities untouched. They also bring to light a number of violations of the right to food that serve to prolong and deepen the hunger situation in Kenya.

Finally, recommendations are made, primarily to the government of Kenya, that if adhered to, would facilitate the respect, protection and fulfilment of the right to food for all sectors of the Kenyan population.

## 2. Introduction

During the past years Kenya has suffered from a severe drought affecting all parts of the country. The hunger situation has reached levels unparalleled in living memory and the President has appealed to the International Community for assistance in addressing the famine. A research mission was thus conceptualised jointly by FIAN International and the African Network on the Right to Food (RAPDA) with the aim of using the right to food to investigate the ongoing drought and to identify underlying causes of the widespread famine. Right to Food problems in programmes dealing with famine relief were also included.

The mission was carried out between September 20 and 26, 2009. The team was comprised of Abigail Booth, the vice-president of FIAN International, Sheikh E.T.Lewis, the deputy-coordinator of RAPDA, and Christophe Golay, former Legal Adviser to the UN Special Rapporteur on the Right to Food (2001-2008), Joint Coordinator of the Project on ESCR, Geneva Academy of International Humanitarian Law and Human Rights, Member of the Board of FIAN Switzerland. The Kenyan mission members were Edwyn Odeny, Tom Onyango and Rosemary Wanjala. The team visited various parts of the country and spoke to representatives of various communities affected by the hunger situation as well as to policy makers, NGOs and CBOs at the national and local levels. The agenda was designed to provide an illustrative overview of a number of different geographical locations and means of livelihood. It included visits to urban and peri-urban areas of Kisumu with a specific focus on urban poor, to the sugar producing district of Mumias, to Kajiado district in which pastoralism has traditionally been the prime means of subsistence and to the semi-arid district of Machakos. All areas visited were suffering from food insecurity.

Due to time constraints the worst hit areas in the North and North Eastern parts of the country were not visited, but as these are the prime focus of emergency programmes there is ample literature to illustrate the causes and consequences of the famine in these areas. Furthermore, no representatives of government agencies directly working with food security were interviewed due to difficulties in accessing these individuals. Although several government documents corroborate the findings of the mission it would have been useful to allow government representatives to give their view of the causes of the extensive food insecurity in the country and to comment directly on our findings. For this reason it is recommended that the report be followed up through interviews with government representatives.

The mission is also aware that the food security situation in Kenya is complex and that this report is too brief to do justice to all issues linking drought to food insecurity. The report posits, however, that drought in and of itself should not necessarily lead to hunger and famine and that the affects could be significantly alleviated if serious measures were put in place to address the rights of vulnerable groups and prevent vulnerability in the country.

### 3. Background

Kenya, located in Eastern Africa, covers an area of approximately 583,000 km<sup>2</sup>. The population is estimated to be 38.3 million<sup>1</sup>, 80% of which live in rural areas and are dependent on the land for their livelihood. Agriculture is primarily dominated by smallholder farmers who generate around 75% of the total agricultural production and over 60% of the gross market output<sup>2</sup>. Major food crops in the country include maize, wheat, rice, pulses and Irish potatoes.

The country is divided topographically into four geographical or ecological regions in which different patterns of land use are practiced. These are the coastal plain, the arid low plateau, the highlands and the Lake Victoria basin. Only an estimated 20% of the land is classed as high to medium potential while the remaining area is arid and semi-arid land (ASAL)<sup>3</sup>. According to figures from 2005 around 5 million people, mostly rangeland and livestock producers and pastoralists, lived in the ASAL areas whereas the high and medium potential rural areas are dominated by subsistence or peasant farming.

Agriculture forms the backbone of the Kenyan economy employing over two thirds of the population and providing a source of raw materials for local industries and foreign exchange earnings. Kenya's agriculture, however, is largely rainfed, making it highly sensitive to drought and other natural and man-made disasters. People living in agricultural areas are affected by insecure land tenure systems and continuous fragmentation of holdings. Currently, population pressure is forcing people to move into more marginal agricultural areas with low productivity, a move that also leads to conflicts between communities and poses a threat to the pastoralists that have traditionally used this land<sup>4</sup>.

Poverty is endemic with approximately 56% of the population living in absolute poverty, 53% of these living in rural areas and 47% in urban areas<sup>5</sup>. According

to official statistics<sup>6</sup> 10 million people were facing hunger and starvation in September 2009. As indicated in the National Food Security and Nutrition Policy, an estimated 10 million people suffer from chronic food insecurity and around two million people rely on food assistance at any given time. The latest United Nations Development Assistance Framework states that child nutrition has not improved in the last 20 years and, according to government figures from 2005/6, levels of stunting, wasting and underweight among under-fives was increasing slightly to 33%, 6.1%, and 20.2% respectively. It is already clear that Kenya will not reach the targets of Millennium Development Goal 1<sup>7</sup>, which is a major concern in terms of the progressive realization of the right to food in Kenya.

The distribution of income in Kenya is extremely unequal with the top 10% of households controlling 42% of the total income while the bottom 10% controls less than 1%<sup>8</sup>. This makes Kenya the tenth most unequal country in the world, with only five countries in Africa displaying higher inequality rates<sup>9</sup>. While there has been a certain level of economic growth over the past years (with the exception of 2008 due to the post-election crisis) unequal distribution of income and wealth has led to an increase in poverty<sup>10</sup> seriously calling into question the dedication of the State towards the fulfilment of its obligation to use all available resources to fulfil the right to food as quickly as possible.

Inequality is exacerbated by both small scale and grand corruption. The Kenya National Commission on Human Rights has pointed out that the pervasive corruption in states authorities amounts to serious violations of economic, social and cultural rights, including the right to food<sup>11</sup>. Severe resource mismanagement and misappropriation has characterised government since independence, diverting public resources from increasing the well being of the population.

1 Kenya National Bureau of Statistics (2009) *Economic Survey 2009*, Nairobi: Government Printer. According to comments made in relation to the national census that was carried out in April 2009 the population could actually be closer to 40 million. See "Kenya's Population Hits the 40 Million Mark", The Daily Nation, 2009-04-23 <http://www.nation.co.ke/News/-/1056/644466/-/um71rt/-/index.html>

2 Republic of Kenya (2002) *Kenya's Country Position Paper: World Food Summit, 5 Years Later*.

3 Land Sector Non-State Actors, 2009, *The National Land Policy Released by the Ministry of Lands, National Land Policy Secretariat, in May 2007*, Nairobi: LSNSA

4 Supra p 1-4

5 See Kenya Human Rights Commission (2007) *Committee on Economic, Social and Cultural Rights Pre-Sessional Working Group 2007: List of Issues by the Kenyan Civil Society Coalition on Economic, Social and Cultural Rights*, Nairobi and United Nations Development Assistance Framework (UNDAF) Kenya, 2004-2008

6 Government of Kenya (2007) *National Food and Nutrition Policy*, Nairobi: Government Printer

7 United Nations Development Assistance Framework (UNDAF) Kenya, 2009-2013

8 Society for International Development (2004) *Pulling Apart: Facts and Figures on Inequality in Kenya*, Nairobi: SID

9 OMCT, ICJ-Kenya and CEMIRIDE (2008) *The Lie of the Land: Addressing the Economic, Social and Cultural Roots of Torture and Other Forms of Violence in Kenya*, [http://www.omct.org/pdf/ESCR/2008/CAT\\_kenya\\_alt\\_report.pdf](http://www.omct.org/pdf/ESCR/2008/CAT_kenya_alt_report.pdf)

10 See Kenya Human Rights Commission Supra note 2. Based on figures from the Millennium Development Goals Kenya Progress Report 2005. It is also pointed out that "the major indicators of poverty in Kenya are unemployment; low coverage of water supply services; a general decline in access to health services; increased pressure on the environment; and increased numbers of people receiving below minimum level of dietary energy consumption." (p 3)

11 Kenya National Commission on Human Rights and Transparency International Kenya, (2005) *Living Large: Counting the Cost of Official Extravagance in Kenya*, Nairobi: KNCHR, Transparency International; Kenya National Commission on Human Rights and the Kenya Land Alliance, 2006, *Unjust Enrichment: The Making of Land Grabbing Millionaires*, Nairobi: KNCHR and KLA

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## 4. Hunger and Famine in Kenya

### 4.1 TRIGGERS OF THE RECENT FAMINE

The hunger situation in Kenya has been seriously exacerbated during the past years. According to Kenya National Bureau of Statistics Economic Survey 2009 the reasons are "inadequate rainfall in parts of the country, post election violence and high agricultural input prices"<sup>12</sup>. The most obvious cause of the drought is the lack of rainfall experienced in the past years.

In the distant past major droughts used to occur about every ten years. The first national food policy of 1981 was developed after the 1979, 1980, and 1981. The frequency of droughts later reduced to 5 years, and now drought is experienced almost every other year. It is said that over 5 million Kenyans rely permanently on relief food and the number increases to 10 to 15 million in the event of human and natural disasters.

The persistent lack of rain has led to increasingly severe drought around the country. Reasons for the lack of rainfall are commonly associated with global climate change caused by emissions of greenhouse gases – a process within which Kenya bears little culpability yet is feeling the most severe effects. The Kenyan president, Mwai Kibaki, has recently appealed to the international community for assistance in addressing the hunger situation in the country.

Corruption and failure to adhere to policy guidelines contributed to climate relevant deforestation in the country. One instance cited by interviewees is the Mau Forest catchment area which supports agriculture in Western Kenya. Government measures have reportedly led to the destruction of the forest which entailed poor rainfall distribution, and permanent rivers from the summit drying up. At the same time the government policy is very specific on forest conservation and clearly spells out forest reserves which should not be interfered with.

Usually, there are two rainy seasons per year and farmers state that a decade or two ago one could predict the onset of the rains to within a day. Today, however, there is no predictability and rains have begun late or not at all. The unpredictability of the rains also affects the farming season. Farmers can no longer be sure when the best time to sow seeds is and either they plant too early and plants wither before maturing, or too late and the seedlings get too little or too much moisture. Farmers stated that crops have now failed several years in a row. Pastoralists have perhaps felt the most detrimental affects of the drought. Traditional pastoralism relies on large grazing areas with herders migrating with their livestock between

wet and dry season grazing lands. Due to the enduring drought, coupled with increased population pressure on the land, the dry season grazing lands are neither left fallow during the wet season nor sufficient to sustain the herds. Pastoralists have been pushed to migrate further and further in search of fodder, in recent years to no avail. Cattle, which constitute economic investment and capital to the pastoralist, are sold of at reduced prices or die from lack of food and water during the migration<sup>13</sup>.

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A further contributing cause of the current hunger in the country is linked to the post-election violence that struck the country in the wake of a contested general election held at the end of 2007. The clashes between the supporters of the competing parties, often divided according to ethnic affiliation and geographic location, led to over 1,000 deaths and displaced more than 350,000 people from their homes<sup>15</sup>. During the clashes,

<sup>12</sup> Supra note 1

<sup>13</sup> See below under "Findings" for more information about the affects of the drought and famine on pastoralist communities.

<sup>14</sup> See below under "Findings" for more information about the affects of the drought and famine on pastoralist communities.

<sup>15</sup> Republic of Kenya (2008) *Report of the Commission of Inquiry into Post-Election Violence (CIPEV)* (Waki-report) Nairobi: Government Printer. The government has, however, admitted that no accurate figures on the number of IDPs exist and many individuals who fled the violence did not originally

that were concentrated to the high-yielding agricultural areas of Nyanza, Western, Rift Valley and Central Province, many crops were burned and destroyed. The clashes also coincided with the harvesting season and crops were left to perish in the fields. Further, the majority of those displaced were peasant farmers who were unable to tend to their crops or plant again the following season. At the beginning of 2009 there were still many internally displaced persons who had been unable to return to their homes further decimating the production of major food crops. According to the KNBS Economic Survey 2009, the agricultural sector went from 2.2 percent growth in 2007 to a contraction of 5.4 percent in 2008<sup>16</sup>.

The shortfall in agricultural production in 2008 led to higher costs of food on the market. This was further exacerbated by the global rise in food prices as well as the related increase in costs of agricultural inputs such as seeds, fertilizer and fuel as well as consumer goods<sup>17</sup>. This both led to a decrease in agricultural production for peasant farmers preventing them from supplementing their own crops with purchased food on the market. The urban poor and the landless were unable to access food at the market with the little cash they have at their disposal.

#### **4.2 HUMAN RIGHTS VIOLATIONS CAUSING THE VULNERABILITY TO HUNGER AND FAMINE**

Although Kenya experiences recurrent drought and can expect rains to fail on average every three to five years, the affects of the drought on food security could be alleviated if the country prepared itself for drought situations and if the structural causes were addressed. The government of Kenya (GoK) is duty-bound under the right to food to take the appropriate measures. In numerous meetings that the mission held with various stakeholders, it was reported that GoK response to drought and food insecurity was always late and famine was addressed in an ad hoc manner. The Government was seen to react only once severe situations were reported in the media or raised by NGOs, an approach described as “putting out fires”. A more long-term and comprehensive approach to the implementation of the right to food would significantly improve the food security of the entire population. During the mission, a number of structural issues behind prolonged food

insecurity were identified, the most serious of which are outlined below:

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. As mentioned above, 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. In relation to food security it is those living in rural areas on small-scale farms or as pastoralists that produce the majority of food in the country yet they have little access to decision-making forums.

During the 1970s and 80s the cooperative farmers movement was seriously decimated due to politicisation, mismanagement and external pressures brought with the Structural Adjustment Programmes. Organisation within these sectors is thus weak and those worst affected by the drought and famine cannot be said to have a voice within the country or the ability hold their governments to account. During the mission it was striking that several groups of small-scale farmers stated that they “were ignorant” and needed the government to tell them how to farm effectively. Although changes in climate and increased population pressure on the land made agriculture harder one would assume that it is the farmers themselves that have the best knowledge of how to farm their land. But it would seem that decades of being ignored by decision makers, either on purpose or by default, and treated as second or third class citizens has withered self-confidence and collective pride. As the Brazilian sociologist and chair of the Executive Committee of the FAO from 1952 to 1956, Josué de Castro, stated poignantly:

Hunger is exclusion – exclusion from the land, from income, jobs, wages, life and citizenship. When a person gets to the point of not having anything to eat, it is because all the rest has been denied. This is a modern form of exile. It is death in life...<sup>18</sup>

Efforts must be taken to increase the organising power of peasant farmers, pastoralists and other marginalised groups in order to ensure that their voice is heard in national and international decision making forums. This must include consciously addressing both political, social

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register as official IDPs.

16 Supra note 1

17 Supra note 1 On the Food Crisis, see Christophe Golay, *The Global Food Crisis and the Right to Food*, CETIM, Geneva, 2008, [http://www.cetim.ch/en/documents/report\\_3.pdf](http://www.cetim.ch/en/documents/report_3.pdf)

18 Right to Food Case Study: Brazil, February 2004, p. 9, FAO Documents IGWG RTFG /INF 4/APR.1: [www.fao.org/righttofood/common/ecg/51629\\_fr\\_template\\_case\\_study\\_Brazil\\_Annex.pdf](http://www.fao.org/righttofood/common/ecg/51629_fr_template_case_study_Brazil_Annex.pdf) quoted in Golay, Christophe and Özden, Melik, (2007) *The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognized in Regional Treaties and Numerous National Constitutions*, Human Rights Programme of the Europe-Third World Centre (CETIM)

and economic marginalisation and exclusion.

Another area that is essential to address if the right to food is to be ensured is the glaring inequality between men and women throughout the country. It is estimated that 96% of rural women work on family smallholdings, provide 75% of the labour and are directly responsible for the management of two-fifths of smallholder farms<sup>19</sup> yet they often have no right to own the land on which they work. Although women contribute most of the labour in the agricultural sector, it is the men in the family that take the decisions about how land is used and which crops are grown. When surplus is sold at market, it is the men that take the cash and decide how it is spent. According to women interviewed during the mission as women have the prime responsibility for feeding the family they tend to prioritise food crops that will ensure that the family has access to adequate food, whereas men tend to prioritise cash crops at the expense of the food security of their wife/wives and children. Increased rural to urban migration on the part of men, as well as HIV and AIDS, has led to a higher number of de facto female headed households in the country.

According to the traditions of most communities in the country, women are not able to own or inherit land and Article 82(4) of the Constitution ensures that traditional and customary personal laws are exempt from the constitutional prohibition against discrimination. Without ownership rights or equal participation in decision making at all levels women are not able to claim their rights to use land or other resources to ensure their families' food security and their own. If the right to food is to be guaranteed, Kenya must ensure the provisions of the Convention on the Elimination of Discrimination against Women, including eradicating traditional and customary practices and attitudes that discriminate against women. The participation of women in decision making structures and processes from the household to national level must be ensured.

Traditional land ownership practices have also discouraged the participation of the youth in the agricultural sector. Fathers do not pass on their land to their sons until after their death meaning that many young men are left landless. These men have instead moved to employment either in the formal or informal sectors or are classed as unemployed. Interviewees stated that the increased association of farming with older men has also led to a negative attitude towards agriculture on the part of the youth resulting in dropping enrolment

rates in agricultural programmes in universities. This will obviously have a long-term effect on research and innovation in agriculture.

Inequality is exacerbated by endemic corruption at all levels of government and the civil service. Although Kenya purportedly has initiated a zero-tolerance policy towards corruption which in the initial stages had an impact within society with citizens refusing to pay bribes to police and government officials, this soon petered out when it became clear that there was no political will to target grand corruption in which the political elite were involved. During the mission all communities visited pointed to mismanagement, corruption and nepotism diverting food and agricultural subsidies from the intended recipients. The land sector has also been characterised by corrupt practices for decades with land being used to buy political favour and support. This has contributed to the current land crisis in the country<sup>20</sup>.

Access to land is a particularly complex issue in Kenya. Land has come to represent survival, shelter and security. Land is crucial for the livelihoods of the majority of Kenya's population and is essential for their enjoyment of the right to work and to feed themselves<sup>21</sup>. During the colonial period large tracts of land were taken from their original inhabitants without any form of compensation being provided. Upon independence there were expectations that land inequalities would be resolved, and the land returned to the people, but this did not happen. Instead, unfair land practices, including the use of public lands for political patronage, were continued and are one of the causes behind conflicts between communities in Kenya today. Much of the land that has been illegally grabbed lies in water catchment areas affecting access to water. The majority of the land is still in the hands of a small, wealthy elite. Land registration is inefficient and land ownership for the poor and marginalised is insecure. In 2003 a commission of inquiry into the illegal and irregular allocation of public land was set up (The Ndungu Commission). Although the commission's report clearly pointed to where and by whom land had been illegally acquired and provided recommendations for a way forward<sup>22</sup>, no progress towards implementing the recommendations has been made. A draft national land policy that would address many of the issues relating to land has been accepted by Government but is yet to be passed by parliament.

19 Action Aid Kenya (2005) *The Right to Food: A Critical Analysis of Kenya's Policy in the Fight Against Hunger*, Action Aid: Nairobi

20 Aee OMCT Report Supra note 9

21 Ibid

22 Government of Kenya (2004) *Report of the Commission of Inquiry into the Illegal/irregular Allocation of Public Land* (Ndungu Report), Nairobi: Government Printer

Further issues that affect food security include inadequate infrastructure and the decrease of public investment in rural development in the last decades – both from the Government and the international community. This, along with paucity of access to information for peasant farmers, inhibits their access to markets on which to sell any surplus they may produce. Peasant farmers are often forced to sell their produce in local markets at below average rates. The poor infrastructure also hinders efficient distribution of relief food in emergency situations.

In general, the politicisation of land as well as the economic interests of elites in agriculture, have led to a lack of political will to provide long-term solutions to the food security situation in the country. The serious implications of the lack of action on the part of the state can be illustrated through the example of the National Disaster Management Policy. This policy was first drafted in 1999 but an overly cumbersome bureaucracy within the government sector delayed its passing until 2007. Information from Oxfam, quoted by the Kenya National Commission on Human Rights, shows that in this same period the number of people affected by drought increased from 1.5 million to over 3.5 million. If the policy had been adopted and implemented in a timely fashion much of the suffering could have been avoided<sup>23</sup>. This delay breaches Kenya's human rights obligation to use the maximum of available resources to progressively realise the right to food and constitutes a violation of the right to food of millions victimized by this policy failure.



<sup>23</sup> Kenya National Commission on Human Rights (2006) *The Right to Food: An Assessment of Kenya's Implementation of the Relief Food Programme in 2006*, Occasional Report No.2, Nairobi: KNCHR

## 5. International and Regional Legal Framework Relating to the Right to Food

### 5.1 THE RIGHT TO FOOD UNDER THE INTERNATIONAL HUMAN RIGHTS SYSTEM

Article 25 of the UDHR<sup>24</sup> and article 11 of the ICESCR<sup>25</sup> enshrine the right of everyone to an adequate standard of living, including food. Article 11 of the ICESCR also recognizes the fundamental right of everyone to be free from hunger and obliges the States parties to adopt concrete measures and programs to achieve this goal.

The Committee on Economic, Social and Cultural Rights (CESCR) of the United Nations, the expert body in charge of monitoring compliance with the ICESCR, presented in its General Comment (GC) 12 of 1999 on the Right to Adequate Food, a detailed and authoritative interpretation of the international law provisions contained in the Covenant. The Comment highlights, in paragraphs 1 and 2 on article 11 of the ICESCR, the following normative content: "The right to adequate food is realized when every man, woman and child, either alone or with others, has continuous physical and economic access to adequate food or to the means to its acquisition." The essential content of the right to food is the following: "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; and the accessibility to such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights" (GC 12, 8).

"Availability refers to the possibilities 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 its site of production to where it is needed in accordance with demand" (GC, 12, 12).

<sup>24</sup> Art. 25. UDHR: "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..."

<sup>25</sup> Art. 11. ICESCR: 1. "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 recognize the essential role of international cooperation and fulfil their commitment to act, either jointly or alone, to achieve the full realization of the right to adequate food. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent".  
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programs, which are needed: a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources."

The accessibility of food encompasses both economic and physical accessibility: Economic accessibility implies that the costs associated with the acquisition of food for a given diet should be at a level such that the satisfaction of other basic needs is not threatened. Socially vulnerable groups, such as landless persons and other particularly impoverished segments of the population, may need attention through special programs. Physical accessibility means that adequate food should be accessible to all, including physically vulnerable individuals, people living in high risk areas, or other particularly disadvantaged groups, such as many indigenous groups, whose access to their ancestral lands may be threatened (cf. GC 12, 13).

GC 12 summarizes in paragraphs 14-20 the States' obligations and possible violations of the human right to food. Regarding the nature of the obligations, the Comment stipulates the following:

"The nature of the legal obligations of States parties is set out in article 2 of the Covenant and has been dealt with in the Committee's General Comment No. 3 (1990). The principal obligation is to take steps to achieve progressively the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger" (GC 12, par. 14).

The right to adequate food, like any other human right, imposes three types of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that third parties (companies or individuals) do not deprive persons of their access to adequate food. The obligation to fulfil (facilitate) means that the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, 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. This obligation also applies for persons who are victims of natural or other disasters (cf. GC 12, par. 15).

Being aware of the differing contexts and situations, the CESCR highlights the need for each State party to take whatever steps are necessary to ensure that everyone is free from hunger and can enjoy the right to adequate food. This will require the adoption of a national strategy to ensure the right to food that formulates policies and corresponding benchmarks and that also identifies the resources available to meet the objectives. (cf. GC 12, 21). According to paragraph 26 of GC 12, this strategy should give particular attention to the prevention of discrimination in access to food or food resources. This should include guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides remuneration ensuring a decent living for wage earners and their families and maintaining registries on rights to land (including forests).

The Covenant's States parties should also take steps to respect the enjoyment of the right to food in other countries, refraining from implementing measures that endanger access to food in other countries (paragraphs 36 and 37).

It is worth highlighting that duty-holders under the right to food are not only States parties to the ICESCR but also international financial institutions. In this regard, paragraph 41 of General Comment 12 stipulates the following:

"The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis."

Access to land is a key element of the right to food<sup>26</sup>. General Comment 12 underlines that access to food depends on access to income or on access to productive resources, such as land. According to the Comment, special attention should be paid to especially vulnerable groups such as the landless people. The Comment asks for guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology.

Due to the close relationship between the right to food and access to land, particularly in rural areas, where a large number of people suffer from hunger, the States parties to the ICESCR are obliged to respect, protect and fulfill access to land. The obligation to fulfil, in particular, implies the implementation of an agrarian reform program that enables landless persons and peasant farmers to have access to land, water, seeds, livestock and other productive resources. In order to achieve this objective, States parties should formulate agrarian reform policies and the corresponding measures for their implementation, in addition to using their resources to the maximum, as stipulated in article 2 of the ICESCR.

As a State party to the ICESCR, Kenya is obliged to regularly present a report on the realization of Economic, Social and Cultural Rights. The last report was presented in 2006 and examined by the CESCR in its session in May 2008. In its Concluding Observations<sup>27</sup>, the CESCR recognizes a number of advances and positive developments but expresses its concerns about the adverse effects of continued corruption on the realisation of economic, social and cultural rights as well as the high disparities in levels of enjoyment of economic, social and cultural rights, including access to land and noted that these disparities have led to interethnic tension and contributed to the post-election violence of 2008. Further, the Committee is concerned about the fact that according to article 82(4) of the constitution, certain customary law practices, including those related to marriage and inheritance, are exempted from the constitutional guarantees against discrimination. It is also concerned about the low levels of employment in the formal sector and lack of regulation of the informal sector.

The provisions of the ICESCR on the right to food should be read in conjunction with those laid out in Article 2 of the ICESCR that prohibits discrimination on the grounds of sex, as well as with the provisions of other international conventions and treaties. With regard to the right to food, the provisions of the International Covenant on the Elimination of all Forms of Discrimination against Women (CEDAW) are crucial, especially those stipulated in Article 5 on modifying prejudicial customary practices, Article 14 on the rights of rural women and Article 16 (h) on women's equal right to own property.

In 2004, the Food and Agriculture Organization of the United Nations (FAO) approved the Voluntary Guidelines to support the progressive realization of the right to adequate food (FAO, 2004). To achieve this objective,

<sup>26</sup> See Report of the Special UN Rapporteur on the Right to Food for the UN General Assembly (2002) A/57/356.

<sup>27</sup> UN Doc E/C.12/KEN/CO/1

States are urged to adopt the measures needed to improve the functioning of and access to the agricultural and food markets that benefit particularly disadvantaged groups (Guideline 4), access to resources and assets by vulnerable populations (Guideline 8), work opportunities (Guideline 8A), security of land tenure, especially with respect to women, the poor and disadvantaged segments of society (Guideline 8B), protection of ecological sustainability and the carrying capacity of ecosystems (Guideline 8E).

## 5.2 REGIONAL HUMAN RIGHTS TREATIES

At the African level the right to food can be found in the African Charter on Human and Peoples Rights (ACHPR), its Protocol on the Rights of Women and in the African Charter on the Rights and Welfare of the Child (ACRWC). Although the ACHPR does not include specific reference to the right to food it was derived in *SERAC vs Nigeria* by the African Commission on Human Rights, which is mandated with the interpretation of the ACHPR from the right to life (Article 4), the right to dignity (Article 5) and the right to health (Article 16). Further, Article 60 stipulates that all States Parties should implement the rights enshrined in international human rights treaties they have ratified such as the ICESCR. States Parties to the ACHPR and the ICESCR such as Kenya thus have an obligation to implement the right to food.

Moreover the Protocol to the ACHPR on the Rights of Women in Africa stipulates in Article 15 (Right to Food Security) the states obligations to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; and to obligation to establish adequate systems of supply and storage to ensure food security.

The African Charter on the Rights and Welfare of the Child, to which Kenya is a Party, specifically recognises the right to food under the right to health. According to Article 14, States Parties must “ensure the provision of adequate food and safe drinking water”. According to Article 20(2) they must also take all appropriate measures to assist parents or other persons responsible for the child and, where needed, should provide material assistance and support, specifically in relation to nutrition<sup>28</sup>.

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<sup>28</sup> Golay, Christophe and Özden, Melik, (2005) *The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognized in Regional Treaties and Numerous National Constitutions*, Human Rights Programme of the Europe-Third World Centre (CETIM)

## 6. National legal framework, Access to Justice and the Role of KNCHR.

Kenya ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976 thus binding herself to put the maximum of available resources towards implementing the rights enshrined therein, including the right to food. The first complete State Party Report on ICESCR was submitted in 2006 and examined by the Committee on Economic, Social and Cultural Rights in 2008.

Kenya is also party to the Convention on the Rights of the Child (CRC, ratified in 1990) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1984. Furthermore, Kenya is a State Party to the African Charter on Human and Peoples Rights (ratified in 1992) and the African Charter on the Rights and Welfare of the Child (2000). Kenya, however, adheres to a dualist system when it comes to international law, and human rights treaties are not automatically incorporated into national legislation. This situation is seriously undermining the legal protection of the right to food at the national level. The provisions of these international instruments are thus not directly applicable in national legislation and the judiciary is often unaware of Kenya's international obligations.

The current constitution does not include provisions on the right to food although various drafts of a new constitution have included broad human rights provisions and measures to ensure that international law is directly applicable in national courts. Despite the positive step of including economic, social and cultural rights in the drafts emanating from the constitutional review process, there has been criticism of the fact that no implementation mechanisms were included. The Waki draft constitution was voted down in a national referendum in 2005, though it should be noted that the bill of rights was not a point of contention. The government has promised that the constitutional review process will be continued although in the current political climate there are no signs that a new constitution will be adopted in the foreseeable future.

The national legislation that could serve to protect and promote the right to adequate food is fragmentary and at times contradictory. This is a fact that is recognised by the Government of Kenya, but developments to put in place a new integrated and comprehensive legal framework are slow and face many challenges, including a lack of political will within some sectors of government. Legislation relating to food security currently includes the following:

The Agriculture Act (Cap 318), the Agriculture Produce (export) Act (Cap 319), The Agricultural Produce Marketing

Act (Cap 320) and the Crop Production and Livestock Act (Cap 32)<sup>29</sup>. With relation to land issues Kenya has, since independence, had both Customary and Statutory land tenure systems, regulated under inter alia: Registration of Titles Act (Cap 281); Government Lands Act (Cap 280); Land Titles Act (Cap 282); Registered Land Act (Cap 300); The Land (Group Representatives) Act (Cap 287); The Trust Land Act (Cap 288); and Sectional Properties Act No.21 of 1987.<sup>30</sup> The Government is aware of the "confusion, conflict, mismanagement and increase in costs for the farmers"<sup>31</sup> of this multiplicity of legislation, but as of yet no harmonized legislation has been passed.

A further issue to be addressed in relation to legal protection of the right to food is access to justice. Despite a reform process initiated in 2004 including plans to set up a national legal aid programme, the poor and marginalised are still effectively excluded from access to justice<sup>32</sup>. Information is lacking, judges are reportedly biased and corrupt, there are too few judges. This leads to long delays in processing cases and legal costs are inhibitive to the majority of the population. Access to justice to protect the right to food is therefore not possible in practice in Kenya.

A lack of information is a further hindrance to the ability to claim the right to food on the part of the general population. There are no clear strategies to disseminate new legal and policy developments to the local level and in communications strategies seldom take into account the isolation from national media that the rural poor experience. Further, there is a widespread culture of secrecy within government departments making access to even harmless government information difficult for ordinary citizens. A freedom of information bill, that would inter alia repeal the national secrets act, has been tabled in Parliament but is yet to be passed. The Kenyan government should take steps to pass a Freedom of Information Bill and ensure that it is followed up by a clear implementation policy in line with civil society recommendations<sup>33</sup>.

The Kenya National Commission on Human Rights (KNCHR), established by an act of Parliament in 2002, is the national focal point for all human rights activities in

29 KNCHR, *Supra* Note 23

30 *Supra* note 3

31 KNCHR *Supra* note 23 p 14

32 Ministry of Foreign Affairs, Sweden, (2008), *Mänskliga Rättigheter i Kenya 2007* [Human Rights in Kenya 2007], [www.manskligarattigheter.gov.se](http://www.manskligarattigheter.gov.se)

33 See ICJ Kenya, Date unknown, Freedom of Information (FOI) Advocacy for Freedom of Information Legislation: A Commentary on the Draft Freedom of Information Bills in Kenya, [http://www.icj-kenya.org/dmdocuments/reports/commentary\\_FOL\\_bill06.pdf](http://www.icj-kenya.org/dmdocuments/reports/commentary_FOL_bill06.pdf), Accessed 2009-11-10 and Article 19, 2006, Memorandum on Kenya's Freedom of Information Bill, <http://www.article19.org/pdfs/analysis/kenya-foi.pdf>, Accessed 2009-11-10

the country. It is a semi-autonomous body with a broad mandate to protect and promote human rights and has worked extensively in the area of economic, social and cultural rights<sup>34</sup>. The Commission also has a mandate to receive complaints from organisations or individuals who feel that their rights have been violated. KNCHR has carried out work on the right to food including a study of the affects of Kenya's implementation of the relief food programme in 2006<sup>35</sup> but, according to the Chairperson, has yet to receive complaints addressing violations of the right to food<sup>36</sup>. Despite this, the possibility of lodging complaints with the commission could be an avenue for gaining redress of victims of violations of the right to food as well as for increasing awareness of the right at the national level.

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34 UN Economic and Social Council (2007) Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Kenya, E/C.12/Kenya/1

35 Kenya National Commission on Human Rights (2006) *The Right to Food: As Assessment of Kenya's Implementation of the Relief Food Programme in 2006*, Nairobi: KNCHR

36 Interview with Florence Jaoko, Chairperson of KNCHR, 25<sup>th</sup> September 2009.

## 7. Institutional and Policy Framework

The institutional and policy framework that could be of relevance to the right to food is fragmented. There are several ministries that have the mandate to work with agriculture and related issues and, despite the establishment of an Agriculture Sector Coordination Unit there is as of yet no streamlined process to ensure long-term food security in the country. The status of this coordinating body is also low making it hard for it to lead and facilitate harmonization of policy development. Resources allocated to the sector as a whole are also insufficient, and are further decimated when shared between the many ministries that have agricultural and food-security issues within their mandates.<sup>37</sup> The government should ensure that the maximum of available resources is allocated to progressively realise the right to food. Spending within the agricultural sector should reach a minimum of the 10% as agreed in the Maputo declaration. It should also be ensured that this amount does not include recurring costs related to running the extensive number of ministries related to the agricultural and food security sector.

Certain developments have been made in designing policies and programmes relating to the sector, but the state bureaucracy is cumbersome and draft policies take many years to be officially approved. Policies that are in place often lack clear implementation strategies or budgetary allocations with the effect that they often remain mere paper products and have little impact on the ground. The following is an outline of the institutional and policy framework relating to food security today as well as of plans for future developments.

The overarching development policy for Kenya is now Vision 2030, launched in 2008. The aim of the policy is to increase economic growth and transform Kenya into a developmental state along the lines of the Asian Tigers. Agriculture is recognised as one of the engines of growth but with an emphasis on increased production and improving the competitiveness of export crops rather than on national food security. The National Accord<sup>38</sup> also puts more emphasis in investing in agriculture to enhance production to address widespread poverty. It

also emphasized a wide range of institutional and legal reforms such as land reform, constitutional reform and youth employment. Exactly which steps are being taken within the agricultural sector as a result of the National Accord is unclear.

Prior to Vision 2030 strategies for development of the agricultural sector were outlined in the Strategy to Revitalize Agriculture (SRA). This has now been expanded into the Kenya Agriculture Sector Strategy Programme (KASSP) which forms part of Vision 2030. It is still unclear in what way this will affect concrete activities to develop the agricultural sector and whether the immediate and long-term food security of the most vulnerable will be taken into consideration, as required by human rights.

Food security has been covered in Sessional Paper Number 4 on National Food and Nutrition Policy from 1981 and Sessional Paper Number 2 of 1994. The aim of these papers was to increase food self-sufficiency and food security, especially for smallholder farmers, but a human rights perspective is missing. Further, the focus is on agricultural production and emergency food relief. Little attention is paid to the long-term food security of the urban poor and rural landless.

As mentioned, the fragmented nature of the policy framework leads to confusion regarding responsibility for implementation. Furthermore, the policies are not accompanied by implementation strategies or monitoring frameworks making it hard to tell whether they have had any impact in practice. The weakness of the current policy framework has been recognised, and steps have been taken to design new and more streamlined policies. These have, however, been in the pipeline for many years without yet having been passed by parliament.

Among these draft policies is the Draft National Food and Nutrition Policy that was developed through a participatory process in 2007. This policy refers explicitly to human rights including the right to food interpreted broadly in line with General Comment No. 12. It also outlines financial measures to enable implementation and a monitoring framework. The Policy would create a number of institutions. At national level implementation would be coordinated by a high profile Inter-Ministerial Steering Committee of Food and Nutrition and a Stakeholder Technical Committee. Each district will establish its own Food and Nutrition Committee to coordinate and monitor all activities in their areas. There is also an explicit focus on the inclusion of civil society in the implementation and monitoring the policy. The Draft Policy also anticipates the enactment of a Food and Nutrition Act.

<sup>37</sup> This was further exacerbated upon the formation of the Grand Coalition Government in 2008. In order to reach an agreement between the two parties to the conflict the number of ministries was increased, dividing former ministries in order to create ministerial posts for the top brass in both ODM and PNU. Not only has the overlap and confusion of mandates become worse but a far higher budgetary allocation now goes to the salaries and administration of these superfluous ministries.

<sup>38</sup> The *National Accord and Reconciliation Act* of 2008 is an act of the National Assembly of Kenya that temporarily re-established the offices of Prime Minister of Kenya, along with the creation of two deputy prime ministers. This act followed the February 28, 2008 power-sharing agreement between current President Mwai Kibaki and opposition leader Raila Odinga, who will become the first prime minister of Kenya since 1964, when the constitution of the newly-created Republic abolished the office.



A Draft National Land Policy has also been developed and was passed by Cabinet in June 2009 but is yet to be passed by parliament. The Policy, which would be the first land policy since independence, was developed with broad participation from civil society and aims to guide the country towards sustainable and equitable land use. Objectives of the Policy are to provide "all citizens, particularly the poor, with the opportunity to access and beneficially occupy and use land; an economically, socially equitable and environmentally sustainable allocation and use of land; and the efficient, effective and economical operation of the land market<sup>39</sup>". The policy focuses on the redistribution of land and the resolution of historical injustices. It includes land security for vulnerable groups and minority communities including pastoralists. The policy would create both land courts and land commissions to adjudicate in land disputes. The Draft Policy is currently being opposed by the Kenya Landowners Association for its perceived attack on private property rights. It is doubtful whether it will be passed in the near future. Further, as greater effort is directed towards achieving Vision 2030, the completion, adoption and subsequent implementation of the National Food and Nutrition Policy is left in the periphery. In relation to drought and disaster related hunger, a National Disaster Management Policy was elaborated in 1999 but is yet to be passed in parliament<sup>40</sup>.

In 2003 the Kenyan Government developed the Constituency Development Fund (CDF) with the aim of decentralising development funding to the local level and to implement projects to alleviate poverty, particularly at the grassroots level. Although the administration of the CDF has been accused of being riddled with corruption, many projects have been implemented thanks to the fund. These projects have, however, mainly focussed on tangible support such as building schools. Projects aimed at increasing food security per se are not common. Several groups visited during the mission stated that they either did not know how to access funding from the CDF or that their applications had been turned down. In principle, however, the CDF could provide an opportunity for grassroots driven projects to improve enjoyment of the right to food.

39 Government of Kenya, Ministry of Lands, 2007, Draft National Land Policy, Nairobi [www.ilegkenya.org/pubs/docs/DraftNationalLandPolicy.pdf](http://www.ilegkenya.org/pubs/docs/DraftNationalLandPolicy.pdf), Accessed 2009-11-11

40 Government of Kenya, Ministry of State for Special Programmes, Office of the President, 2009, Draft National Policy for Disaster Management in Kenya, [http://www.kecosce.org/downloads/DRAFT\\_DISASTER\\_MANAGEMENT\\_POLICY.pdf](http://www.kecosce.org/downloads/DRAFT_DISASTER_MANAGEMENT_POLICY.pdf) Accessed 2009-11-11

## 8. Findings on the right to food

During the research mission visits were made to four distinct areas of the country from the fertile lands on the shores of Lake Victoria to the semi arid district of Machakos. Although none of these areas are amongst the most food insecure in the country, and all are relatively close to urban centres thus benefiting from above average infrastructure, food insecurity was rife pointing to the fact that hunger is currently a countrywide problem. The following provides an outline of the findings in each location.

### 8.1 KISUMU TOWN AND ENVIRONS

Kisumu, the third-largest city in Kenya, is situated in Nyanza province on the shores of Lake Victoria. The majority of the population have traditionally been reliant on small-scale fishing and subsidiary businesses. Although the land is fertile it is prone to flooding in the rainy season. This, accompanied by the past years' shortage of rainfall, makes farming precarious. Further, agriculture has not been a traditional means of livelihood and the promotion of the farming of food crops has been slow to take root. Kisumu is currently a net importer of food. The HIV and AIDS prevalence rate is higher than the average in the country (around 15.4%) and has contributed to lower productivity and increased food insecurity.

In Kisumu the mission spoke to representatives of the urban and peri-urban poor, surviving on a combination of casual labour, day-work and through cultivating small plots or kitchen gardens. Individuals and groups interviewed in Kisumu and on its outskirts had all experienced a decline in food security. As net consumers of food they are dependent on the market and have been adversely affected by the increase of food prices. Furthermore, there is a lack of adequate water and sanitation systems in the urban areas including a lack of clean drinking water. Furthermore, the practice of irrigating crops using sewage water can contaminate food causing health risks.

The Ministry of Agriculture is promoting urban agriculture as a measure to increase the food security of those living in poverty in urban areas. This conflicts with county bylaws that prohibit the use of land in urban areas for cultivation other than 'ornamental gardens' making land tenure insecure and prohibiting long-term investment in farmlands. Those who had access to land for food production complained of the destruction of crops by wild animals, especially hippopotami from the lake. The Kenya Wildlife Service has issued a recommendation that farmers should dig ditches and not farm closer than

100m from the riverbanks but the scarcity of land in the urban area does not allow farmers to devote land to wildlife conservation leading to conflicts between KWS and local farmers. The system of free grazing, where domestic animals are left to roam freely to find fodder has also threatened crops and leads to conflicts within the community.

As in the rest of the country, it is women who have the prime responsibility for providing food for the family and who are worst hit by food shortages and massive unemployment. HIV and AIDS have also affected the community severely with many women widowed and suffering from the disease, further exacerbating food insecurity. Young children and the aged have also been forced to take a more active part in the provision of food most often through casual employment in the informal sector complemented with food production in kitchen gardens. This, along with unaffordable school fees or charges<sup>41</sup>, has also contributed to high school drop out rates. Some of the interviewees confirmed that it had also become commonplace for women, and even young girls, to exchange sexual favours for food or other forms of support.

Some communities around Kisumu were also receiving food aid, but questioned the amount given and the process of selecting recipients. They claimed that nepotism and theft characterised the distribution of relief food and that alternative distribution mechanisms, that do not involve the local authorities, should be found, for example by working through local women's groups.

In Kisumu the mission was also able to meet a group of internally displaced persons (IDPs) who were forced from their homes as a result of the post-election violence. The individuals the mission spoke to were self-integrated IDPs and had not spent time in the many IDP camps set up around the country. Although the government has provided IDPs with compensation and a contribution towards resettlement, interviewees complained that this was not enough to ensure food security. There were also difficulties for some IDPs to access these grants due to excessive bureaucracy. While the mission was in Kenya it was also reported that the President ordered the closure of the remaining IDP camps with two weeks' notice<sup>42</sup>. Although it is positive that the government is working towards resettling the IDPs who have now lived in camps

<sup>41</sup> Kenya introduced a policy of free primary education in 2003 which has enabled many more children to attend school. The many hidden charges, such as compulsory school uniforms, purchase of books, compulsory contributions to various teachers, kitties, etc. all continue to deny access to education for many Kenyan children. A government statement in 2008 introducing free secondary education has as of yet not had any effect.

<sup>42</sup> Daily Nation, 2009-09-25, Kibaki Directs Closure of Kenya Refugee Camps

for more than 18 months, they must ensure that the resettlement is carried out in accordance with human rights principles, including ensuring conditions enabling access to adequate food.

All of the issues mentioned above were exacerbated by a lack of information from central government and local authorities to the citizens of the country, in particular people living in poverty. Government schemes to assist through the provision of extension services, seed-aid, relief food, etc. are characterised by a lack of transparency and a lack of knowledge on the part of the recipients about what they can expect. This in turn prevents individuals from holding authorities to account.

## 8.2 SUGAR CANE PRODUCTION/MONOCULTURES IN MUMIAS

**Mumias** is a town some 50 km north of Kisumu. Mumias Sugar Company is a major industry in the area. A visit to various parts of the sugar cane producing area of Mumias confirmed challenges to food security related to monoculture production around the world<sup>43</sup>. Although the area is highly fertile, the diversion of land to sugar cane plantation had severely affected food security. The mission spoke to small and medium scale farmers as well as individuals working for the Mumias Sugar Company Limited.

Mumias Sugar Company Limited was established in the early 1970s with majority shares being held by the Kenyan government. Farmers in the surrounding areas were encouraged to plant sugar cane on their land as outgrowers. Today, most farmers in the area use a portion of their land for the cultivation of sugar cane. This is done through contract farming schemes within which the sugar company provides agricultural inputs such as assistance in ploughing, seeds and fertilizer to the farmer on credit. The loan is deducted from the payment the farmers receive from the company for the mature cane. This type of agreement is extremely precarious for the farmer. According to a recent report on monocultures worldwide:

Most [...contract farming] programs are designed so that the small producers rely extensively on the large agricultural companies who control the

prices, processing and distribution of production. The small peasants generally cannot benefit from good agricultural prices, as those who control the marketing process monopolize these gains. In many cases the small producers risk losing their land if they cannot compete to stay in business. In addition, cases have also been reported of abuse by the companies that breach contracts with the farmers, which often lead to a dire situation and food insecurity for the latter<sup>44</sup>.

All this was confirmed in the Mumias case. Farmers also stated that there was no clear information about the actual price of the input services. Further, farmers were paid for their cane by weight, but were not allowed to be present when the cane was weighed in the factory. Payment was often delayed with farmers having little power to demand the money that they are owed. This lack of transparency and accountability on the part of Mumias Sugar Company Limited in a situation in which the small farmer has little influence is not in line with human rights standards. The failure of the state to monitor and prevent such practices is a breach of its obligation to protect and regulate the activities of the company in line with international and regional human rights standards as well as with Kenyan legislation. Moreover, as the government holds the majority of the shares in Mumias Sugar Company Limited the obligation to respect is also involved as the government is actively involved in these abuses.

Although the Kenya Sugar Act of 2001 outlines the rights and responsibilities of all parties in the sugar production chain it has not been implemented. Many of the provisions are also problematic in terms of human rights. Their implementation, however, would be better than the status quo. In any event, the rights of the sugar growers in relation to the factory need to be strengthened<sup>45</sup>. Further, the sugar sector in Kenya is highly politicised with strong political interests ensuring that prices of production are kept at a minimum. There is thus no political will to push for the implementation of the Sugar Act, let alone the necessary amendments.

In 2001 Mumias Sugar Company was introduced on the Nairobi Stock Exchange. At the time 20% of the shares were set aside for farmers and made available at a reduced price with the intention of increasing their

43 See FIAN International and Habitat International Coalition – Regional Office Latin America (2009) *Monocultures and Human Rights: Guide for Documenting Violations of the Right to Adequate Food and Housing, to Water, to Land, and Territory Related to Monocultures for Industrial Agriculture Production*, FIAN and HIC-AL:Heidelberg

44 *ibid.* p 14

45 For a more detailed analysis of the 2001 Sugar Act from a human rights perspective see Kenya Human Rights Commission and Farmers from the Western Region, 2006, *Recommendations Towards the Amendment of the Sugar Act, 2001*, [http://www.khrc.or.ke/documents/sugar\\_act2001\\_recomendations.pdf](http://www.khrc.or.ke/documents/sugar_act2001_recomendations.pdf) Accessed 2009-10-28

participation in the running of the factory. According to informants, however, farmers were provided with too little information about the meaning of owning shares. Interviewees stated that the share was seen as merely a piece of paper making it easy for speculators to buy them from farmers at deflated prices.

The production of sugar cane by small-scale farmers has led to decreased food security in the region. Whereas the possibility of earning cash for their produce has been attractive, returns are actually low when taking into account the amount of work put in and the diversion of land from food crops. Sugar cane takes between 18-24 months to mature and during this time the farmers receive no payment for their services. Although sugar cane production is still popular amongst many men in farming families, the women tell a different story. As in most of the country, women are responsible for the food security of their families. They also do most of the agricultural work, including on the sugar cane crops. The women talked to were very clear that the diversion of land to sugar cane had made it harder for them to feed their families. They had no choice about how land was used and were forced to adhere to the decisions of their husbands. The land available on their small farms for producing food had decreased substantially. Although the factory purportedly has issued guidelines stating that farmers should not use more than one third of their land for sugar cane cropping, in practice most small landowners were diverting significantly larger amounts. In some cases no land at all was left for growing food. This was further exacerbated by the decreasing size of plots due to inheritance customs whereby land is divided amongst the sons in the family.

When the cane is sold to the factory it is again the men who take the decisions on how to spend the proceeds. This does not necessarily include providing money to buy food or pay for school fees, costs that women stated they would prioritise. Even when the money is used for food, the increased prices on the market have made it virtually impossible to provide adequate food with the payment received for sugar cane, even in those cases when the entire land is used for cane production.

Mumias Sugar Company has noted the food security issues in the sugar producing regions and has encouraged intercropping – the planting of food crops such as beans in between the cane. Representatives of the company also pointed to their far-reaching corporate social responsibility programme. Although the implemented projects aimed at improving the lives of surrounding communities, they are not sufficient to counter the





negative impact of the activities of the company on the food security situation in the region.

The youth were also marginalised in the area. Because of the land ownership system, young men only gained access to the land upon the death of their fathers. Young women had no prospect of owning land, but moved to their husbands' land on marriage, land to which they had no claim. Young men claimed that as they did not own land, they had little interest in farming so they eek out a living in the informal sector. According to statements made during interviews this had also led to an increase in crime and insecurity in the area.

### **8.3 PASTORALIST COMMUNITIES IN KAJIADO DISTRICT**

Pastoralism is the main means of livelihood for around 3 million Kenyans but the preconditions for traditional pastoralism have been deteriorating since the pre-colonial period, especially with the colonial promotion of white settler farming. Nomadic livestock herding is built upon the availability of large tracts of grazing land, land that has been encroached upon by agricultural and urban expansion<sup>46</sup> as well as by the pervasive illegal acquisition of land through political patronage and other forms of corruption<sup>47</sup>. Pastoralist communities have also been marginalised and consecutive governments have failed to recognise them as a true part of a modern Kenyan nation.

The interviewed groups pointed especially to the demarcation of Maasai lands that converted communal lands to individual ownership as a big problem that had contributed to eroding traditional survival mechanisms and the pastoralist way of life and had contributed to the commodification of land. As one respondent put it:

*Land, a most valued resource, had been commodified so that it is sold at a throw away price to settlers. The hilly places like the Ngong hills with rich pastures now have settlers... Our people have been pushed to the limit. The system in this country aids criminality but does not support the poor...*

<sup>46</sup> See Rutten, Marcel (2001) "The Kenya 1997 General Elections in Maasailand: Of 'Sons' and 'Puppets' and how KANU Defeated Itself" in Rutten, Mazuri and Grignon (eds), *Out for the Count: The 1997 General Elections and Prospects for Democracy in Kenya*, Kampala: Fountain Publishers

<sup>47</sup> KCNHR Supra note 11

The Maasai have developed a document called the "Land Use Masterplan" which they are using to lobby for the recognition of traditional land use systems as well as conditions of the sale of individual land in pastoralist areas.

The Maasai interviewed confirmed that this was the worst drought they had experienced in living memory. They pointed to the effects of the lack of water which led to less grass for grazing which in turn led to weaker livestock. In a culture in which livestock constitutes a capital investment for the individual Maasai as well as the main source of food<sup>48</sup>, loss of livestock means a loss of food as well as potential cash with which food could have been purchased.

*Drought has seen people's life investments crumble down in a day... there is no money to buy food because the cattle could not fetch anything, in times like these, we do not care about quality, we only eat to survive.*

During the past years' recurrent drought, the Maasai herders have been forced to migrate further and further with their cattle in search of grazing lands. But the drought is currently so widespread as to leave little available grass for cattle in any part of the country. Further, much of the traditional dry-season grazing land has been grabbed in illegal land deals further decreasing available pasture. This lack of grazing land has severely decimated herds and it was stated that the price of a cow has dropped from 30,000 Kshs to 500 Kshs at the same time as the general prices of food have risen. Further, in order to slaughter the cattle and receive at least meagre compensation, the herders have to take the cattle to the Kenya Meat Commission (KMC) in Nairobi. This can often mean several days trek with already emaciated cattle or transportation costs exceeding the price fetched by the animal. Many cattle were dying on the way to KMC and pastoralists were losing their entire life investment.

A livestock scientist interviewed during the mission mentioned that the cattle that were being promoted due to their potential to produce more milk were in fact a burden to the Maasai. Although these cattle could produce more when they received sufficient nutrition, the milk production declined rapidly in times of food insecurity. Further, these cattle are generally bigger than the traditional zebu cow meaning that the herder is unable to pick them up manually when they are hungry and weak, a necessity if they are to walk to better grazing or to market.

<sup>48</sup> Traditionally the Maasai sustained themselves on a diet of milk and blood taken from the living animals.

Government schemes have in recent decades promoted agro-pastoralism and the combination of cattle herding and small-scale farming. This has, however, proved problematic as traditional pastoralist lands are not suitable for farming, especially production of maize, the main crop that has been promoted. The Maasai claimed that although agro-pastoralism could be part of a solution enabling the survival of the community, more sustainable crops such as millet and cassava should be promoted instead of maize.

The social structures of the Maasai have been changing due to several causes including the long distances migrated and the introduction of individual land tenure systems. Whereas families used to migrate together, moving from dry-season to wet-season grazing lands, the men now migrate alone with their herds leaving the women in the homes to tend to the smaller animals and crops and to secure food for their children on their own. The decrease in available food has hit women hard as they are unable to provide their children with sufficient food and due to the forced separation of families the cattle, that provide the traditional food source, are not accessible. Women have also been forced to take on roles outside the homestead which traditionally were the preserve of men such as cutting trees for charcoal production that could supplement the family income. Further, many children have dropped out of school, as families are unable to pay school fees. Women interviewed stated that at times women resorted to exchanging sexual favours for food and that the level of domestic violence and psychological problems has risen.

Kajiado District borders Nairobi city and extends to the Kenya-Tanzania border further south. Kajiado district has been targeted for relief food programmes, according to interviewees by the World Food Programme, but in a district with a population of 500,000, the majority of which are faced by food insecurity, only 80,000 persons were receiving food aid and even then of insufficient quantity and quality.

Further problems brought up during interviews are related to construction and industries being set up on Maasai lands. One example is the Jamii Bora housing scheme. 'Jamii Bora', meaning a better society, is an organisation aiming to empower women economically. They are currently building a settlement called Kaputei in Kisaju, Kajiado district, an area neighbouring Nairobi. Jamii Bora Trust has procured 293 acres of land in this traditionally pastoralist area, in order to build housing for its members. The land had been designated as agricultural land but the planning permission had been granted for the

development of a comprehensive housing scheme with all necessary social facilities as well as employment and commercial opportunities. The local authorities approved the detailed plans on 22 June 2004. The town will be comprised of approximately 2000 homes of 50m<sup>2</sup> each, built in permanent materials that are produced in a factory on site. The factory provides employment to members of the Trust and it is claimed that this will enhance the families' capacity to repay their housing loans.

Pastoralists interviewed in Kajiado raised concerns that this project was cleared without due process and in violation of environmental regulations and land management rules although the Jamii Bora website states otherwise.

The community went to court to challenge the construction of houses because the area designated was originally agricultural land. The project is expected to utilize 295 acres of land which will translate to 2000 homes. The local authorities approved the construction plan in 22<sup>nd</sup> June 2004.

Despite the protest from Maasai herdsmen the construction is going on. According to community representatives, this is potential source of conflict between government and the Maasai people because the people's right to land is being deliberately violated by government. To Maasai people it seems the government gives priority to "outsiders" than the locals.

Whether or not this is the case, the views of the pastoralists serve to illustrate conflicts that may arise out of conflicting claims to land as well as a failure on the part of government to take pastoralist land use and land rights seriously.

Another example is the Magadi soda factory. The company mines soda ash at Lake Magadi and processes the same for the export market. It was established in the colonial period. According to community representatives, Lake Magadi is in the Maasai land. The interviewees said that the factory had been illegally acquired in colonial times. It was not returned to the affected communities, however, but sold to a group of foreign corporations. The foreign investors never compensated the community despite the huge benefit they get from the land/lake. They have degraded the environment and what the company invests in terms of corporate social responsibility is negligible. The communities living around the company are very poor, lack water & sanitation services, have poor roads, and are continually faced by drought. The community members are complaining that the company is siphoning profit from their resources are not ploughing resources to the locals in terms of employment, infrastructure

improvement and environmental improvement.

#### **8.4 RURAL COMMUNITIES IN SEMI-ARID AREAS (MACHAKOS DISTRICT)**

Machakos district, to the south east of the capital city Nairobi, is recognised as one of the areas worst hit by the drought. It is a semi-arid area. The majority of the population practices peasant agriculture. The drought has further impaired food security. The crops have failed several seasons in a row and those interviewed stated that they were now eating only one meal a day. The prolonged drought has also led to a fragmentation of traditional family and communal structures and threatened the education of the children.

As the area is relatively close to the capital city, many of the men have migrated into town in search of employment opportunities leaving women alone on the farms. As in most of the country it is the women who are responsible for feeding their children and with little food available from their own farms they are forced to look for the means to acquire food elsewhere. Many women had earned small sums of cash through cutting trees for charcoal that was sold at market. The groups interviewed stated that there were now no trees left for charcoal production and were now cutting stone instead for sale as gravel or stone slabs. Children were also taking part in stone cutting. This is both a traditionally male occupation and can constitute a serious health hazard. It also illustrates one of the linkages between food insecurity and environmental degradation. As one of the respondents said "we have taken the trees now we are taking the rocks as well". Despite the hard work, the cash earned for the stone was not enough to buy sufficient food.

Although women shouldered an enormous burden in the communities visited, it seemed that they had slightly more decision making power than in the other areas visited and had a say in what crops were planted and what to do with any cash income secured. This, they claimed, as because the men most often migrate to Nairobi in search of employment and are not available to make decisions on the farm.

The area visited was targeted for the distribution of emergency food, but women stated that they only received one kilogramme of maize flour a month. This was not even enough to feed the family for one day. The communities stated that they were not consulted when it came to the distribution of relief food and that the area

could have productive potential, if help was provided in the form of irrigation schemes and agricultural inputs rather than food aid. Community members also suspected that those responsible for the distribution, often the chief or district commissioner, favoured their friends and relatives at the expense of those most in need. Community members also stated that a school-feeding programme had been discontinued leading to higher school drop out rates. Children instead came home during the lunch break but their families were unable to provide a mid-day meal. The lack of food, it was stated, has also led to an increase in crime as many young men have no occupation and spend their time in bars and pool halls using the little money they can earn on alcohol or drugs. Many young girls were also believed to be engaging in sexual activities in exchange for food or other goods.

The mission also visited a group of aged persons and persons with disabilities in the highland areas of Machakos district. This area was more fertile than the lower parts of Machakos but respondents still complained of food insecurity due to inadequate rainfall. This had been further exacerbated by the promotion of the planting of Eucalyptus trees to combat deforestation, a tree that needs large amounts of moisture resulting in the drainage of water sources in the area.

Persons with disabilities receive little recognition or government support<sup>49</sup> in Kenya. The group spoken with was, as everyone else in the region, sustaining themselves through peasant farming. Although the village did receive food aid at times, it was often distributed at a central point on a first come first serve basis. Persons with disabilities were often unable to fight their way to the front of the queue to receive food rations. Some support was also provided as food-for-work, requiring an input of labour that was difficult for persons with disabilities and the aged to provide. Those that had managed to get food aid claimed that it was too little and came too seldom. Again it was stated that there was no clear policy regarding the distribution of relief food and no transparency in distribution and that this resulted in corruption and nepotism. This was reportedly true both of government and NGO funded food aid. Further, each sub-location was provided with the same amount of food without the number of inhabitants being taken into account.

49 See African Union of the Blind, Kenya Union of the Blind and Centre for Disability Rights, Education and Advocacy, 2007. State of Disabled Peoples' Rights in Kenya (2007) Report, <http://www.yorku.ca/dрпи/files/KenyaReport07.pdf> Accessed 2009-09-31

A recurrent theme during all visits in Machakos was the lack of information received by the communities. Although they had heard that research was being carried out on drought resistant crops and that certain seeds could be available to farmers, there was no information on where or how they could be acquired. They were also aware of the existence of agricultural extension officers, but had never seen them and did not know how to contact them or what could be expected from them.

## 8.4 CROSS CUTTING ISSUES

The following issues were brought up as serious threats to food security in all communities that were visited and were confirmed by policy makers and NGO representatives the mission spoke with in Nairobi.

### 8.4.1 Corruption, nepotism

As mentioned above, corruption is rife in Kenya. Almost all interviewees pointed to corruption and nepotism within food aid and agricultural support programmes. This corruption seemingly takes place on all levels with resources earmarked for various support programmes being siphoned off at national and local levels.

There have been several corruption scandals involving high-level officials, including the so called maize scandal in which grain, meant to cushion Kenya against immanent price hikes and drought, has been used for speculation by businessmen posing as millers. The maize was obtained through illegally awarded government contracts<sup>50</sup>.

A recurring problem was the fact that local chiefs or headmen are used by government to identify individuals and families most in need of support. Purportedly it was common for friends and relatives of the headmen to be targeted for aid, at the expense of the most vulnerable in the community. There seems to be a widespread culture of self-enrichment with each individual in the distribution chain seeing it as their right to take a cut before food or other goods and services are distributed to the intended recipients.

The diversion of resources through corrupt practices, whether by national politicians or local officials, violates different human rights. In the context of the right to food the misappropriation of resources by government

50 See Mars Group Kenya for a collection of articles related to the maize scandal [www.marsgroupkenya.org](http://www.marsgroupkenya.org)

officials and the lack of real efforts on the part of central government to combat this trend, breaches the state's obligation to protect and fulfil the enjoyment of the right to food by the most vulnerable.

#### 8.4.2 Access to Information

A clear impediment to the realisation of the right to food was the widespread violations of access to information in the country. It was the first time that most of the people the mission spoke with had heard about a "right to food". They also claimed that they were not adequately informed about government policies and directives related to agriculture and food production. At the state level there are no clear strategies to disseminate new legal and policy developments to the local level and in communications strategies seldom take into account the isolation from national media that the rural poor experience. Further, there is a widespread culture of secrecy within government departments making access to even harmless government information difficult for ordinary citizens. It also seemed, however, that the top-down system of government had led to a culture of dependency and a lack of initiative on the part of the respondents hampering initiatives to devise and implement new strategies to improve farming practices or reduce the impact of hunger. This lack of proactive initiatives had, in some places the mission visited, further contributed to the laxity on the part of government, as there was not enough pressure from the population to implement and actualise different policies that would improve agriculture and cushion farmers in times of disaster such as drought.

A freedom of information bill, that would inter alia repeal the national secrets act, has been tabled in Parliament but is yet to be passed. The Kenyan government should take steps to pass a Freedom of Information Bill and ensure that it is followed up by a clear implementation policy in line with civil society recommendations<sup>51</sup>.

#### 8.4.3 Gender issues

Gender issues are central when it comes to the fulfilment of the right to food in Kenya, as in most parts of the world. The gendered division of labour and decision-making in relation to producing and purchasing food is clearly discriminatory against women. As mentioned elsewhere

in this report (See 4.2), it is women who provide the majority of labour in the agricultural and informal sectors, yet they have little or no decision making power when it comes to how to use the proceeds of their labour and no or weak rights to own land and other productive resources. In times of economic hardship, women's workload can drastically increase as contributions that are normally the responsibility of the husband fall on the shoulders of his wife<sup>52</sup>. Evidence shows that women, when they have a choice, tend to prioritise the food security of their families and their education of their children whereas men often put personal expenses first<sup>53</sup>. The increasing number of female-headed households in Kenya also points to the importance of recognising women as farmers and food providers in policies, legislation and programmes aimed at improving food security. Gender disaggregated statistics are also necessary to ensure that women are visible and included in programmes and policies aimed at ensuring the right to food.

Women must be seen as stakeholders on an equal standing to men. Women are still underrepresented in decision-making structures at all levels of Kenyan society, but their voice and input is essential for the implementation of all human rights. A crucial aspect of ensuring the right to food is thus to implement all provisions of CEDAW and empowering women to claim their rights and their position in local, national and international decision-making forums.

#### 8.4.4 Children and youth issues

In Kenya, 42% of the population is comprised of children under the age of 14 and 75% are below the age of 30, yet children and youth have traditionally had little decision-making power. Kenya has in fact been characterised as a gerontocratic state in which older people are favoured and accorded respect due merely to their age and it is the norm for youth to defer to their elders<sup>54</sup>.

Youth are marginalised within the agricultural sector due, in part to the land inheritance system (see below 8.4.9). To an increasing extent young people are leaving agriculture and moving to urban areas in search of alternative employment. The association of agriculture with old

51 See ICJ Kenya, Date unknown, Freedom of Information (FOI) Advocacy for Freedom of Information Legislation: A Commentary on the Draft Freedom of Information Bills in Kenya, [http://www.icj-kenya.org/dmdocuments/reports/commentary\\_FOI\\_bill06.pdf](http://www.icj-kenya.org/dmdocuments/reports/commentary_FOI_bill06.pdf), Accessed 2009-11-10 and Article 19, 2006, Memorandum on Kenya's Freedom of Information Bill, <http://www.article19.org/pdfs/analysis/kenya-foi.pdf>, Accessed 2009-11-10

52 Action Against Hunger, 2006, *Women and Hunger: Women Play a Central Role in the Fight Against Hunger*. Action Against Hunger, <http://www.actionagainsthunger.org/resources/publications/women-hunger-women-play-central-role-the-fight-against-hunger>, Accessed 2009-11-26

53 Lerner, Michelle, 2008, *Agriculture: A Must of the Millennium Development Goals*, <http://www.bread.org/learn/background-papers/2008/agriculture-mdgs.html>, Accessed 2009-11-11

54 Chesoni, Atsango (2006) "Ethnic Chauvinism, Xenophobia and Gender Inequality in Kenya", in Society for International Development (ed), *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives*. Nairobi: Society for International Development, East Africa.

men and a seeming lack of interest in agriculture on the part of youth is also leading to a decline in enrolment in agricultural education programmes. Not only is knowledge no longer being passed on from parents to their children, but research and innovation within agriculture that takes place within formal institutions is also being neglected. This raises the question of where the next generation of food producers in Kenya will come from. Investments are needed in agricultural institutions and strategies need to be devised to attract young people into the agricultural sector in order to ensure a revitalisation of agricultural practice, research and policy development.

The right to food of children is also seriously threatened and these violations have detrimental affects on other fundamental rights of the child. All areas visited raised the problem of children dropping out of school. Reasons for the school drop out rate were several including inability of parents to pay school fees and other school-related costs, the need for children to contribute to the family income, a lack of food and absence of school-feeding programmes. This is threatening the basic right of the child to education including free primary education without hidden costs. The missing enjoyment of this right will lead to future inequalities as a new generation of people living in poverty are denied the basic education, health and nutrition necessary for full participation in the affairs of the country.

In order to ensure the right to food and the right to education of children in Kenya, the government should put in place and maintain school feeding programmes in all areas of Kenya, providing a nutritionally adequate and culturally acceptable diet. Although primary education is free in principle, efforts must be taken to eradicate hidden fees such as costs for books, school uniforms and "teachers' funds". Promises to introduce free secondary education should be implemented.

#### **8.4.5 HIV/Aids**

The HIV and AIDS pandemic affect food security in many complex ways. In Kenya, as in the rest of Africa, effects are particularly severe in rural areas where the majority of the population rely on small-scale agriculture. The prevalence rate in Kenya in 2007 was 7.4% showing a slow increase since 2003. Although general prevalence is higher in urban than rural areas it is nevertheless rural residents that are hardest hit with seven out of ten infected adults living in rural areas. The prevalence rate in 2007 was 7.4% in Kenya as a whole but reached 15.4% in Nyanza Province. Prevalence is higher among women in all age groups and





the majority of newly infected are women<sup>55</sup>.

HIV and AIDS infection is most widespread amongst productive age groups, those groups that are also most active in the agricultural sector. This has led to a decrease in agricultural labour for small-scale farming which is now left in the hands of older persons and children. The loss of life due to AIDS related illness has also had a detrimental affect on agricultural knowledge as parents die before they are able to pass on traditional knowledge to their children leading to lower production rates and reduced quality food. That children are needed on the farms has also led to an increased school drop out rate.

Not only do HIV and AIDS have a negative impact on the production of food, but lower food production and decreased nutritional intake also impact on HIV and AIDS causing a downward spiral. Persons taking ARV drugs must have access to adequate nutrition in order for the medication to be effective. If food intake is insufficient, side effects of the drugs can be more severe. During visits in Kisumu the mission was informed that women were likely not to take ARVs on days that they had too little food. This can both decrease the effect of the medication and lead to resistance to the drugs. All visited communities stated that HIV and AIDS had had a profound affect on their livelihoods, including a decrease in their food security.

Consequently, it is essential both to address the HIV and AIDS pandemic through the provision of adequate information, sexual and reproductive health care services and the provision of ARVs throughout the country as well as to ensure those infected and affected by HIV and AIDS are targeted in schemes aimed at increasing food security, taking into account their particular nutritional needs. It is also essential to address the stigma related to HIV and AIDS that currently make it hard for those affected to talk about their problems and to claim their rights.

#### **8.4.6 The Right to Water**

As is frequently mentioned, one of the threats to sustainable food-security in Kenya is the fact that agriculture is basically rain-fed making it extremely vulnerable to the periodic droughts experienced in the country. Many of the farmers the mission spoke to pointed to difficulties in accessing water as one of the most serious causes of the hunger situation. Although efforts have been made in Kenya to invest in irrigation projects, the focus has been on large-scale irrigation

<sup>55</sup> Government of Kenya/Ministry of Health (2007) *Kenya Aids Indicator Survey 2007*, [http://www.kanco.org/FW266/html/pfd/KAIS%20-%20Preliminary%20Report\\_July%2029.pdf](http://www.kanco.org/FW266/html/pfd/KAIS%20-%20Preliminary%20Report_July%2029.pdf)

whereas the majority of farmers are smallholders or subsistence producers. Despite the dry climatic conditions in some regions of the country, agricultural output could be increased radically with increased irrigation thus contributing to national food security.

Much more research and resources should be directed towards increasing irrigation throughout the country with emphasis on projects and capacity building for small-scale farmers. Simple, low-cost techniques such as rainwater harvesting could ensure a sufficient yield even in times of scarce rainfall, but farmers will need capacity building in how to put in place and use rainwater harvesting techniques as well as resources for the initial investment in the necessary materials.

Water is in itself a human right as recognised by the CESCR. Future agricultural policies and programmes should include measures to facilitate the development of irrigation schemes for small-scale farmers.

#### **8.4.7 Diversification of food crops**

The staple food crop in Kenya is maize and many people state that a meal without Ugali (Maize meal porridge) is not a real meal. Yet maize is not indigenous to Africa and was introduced via the Portuguese colonies in West Africa. Although Maize is grown in most parts of the country, informants claimed that maize production is not really suitable in most areas as there is not enough rainfall to sustain the crop and the harvest often fails when there is too little rainfall.

Instead it was suggested that alternatives to maize should be promoted; crops that would be more drought resistant and provide greater nutrition to the consumers. More emphasis could be put on research into and promotion of the so-called orphan-crops - indigenous crops such as sorghum and millet. If food security is to be guaranteed the government should promote these crops through research as well as creating a greater pride in traditional food crops.

#### **8.4.8 Access to markets**

A serious impediment to food security for peasant farmers is deficient infrastructure making it hard for producers to access markets and market-information as well as information about new technological developments. Without this infrastructure peasant farmers will be unable to compete with foreign producers and with local and national agribusiness. Currently infrastructure in the form of road networks, electricity access, access to telephone networks, etc is seriously inadequate and all

sectors are characterised by a history of corruption and mismanagement. There is a need for greater investment in the road, transport and communication networks to connect rural farmers to market centres to enable them to participate effectively and obtain the best prices possible for their produce. Better infrastructure could also facilitate cooperation between peasant farmers.

A related issue is access to information, both regarding policies and technological developments within agriculture. This would entail ensuring building the capacity of farmers to participate in technological innovation, use of communication technologies etc.

#### **8.4.9 High population growth**

The population of Kenya is currently growing at 2.691% annually giving it the 25<sup>th</sup> highest population growth in the world<sup>56</sup>. The population has tripled since independence and is now nearing the 40 million mark. There are prognoses that the populations will double again by the year 2036.

Increased population pressure is increasing rural to urban migration and the expansion of settled areas leading to increased competition over resources and even to conflict. The pastoralist way of life, for example, is threatened with extinction, due to ever-reducing grazing land. The environmental impact of population growth is also serious as agriculture is expanded into areas in which traditional farming methods are not sustainable. Deforestation is a further consequence of population growth as forests are cleared to make way for settlements and for both large scale and peasant farming. The forest cover of Kenya has been reduced from 12% at independence to less than 2% today<sup>57</sup> leading to soil erosion and depletion of water catchment areas, both of which are serious threats to future food security.

The rapid population increase is not explicitly taken into account in policy development or in government development programmes. If the right to food is to be ensured in a sustainable, a predictable stabilisation of the population must be made explicit and be combined with policies to reduce fertility rates. Methods to promote more sustainable land-use must also be designed, taking into account the right to feed themselves of the most vulnerable groups of the population.

<sup>56</sup> CIA World Factbook Kenya, 2009, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>

<sup>57</sup> Government of Kenya, Office of the Prime Minister, 2009, Statement of the Rt. Hon. Prime Minister Riala Odinga on the State of Food Security, Water and Energy in the Country, July 22, 2009, <http://www.primeminister.go.ke/docs/PM%20on%20food%20water%20and%20energy.pdf> Accessed 2009-10-28

## 9. Conclusions on violations identified

The mission found that the food situation in Kenya is deteriorating due to widespread and systematic violations of the human right to food. The hunger situation has been further exacerbated by drought and the effects of the post election violence, but if measures had been put in place to address the underlying causes the level of hunger and malnutrition experienced today could have been decreased significantly. The main human rights violations related to the right to food were identified as the following:

- failure to provide an operative national strategy plan on the right to food (with indicators, benchmarks and monitoring systems) including disaster preparedness;
- failure to provide the necessary budget allocations to implementing the right to food and to ensure that resources are not diverted to recurring costs of the ministries involved;
- failure to take decisive action against corruption;
- failure to properly implement the right to information and to political participation;
- failure to carry out an agrarian reform including a redistribution of lands and the creation of an institutional environment suitable for sustainable agriculture by peasant farmers, including women, youth and minority groups.
- failures to provide de facto free primary education (ICESCR 13.2.a) and to provide school meals
- failure to properly recognize the dignity and rights of peasant farmers and pastoralists, in particular women.

Extraterritorial violations:

- failure by industrialized countries to effectively curb causes of climate change.
- failure to design and implement rights based food relief programmes.
- failure to assist Kenya in establishing minimum income systems safeguarding food security for all.

Although efforts are being made to improving policies and legislation related to food security, progress is too slow and points to a lack of political will to ensure the right to food for the population. The policies, laws and institutions that exist today are inadequate and implementation is uncoordinated and inefficient. Many of the positive effects these policies could have are squandered due to mismanagement and misuse of resources, including through corruption.

During visits to groups from diverse climatic areas and with different means of livelihood the mission was able to identify issues recurring countrywide that, if not tackled seriously, will continue to act as serious hindrances to the full enjoyment of the right to food of all sectors of the Kenyan population. These include widespread inequality and exclusion of people living in poverty for economic, social and political participation; endemic corruption and nepotism; discrimination against and marginalisation of women, children, youth, the disabled and minority groups including the rural and urban poor; the increasing HIV and AIDS prevalence rate in certain areas of the country; lack of access to water for crop irrigation; overreliance on maize as a food-crop at the expense of other more sustainable crops; difficulties in accessing markets and market information for smallholder producers and finally that the rapid population growth is not sufficiently addressed in policies and programmes aimed at improving food security and promoting development in Kenya.

## 10. Recommendations

### Recommendations to the Government of Kenya

#### On general governance

- The right to food, including measures for ensuring implementation, should be included in the new constitution as a fundamental and justiciable right.
- Kenya should develop national framework legislation on the right to food in line with the FAO right to food guidelines.
- Judges and lawyers should be trained to adjudicate the right to food;
- The Kenya National Commission on Human Rights should be adequately funded so as to enable the monitoring of progressive realisation as well as the respect, protection and fulfilment of the right to food, both at national and district levels;
- Ongoing policy reforms must be fast-tracked to ensure a comprehensive approach to food security; participation of all stakeholders, including small-scale farmers, pastoralists, landless and the urban poor in the design and implementation of all policies, strategies and programmes aimed at the realisation of the right to food;
- Gender parity should be ensured in participation and decision-making;
- All policies and strategies relating to food security should be accompanied by clear targets and indicators as well as budget provisions to enable efficient implementation, monitoring and evaluation, results of monitoring should be made public;
- The freedom of information act should be passed and implemented taking into account the comments of civil society on the right to information and freedom of expression. Methods of ensuring dissemination of all information about government decisions to all sectors of the population should be devised;
- The Government should ensure the implementation of its stated policy of zero tolerance towards corruption, including within the agricultural sector;

#### On agriculture

- Government should increase budget allocations to agriculture, at a minimum to the target of 10% agreed upon in the Maputo declaration. It should be ensured that this amount is spent on smallholder-oriented agricultural development and not on recurrent costs of states authorities or on agribusiness;
- The organising power of peasant farmers, pastoralists and other marginalised groups should be promoted and safeguarded and their voices should be heard in national and international decision making forums. This must include consciously addressing both political, social and economic marginalisation and exclusion.
- A comprehensive irrigation policy should be designed that will take into account the interests of peasant farmers. Promotion and investment in rainwater harvesting for irrigation and domestic use should be seriously considered;
- Diversification of food crops, respecting cultural acceptability, should be carried out in order to improve nutritional status and access to food; more emphasis should be put on the promotion of indigenous crops such as sorghum and millet
- Methods of sustainable land-use are available and should be promoted and applied, taking into account the right to feed themselves of the most vulnerable groups of the population.
- Information exchange between peasant farmers and extension services for them should be expanded to ensure access for all peasant farmers. This should include the dissemination of information to ensure that people are aware of which services they are entitled to and how they can be accessed;
- Development of irrigation schemes for peasant farmers should be promoted with low-cost techniques such as rainwater harvesting. Peasant farmers' capacity building in this area should be supported.
- Access to markets for rural populations, including information and infrastructure, should be improved;

#### On other issues

- Clear systems of checks and balances for the distribution of food aid should be designed and enforced, relief food should, where possible, be sourced locally;
- Specific focus should be put to ensure the right of children to food so as to enable the fulfilment of all rights of the child, including the provision of sustainable school feeding programmes providing nutritionally balanced food. Efforts should be made to ensure that food is sourced locally;
- The right to food of persons affected and infected by HIV and AIDS, of the aged and disabled should be especially considered;
- "Hidden fees" in primary education such as costs for books, school uniforms and "teachers' funds" should be eradicated. Promises to introduce free secondary education should be implemented.
- The government should ensure the implementation of the provisions of CEDAW, especially article 14 on the rights of rural women. If the right to food is to be guaranteed, Kenya must ensure that all provisions of the Convention on the Elimination of Discrimination Against Women, including eradicating traditional and customary practices and attitudes that discriminate against women. These provisions include the promotion of the participation of women in decision making structures and processes from the household to national level.
- Women and men should be empowered to be able to take informed decisions on sexual and reproductive health issues.
- A predictable stabilisation of the population must be made explicit and be combined with policies to reduce fertility rates.

#### Recommendations to Kenyan Civil Society

- Civil society organisations should capacitate themselves to strengthen their work on the right to food, through advocacy, capacity building, etc;
- Civil society should support victims to launch complaints on violations of the right to food;
- The right to food should be included in the Universal Periodic Review process and in the follow-up of the concluding observations of the UN Committee on Economic, Social and Cultural Rights;
- Civil society should consider presenting parallel reports, including the right to food, to the African Commission on Human and Peoples rights;
- Emphasis should be put on strengthening grassroots organisations promoting access to resources, decision-making and the right to food in general.

#### Recommendations to the International Community

- Relief food and food aid programmes should be designed from a rights-based perspective in line with General Comment 12 of the ICESCR and the FAO Guidelines on the Right to Food.
- Serious efforts should be made to combat the causes of climate change and the destruction of life-supporting eco-systems.

## 11. Acronyms

ACHPR	– African Charter on Human and Peoples Rights (ACHPR),	KASSP	– Kenya Agriculture Sector Strategy Programme
ACRWC	– Protocol on the Rights of Women and in the African Charter on the Rights and Welfare of the Child	KMC	– Kenya Meat Commission
ARV	– Anti-retroviral drugs against HIV AIDs	KNBS	– Kenya National Bureau of Statistics
CBO	– Community Based Organisation	KNCHR	– Kenya National Commission on Human Rights
CDF	– Constituency Development Fund of the Kenyan Government	LSNSA	– Land Sector Non-State Actors, national land network of NGOs and professional organizations
CEDAW	– Convention on the Eradication of All Forms of Discrimination Against Women	NGO	– Non-governmental organisation
CEMIRIDE	– Centre for Minority Rights Development, Kenya	ODM	– Orange Democratic Movement
CESCR	– UN Committee on Economic, Social and Cultural Rights	OMCT	– Organisation mondiale contre la torture, World Organisation Against Torture
CETIM	– Europe Third World Centre	PNU	– Party of National Unity, Kenya
ESCR	– Economic, Social and Cultural Rights	RAPDA	– Réseau africain pour le droit à l'alimentation, African Network on the Right to Food
FAO	– Food and Agriculture Organisation of the UN	UNDAF	– United Nations Development Assistance Framework
FIAN International	– Human Rights Organisation on the Right to Food	SERAC	– Social and Economic Rights Action Centre, Nigeria
GC	– General Comment of the CESCR	SID	– Society for International Development
GoK	– Government of Kenya	SRA	– Strategy to Revitalize Agriculture
ICJ	– International Commission of Jurists	UDHR	– Universal Declaration on Human Rights
ICESCR	– International Covenant on Economic, Social and Cultural Rights		
IDP	– Internally Displaced Person		
IGWG RTFG	– FAO Intergovernmental Working Group on the Right to Food Guidelines		





RAPDA is a pan-African network. RAPDA is the acronym of Réseau africain pour le droit à l'alimentation (African Network on the Right to Food). The network was launched on July 11, 2008 in Cotonou in Benin. The purpose of the network is to work for the effectiveness of the human Right to Food in Africa. The Head Office is in Cotonou, Benin. The members of RAPDA are national coalitions of CSOs. About twenty countries attended the launching conference in Cotonou: Benin, Burkina-Faso, the Gambia, Mali, Niger, Togo, DRC, Congo, Zambia, Cameroon, Kenya, Sudan, Côte d'Ivoire, Sierra-Leone, CRA, Nigeria, Senegal, Uganda, Malawi, South Africa, Mauritania.

The following countries have now created their national coalitions and are operating: Benin, Burkina-Faso, Cameroon, Congo, Côte-d'Ivoire, the Gambia, Kenya, Mali, Niger, CRA, DRC, Sierra-Leone, Sudan, Togo, Zambia.

The vision of RAPDA: Africa is a continent where every person has adequate and sufficient food and has the effective and full benefit of the Right to Food (RtF).

RAPDA's objectives are

- Provide information on the Economic, Social and Cultural Rights (ESCR) and more specifically on the RtF
- Engage policy makers and communities to work for the effectiveness of the RtF
- Build policy makers' and communities' capacities for the effectiveness of the RtF

RAPDA main actions are

- Dissemination of information on the RtF
- Advocacy for the efficacy of the RtF
- Training of policy makers and development stakeholders for the effectiveness of the RtF
- Studies on the situation of the RtF in members countries and in the region
- Awareness raising and information activities on the RtF
- Inventory of the national laws relative to the RtF
- Alternative reports on actions relative to the RtF
- Dissemination of information on FAO Voluntary Guidelines



FIAN International, the FoodFirst Information and Action Network, was founded in 1986. It was the first international human rights organisation to advocate the realisation of the right to food, as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

FIAN consists of national sections present in Africa, Asia, Latin America and Europe. Its individual members come from over 50 countries. FIAN is a not-for-profit organisation without any religious or political affiliation and has consultative status with the United Nations.

FIAN envisions a world free from hunger, in which every person fully enjoys human rights in dignity, particularly the right to adequate food.

FIAN exposes and addresses violations of people's right to adequate food wherever they may occur. FIAN opposes unjust and oppressive practices that prevent people from feeding themselves and their families. The struggle against gender discrimination and other forms of exclusion is integral part of FIAN's mission. FIAN International strives to secure people's access to the resources they need in order to feed themselves, now and in the future.

FIAN analyses and documents concrete cases of violations of the right to adequate food. FIAN raises awareness on the right to adequate food among social movements, non-governmental organisations, governmental bodies, and the general public.

FIAN responds to requests from individuals and groups whose right to adequate food is threatened or has been violated, and mobilises support. With protest letter campaigns, advocacy and recourse to the law, FIAN exerts public pressure in order to hold governments accountable for violations of the right to adequate food. FIAN follows up cases until the victims get appropriate redress.

Within the United Nations system and other legal regimes, FIAN advocates respect for human rights in order to strengthen and improve the international human rights protection.