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**TOPIC: REALISING THE RIGHT TO FOOD IN THE CONTEXT OF HIV/AIDS IN
LESOTHO**

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of laws degree (LLM) International Human Rights Law and HIV in Africa of the
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DECLARATION

I Mamofuta Vivian Kale declare that this research is my original work and it has not been submitted for the award of degree at any other university or institution. Where other sources have been used are properly acknowledged and referenced

Signed _____

Vivian Kale

Date _____

DEDICATION

This work is dedicated to my beloved husband for the role that he has played to support me to carry out my studies in order to pursue my vision.

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Firstly, I would like to give special thanks to the Lord, my saviour for giving me the courage as well as helping me to finish my LLM.

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LIST OF ACRONYMS

AIDS	- Acquired Immune Deficiency Syndrome
ARV	- Anti-retroviral
CRS	- Catholic Relief Services
CESCR	- Convention on Economic, Social and Cultural Rights
CEDAW	- Convention on Elimination of all Discrimination against Women
CRC	- Convention on the Rights of A Child
FAO	- Food Agricultural Organisation
HIV	- Human Immunodeficiency virus
LENEPWA	- Lesotho Network of People Living with HIV
ICESCR	- International Covenant on Economic, Social and Cultural Rights
IFAD	- International Fund for Agricultural Development
MDGs	- Millennium Development Goals
NAPFS	- National Action for Food Security
NGOS	- Non Governmental Organisation
OAU	- Organisation of African Unity
PLHIV	- People Living with HIV
PMTCT	- Prevention of Mother-to-Child Transmission
PRS	- Poverty Reduction Strategy
SADC	- Southern African Development Community
SWAALES	- Society for Women and AIDS, in Africa Lesotho

- UDHR - Universal Declaration of Human Rights
- UN - United Nations
- UNDP - United Nations Development Programme
- WILSA - Women and Law in Southern Africa Research and Education
Trust Lesotho

TABLES OF SELECTED CASES

- African Commission on Human and Peoples' Rights, communication 155/96, *The Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria* 2001
- *Khathang Tema Baits'okoli and Mosala v Maseru City Council and others*, Const/C/1/2005 (CC)
- *Government of South Africa and others v Grootbroom and others* 2001(1) SA 46 (CC)
- *People's Union for Civil Liberties (PUCL) v Union of India and others* writ petition (Civil) no. 196/2006 (SC)

TABLE OF SELECTED STATUTES

DOMESTIC LAWS (LESOTHO)

- Constitution of Lesotho 1993
- Child Protection and Welfare Act No.7 of 2011
- Education Act No. 3 of 2010

INTERNATIONAL INSTRUMENTS

- African Charter on Human and People's Rights 1981
- African Charter on the Rights and Welfare of the Child 1990
- African Youth Charter 2006
- Convention on the Elimination of All forms of Discrimination against Women 1979
- Convention on the Rights of the Child 1989
- International Covenant on Economic, Social and Cultural Rights 1966
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003

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CHAPTER ONE

1.1 INTRODUCTION AND RESEARCH BACKGROUND

HIV is a global public health problem severely affecting the Sub-Saharan region. Lesotho is no exception.¹ It is a small country with a population estimated at 1.8 million but it has the third highest HIV prevalence rate in the world which is 23.5 per cent, behind Swaziland and Botswana.² The annual report of the Joint United Nations Programme on HIV/AIDS (UNAIDS) has indicated that there has been little progress in the struggle against the epidemic because the number of people infected continues to increase.³ More than twenty five million people have already died of AIDS worldwide.⁴ For every person infected with HIV or killed by AIDS, a family and a community loses, and so does the nation.⁵ In countries that are mostly affected, sickness and loss of productive adults have already worsened poverty.⁶ HIV/AIDS poses a unique threat because it affects the most productive people in a society. Efforts have been made to increase access to antiretroviral therapy all over the world as an effective response.

Despite the challenges some progress has been made.⁷ Countries have come together to fight the epidemic.⁸ There were 700 000 fewer infections across the world in 2011 than in 2001.⁹ This is more so in countries with a concurrent scale up of HIV prevention and treatment programmes.¹⁰ Lesotho, being such a country, has reduced HIV related deaths by one third from 2009 to 2011.¹¹ But not withstanding this progress, much more needs to be done. No one should die of AIDS or TB.

¹ USAID *Antiretroviral therapy literacy for community-based caregivers, a reference manual by USAID in collaboration with the government of the Kingdom of Lesotho.*

² UNAIDS *Report on global Aids epidemic* (2006) 8.

³ As above.

⁴ UNAIDS *Taking action against HIV and AIDS - Handbook for Parliamentarians no. 15* (2007) 7.

⁵ As above.

⁶ As above.

⁷ UNAIDS *World Aids day report* (2012) 9.

⁸ As above.

⁹ As above.

¹⁰ As above.

¹¹ USAID (n 1 above).

1.2 PROBLEM STATEMENT

Like many countries in the world, in Lesotho, there is an increasing availability of anti-retroviral treatment (ART) as a tool to reduce the HIV prevalence which is overwhelming in the country.¹² ARV coverage is estimated at 57 %. It has however, been discovered that despite this effort of providing access to ARVs, thousands of people are still dying of AIDS and there are new infections every day. Poverty and hunger drive the disease.¹³ Provision of ARVs alone will not suffice to sustain life, there are other factors that need to be taken into account as an effective measure to fight the epidemic. One such factor is food.¹⁴

In order to adhere to ARVs and live a healthy life, people need access to food, preferably nutritious food. According to one of the scholars, 'food insecurity and HIV has been described as 'syndemic' meaning epidemics that coexist and perpetuate the other'.¹⁵ The relationship between the two is normally referred to as a vicious circle. It is against this background that the researcher feels strongly that the realisation of the right to food requires the adoption of measures that to ensure the enjoyment of a list of other rights such as the right to health which is closely linked with living conditions in general, including access to adequate food and nutrition. Although in Lesotho there is an increasing availability of ARVs, some people living with HIV lack food and as a result, they are reluctant to take their ARVs properly and constantly.

Reports show that in Lesotho, malnutrition and TB are very common and may promote the progression of HIV/AIDS and affect the ability of ARVs to do their job.¹⁶ There has been very little progress in the eradication of poverty and hunger in Lesotho over the last decade.¹⁷ A significant number of the population faces

¹² As above.

¹³ As above.

¹⁴ As above.

¹⁵ A Anema 'Relationship between food insecurity and HIV outcomes among individuals receiving antiretroviral therapy' unpublished thesis, University of British Columbia (2012) 3. Available at <https://circle.ubc.ca/handle>.

¹⁶ USAID (1 above).

¹⁷ As above.

food shortage every year and 25 per cent of the population is currently vulnerable to food insecurity.¹⁸

The impact is that malnourished people are less likely to benefit from antiretroviral treatment because it has been said that ‘taking ARV drugs on an empty stomach is like digesting a razor blade’.¹⁹ The result is that many people simply do not take them. The specific links between food security, HIV/AIDS and human rights are not sufficiently addressed in Lesotho therefore the government of Lesotho cannot effectively reduce HIV prevalence in the country without addressing the fact that food and nutrition in the context of HIV/AIDS plays a central role.

1.3. RESEARCH QUESTIONS

The main research questions in this study are the following:

- How has food insecurity (malnutrition) affected poor people living with HIV in Lesotho?
- What are Lesotho’s human rights obligations under international, regional and domestic laws pertaining to the right to food?
- Is the government of Lesotho complying with its obligations? If not, why?

1.4 SIGNIFICANCE OF THE STUDY

In Lesotho, little is known about the relationship between food insecurity and health outcomes among people living with HIV/AIDS. The researcher has witnessed this fact through the interviews that have been held with different stakeholders during my research. This study therefore intends to make the country aware of the importance of nutrition and ARVs on people living with

¹⁸ As above.

¹⁹ HIV and nutrition by International HIV & AIDS charity. Available at www.avert.org/hiv-nutrition.htm (accessed 15/11/12).

HIV/AIDS. The study is also significant in that it will show that there is a need for a deeper understanding of the integral role that food and nutrition can and should play in HIV/AIDS prevention, treatment and care. It will make government aware that there is a corresponding urgency to use the understanding to improve responses at all levels. The study will also be used as a tool to advocate for the rights of people living with HIV/AIDS in Lesotho because it will add to the limited literature available in the country that talks about the link between food, nutrition and HIV/AIDS. The aim is also to make the government aware that adequate food and nutrition are critical to an effective response to HIV/AIDS epidemic and that it must act urgently to improve food insecurity within the country. There is also a need to show the importance of seeing HIV/AIDS as an issue that goes beyond the medical aspects of human rights.

1.5. TERMINOLOGY

For the purpose of this study, certain scientific concepts frequently used are briefly defined.

Antiretroviral therapy is the treatment that is available for people living with HIV/AIDS.²⁰ A patient who adheres to this treatment has a chance of living for a long time. The aim of the antiretroviral treatment is to keep the amount of HIV in body at low level. It stops the weakening of the immune system. The drugs are often referred to as antiretroviral, anti-HIV, anti-Aids drugs, HIV antiretroviral drugs or ARVs.

Micronutrients are vitamins and minerals that the body need to maintain good health. They help to boost the immune system of a human being.

1.6 RESEARCH METHODOLOGY

The methodology to be used in this study will be two-fold as below:

²⁰ N Dlomo ' Investigating adherence for people living with HIV and AIDS on ART in Durban, Kwazulu Natal, South Africa' unpublished thesis, Stellenbosch University, (2010) 7. Available at scholar-sun.ac.za.

- Desktop research which will be mainly literature review. It will be conceptualised and analysed in the light of HIV/AIDS by identifying the state's obligations with regard to the right to food in Lesotho.
- Semi-structured interviews will also be conducted with people living with HIV/AIDS who will be selected from community based organisations that arrive frequently to pick their monthly supply of ARVs and to attend to other health issues, NGOs working in the field of HIV/AIDS and nurses working in the area of HIV/AIDS in hospitals or clinics. The NGOs that will be consulted are centred in the capital town of Maseru but they have affiliates in the ten (10) district in Lesotho. Through the interviews, I will be able to analyse how well the people in Lesotho know about the link between food insecurity and HIV/AIDS.

This means that few open-ended questions specifically relating to the area of expertise of a particular person will be conducted. The format is useful at collecting more factual information.

1.7 CHAPTER OUTLINE

The study contains four main chapters. Chapter 1 sketches the introduction and background of the study and the problem to be addressed. It also outlines the main research questions aimed at answering or addressing the problem.

Chapter two focuses on whether inadequate food has a detrimental effect on the health of poor people living with HIV/AIDS in Lesotho.

Chapter three focuses on Lesotho's obligations under international, regional and domestic law with regard to right to food. The identification of the state's obligations is crucial in a human right approach to HIV/AIDS and food security.²¹ It is important to identify human rights obligations before analysing which aspects of the state's capacity need to be addressed. The obligations will be identified by

²¹ | Engh *Developing capacity to realise socio-economic rights, the right to food in the context of HIV/AIDS in South-Africa and Uganda* (2008) 121.

looking at the international and regional instruments which have been ratified by Lesotho and also the domestic laws and policies of the country. I will also look at international soft law which are used as guide to realise the right to food in the context of HIV/AIDS.

This chapter will further discuss whether the government of Lesotho is complying with its national, regional and international obligations. Based on the information gathered from the empirical data that will be collected during in-depth interviews with people mentioned in the first research question, the reports from NGOs and government policies and laws on the right to food, the study will be able to assess the situation on the ground. The study will also identify the responsibilities of state actors and non-state actors working on the issues relating to the right to determine whether the government is failing or not. Other than binding instruments, non-binding international instruments such as concluding observations of the UN Committee on Social, Economic and Cultural Rights, Committee on the Rights of the Child, UN committee on torture and other relevant bodies such as the African Commission on Human and Peoples' Rights its guidelines and resolutions and UN special procedures and FAO guidelines on the right to food, are also considered in answering the question.

The last Chapter contains general conclusions drawn from discussions throughout the study and gives reasons why the government of Lesotho is failing to meet its obligations. It also makes recommendations on how to solve the problems tabled throughout the study.

1.8 LITERATURE REVIEW

Causes of HIV infections are known but little is known about what fuels the epidemic. To achieve positive results, there is a need to address the root causes of the illness and deaths caused by HIV/AIDS.²² There is a need to adopt a human right approach as a global response to HIV/AIDS.

²² FAO *The right to food in the context of HIV/AIDS* (2009) 8.

Research suggests that treatments focus on providing antiretroviral drugs and that is why even when the therapy is available, in poor-limited settings the need for adequate food remains. It is also argued that ‘... interactions between anti-retroviral and food and nutrition can significantly influence the success of the therapy by affecting drug efficacy, adherence to drug regimes and nutritional status’.²³ It has been evident by different authors that providing medicine alone is not enough. Adequate food and nutrition are essential elements of treatment.²⁴ Recent reports have shown that in health programmes medicines are of little or no use without adequate food and nutrition.²⁵ It has been shown that malnutrition is the accelerator in the progression and development of the disease and evidence also suggests that the disease progresses faster in malnourished people.²⁶ As a result, there is frequency of opportunistic infections, of which tuberculosis is the most common. The reduced food intake then results in further weakening of the immune system which in turn reduces the period before full blown AIDS develops.²⁷

Greenblott argues that food is an essential weapon in the battle against HIV/AIDS.²⁸ Greenblott goes further to say that poor individuals living with AIDS had started to reject free, life-prolonging ARV medication because of the side effects of taking the drugs on an empty stomach.²⁹ It has been proven that adequate food and nutrition cannot cure HIV infection, but they can delay the progression to AIDS reducing health care costs and allowing PLHIV to remain active.³⁰ Engh shares the same sentiments by saying food and treatment are equally important.³¹ One cannot take drugs on an empty stomach.³² Treatment

²³ As above 18.

²⁴ As above.

²⁵ WHO *Scaling up antiretroviral therapy in resource –limited settings: treatment guidelines for a public health approach* (2003).

²⁶ FAO (n 22 above) 17.

²⁷ As above.

²⁸ K Greenblott ‘Food: An essential weapon in the battle against HIV and AIDS’ (2010) 37 *Human Rights Magazine Home* 1 available www.americanbar.org.

²⁹ Greenblott (n 28 above) 1.

³⁰ As above.

³¹ Engh (n 21 above) 98.

³² As above.

coupled with food and nutrition is necessary to postpone death. Inadequate nutrition interferes with the use of the ARV drugs thereby reducing the benefit of advances in health care even when ARVs are available.³³ Castleman suggests that food insecurity limits the capacity of HIV infected people to comply with special food requirements for ARVs and this may result in compromised drug regimen adherence and aggravated side-effects.³⁴

Food insecurity defined as the limited or uncertain availability of nutritionally adequate, safe food or the inability to acquire personally acceptable foods in socially acceptable ways has recently been identified as a key structure to ARV adherence and a contributor to ARV treatment interruptions in resource-poor settings.³⁵ According to a quantitative study from Uganda, Malawi and Tanzania, hunger during highly active antiretroviral therapy initiation appeared to be the leading obstacles to ARV adherence.³⁶ Food insecurity does not only act as barrier to ARV adherence but it may increase vulnerability to HIV infection.³⁷

HIV disproportionately affects prime working- aged adults, killing the most productive members of the society.³⁸ In families whose breadwinners are HIV-positive and who experience declining health or who died, the entire household is more likely to become food insecure because the person they rely on is less able to produce.³⁹ The problem of orphans and vulnerable children will persist for years even with the expansion of prevention and treatment.⁴⁰ The reason being that in order for these children to feed themselves, most of them will drop out of school and will be in danger of exploitation or abuse.⁴¹ Food insecurity is considered as a factor that increases the vulnerability to HIV/AIDS.⁴² Beside

³³ As above 97.

³⁴ T Castleman et al *Food and nutrition implications of antiretroviral therapy in resourced limited settings*, FANTA Technical Note No. 7 (2004)..

³⁵ AP Hardon et al 'Hunger, waiting time and transport costs: time to confront challenges to ATR adherence in Africa' (2007) 19 *AIDS care Journal* 658.

³⁶ As above

³⁷ Castleman (n 34 above).

³⁸ Greenblott (n 28 above) 4.

³⁹ As above

⁴⁰ Dlomo (n 19 above) 8.

⁴¹ As above

⁴² Greenblott (n 27 above) 4.

orphans and children, people who are malnourished may increase their risk of contracting HIV infection by engaging in sex work to generate income for food.⁴³

Engel also argues that mother-to-child transmission (MTCT) of HIV is a major nutritional issue.⁴⁴ He argues further that a number of studies show that the exclusive breastfeeding significantly reduces the risk of transmission than partial breastfeeding.⁴⁵ In order to prevent mother to child transmission, the health of the mother and her right to food must be guaranteed. Studies have shown that women, especially those infected, need additional food when breast feeding and when an undernourished woman breastfeeds, this makes demands on their already depleted resources.⁴⁶ Mothers' enjoyment of the right to food is a prerequisite for them to be able to realize their children's right to food; keeping mothers in good health with access to adequate food is a priority and the cornerstone of an adequate response to HIV.⁴⁷

The right to adequate, safe and nutritious food is a human right that ensures every individual to enjoy a life of dignity.⁴⁸ Several human rights treaties and declarations recognise the right to food. The main legal basis of the right to food is the International Covenant on Economic, Social and Cultural Rights (ICESCR) in article 11.1 and 11.2 and the General Comment 12 of the Committee on Economic, Social and Cultural Rights in article 11.⁴⁹ Manzara argues further that the right has recently been expanded to address the special need of those living with HIV/AIDS particularly because it has been discovered that there is an interrelationship between comprehensive treatment to HIV, access to nutritious food and impact on agricultural production.⁵⁰

⁴³ LM Houtzager 'Nutrition in HIV: a review' (2009) 11 *Journal of Postgraduate Medicine* 63.

⁴⁴ Engel (n 20 above) 96.

⁴⁵ As above.

⁴⁶ Save the children *Saving children's lives. why equity matters* (2008) 8.

⁴⁷ S Gillespie & S Kadiyala *HIV/AIDS and food and nutrition security from evidence to action* by the international Food Policy Research Institute (IFPRI) Washington DC, (2005) 53

⁴⁸ MA Munzara-Chawira *The right to food of people living with HIV and AIDS* 1. The author is the food campaign coordinator for Ecumenical Advocacy Alliance (EAA) which is a global network of churches . www.e-alliance.ch.

⁴⁹ CESR General Comment 12/1999.

⁵⁰ Munzara-Chawira (n 48 above) 1.

The conclusion to be drawn from the literature is the fact that food and nutrition play crucial role as one of the responses on HIV treatment. That is why Farmer stresses that ‘providing medicine without also providing food is like washing your hands with dirt’.⁵¹

⁵¹Dr Paul Farmer as quoted by Greenblott (n 28 above) 8.

CHAPTER TWO

FOOD INSECURITY IN LESOTHO

2.1 INTRODUCTION

There has been remarkably rapid expansion of ARV treatment in Lesotho. The improved access to ARV treatment and expansion of Prevention of Mother- to Child -Transmission (PMTCT) programmes has sharply reduced HIV-related mortality.⁵² However, the country has to address the issue of food insecurity and urgently facilitate its implementation as one of the effective response to HIV/AIDS prevention. This chapter discusses the problems caused by food insecurity in relation to people living with HIV/AIDS in Lesotho.

2.2 THE IMPACTS OF FOOD INSECURITY ON PEOPLE LIVING WITH HIV/AIDS IN LESOTHO

At the moment Lesotho is faced with a challenge of lack of food.⁵³ With high levels of chronic food insecurity and endemic poverty in Lesotho, there are many households that are being exposed to undernourishment, with the result of high incidence of protein- energy malnutrition and other nutrient deficiencies.⁵⁴ Recently FAO has released alarming statistics that 725 000 Basotho are considered food insecure after the poor harvest recorded in 2012.⁵⁵ This issue of food insecurity has now caused more harm to people living with HIV/AIDS in the country.⁵⁶ Because of the situation, the Prime Minister Motsoahae Thabane has declared a state of emergency on food security.⁵⁷ He called assistance from all development partners and friends of Lesotho to address the situation. He said ‘ ...

⁵² HIV and AIDS in Lesotho www.avert.org/aid-lesotho.htm. (accessed on the 12/06/13).

⁵³ Declaration of an emergency on food security. Available at www.gov.is (accessed on 12/06/13).

⁵⁴ Food insecurity in Lesotho, www.fao.org (accessed on 15/06/13).

⁵⁵ FAO ‘Basotho in need of food’, Informative 11-17 June 2013.

⁵⁶ As above

⁵⁷ Declaration (n 53 above).

it is worth noting that it is the women, the HIV infected, orphans and children under the age of five years who suffer most...'.⁵⁸

2.3 THE EVIDENCE BASE FOR FOOD AND NUTRITION FOR PEOPLE LIVING WITH HIV/AIDS IN LESOTHO

When conducting in depth interviews with relevant stakeholders, to understand how food insecurity interferes with ARV therapy, food insecurity was mentioned as a common and an important barrier to accessing medical care and ARV treatment. Food was often cited by majority of people as the greatest and urgent need for people living with HIV/AIDS. The programmes manager of the Lesotho Network of People Living with Aids (LENEPWA) urged that although there are increasing numbers of interventions to address the issue of food insecurity in HIV/AIDS prevalence settings, there is little evidence on the effectiveness of such programmes in improving nutrition and access to food by targeted population within the country.⁵⁹ He emphasised that many organisations have tried many interventions to improve food security especially for people living with HIV/AIDS but the projects were isolated and they are usually on small scale.⁶⁰

He added that food is important for people living with HIV/AIDS because it is a primary defence in the ongoing struggle to maintain their health because it helps them meet the challenges of strict adherence to their medication.⁶¹ He said that initially the LENEPEA did not have food programmes in their project save to teach people about nutritious food but at as time goes, they realised that some people are so destitute they cannot afford basic food, let alone a balanced diet. That is when the organisation decided to take the issues of food security seriously and formed a partnership with already existing organisations such as Action AID, FAO, IFAD and UNDP to address the issue.⁶² They have been successfully working

⁵⁸ As above).

⁵⁹ Interview with Mr. Taineomwangire the programmes manager of the LENEPEA conducted at their offices on the 24th may 2013.

⁶⁰ As above

⁶¹ As above

⁶² As above.

with families in a number of districts to increase their livestock production and income generating projects by providing people with broiler chickens and pigs and giving them seeds for farming.⁶³ These long term food security interventions have only started recently and the results are not yet known.

During the course of the study, the researcher was able to interview some of the people living with HIV/AIDS within the organisation. It must be mentioned that LENEPWA is working with community based organisation of people living with HIV/AIDS throughout the country and the researcher had occasion to interview those that were interested. Participants were asked about their overall food situation, how often they were hungry and they were also asked about general barriers to adherence and more specifically whether food insecurity has affected their ability to take their medications as prescribed. These participants indicated that taking ARV medications without sufficient food exacerbated medication side effects. The most painful thing about these poor people is that they do not talk about nutritious food, they are talking about basic food for example pap (mealie).

During these interviews, one of them said, 'taking ARVs without food, makes me feel unwell and causes pain inside my stomach and sometimes I feel dizzy. As a result, when I do not have food, I just decide not to take them at all'.⁶⁴

A 33 year old woman⁶⁵ actually talked about a range of serious side effects and said:

I feel uncomfortable, and start to sweat severely and sometimes I pass out. And I took a long time without taking the medication because I had to struggle to have food. And when I took the medication again, I was told that I have developed resistance to ARVS and that is why my recovery takes longer

Despite these side effects some of them were strongly motivated to take their medication even in the absence of food because they had a strong belief that ARVs are life prolonging medications which enable them to live with dignity and

⁶³ As above.

⁶⁴ Interview with one of the participants who wanted to remain anonymous conducted at LENEPWA offices on 24 May 2013.

⁶⁵ Another interviewee who requested anonymity at LENEPWA offices on 24 May 2013.

security. For example one woman who had been on treatment for more than seven years said she takes her medication even when food is not available even though it can cause her to vomit, pains in her stomach and also some dizziness because she saw some benefit of the drug.⁶⁶

One the members of T'sepong Counselling centre 'A place of Hope' told me that the mission of the institution is to promote the good health and the overall well-being of HIV/AIDS affected and infected people, orphans and vulnerable children (OVCs) by providing general counselling and HIV/AIDS training and education for community volunteers to become good health promoters and home based carers. Like LENEPWA, this institution did not have food programmes in its projects. But with time, they realised that ARVs interact with food and nutrition in a variety of ways resulting in both positive and negative outcomes. She went further to say during the course of their work, they realised that some patients despite being on ARV treatment and counselling, did not recover and it was realised later that they lacked food. That is when the institution decided to train and educate people on horticultural services and gardening to families.⁶⁷ The issue of a balanced diet was also emphasised. They had realised that the food must be taken at the right time in order to maximise a patient's adherence to the drug to minimise unhealthy, often painful side effects and achieve optimal drug efficiency.⁶⁸

One of the nurses in the Centre emphasised the importance of nutrition on mothers who are HIV positive.⁶⁹ She said people living with HIV/AIDS need to consume more calories than those without the virus and the consequence of skipping meals can be very serious.⁷⁰ Her biggest concern was HIV positive mothers. She argued that positive mothers need to breastfeed exclusively for six months to reduce the risk of mother to child transmission.⁷¹ But she said more

⁶⁶ Interview with one of the people living with HIV/AIDS who also did not want her name disclosed at LENEPWA offices on 24th May 2013.

⁶⁷ Interview with Mrs. Kolobe the director of T'sepong counseling center conducted at their offices on the 31st May 2013.

⁶⁸ As above

⁶⁹ Interview with Ms. Phafoli a stationed nurse at the center conducted at their offices on the 31st May 2013.

⁷⁰ As above.

⁷¹ As above.

than thirty per cent of people coming to the Centre are food insecure and most of them are HIV positive mothers. She said mothers who are not getting enough food often struggle to produce enough milk to breastfeed and the result is that they mix bottle feeding and breastfeeding and thus they increase the chances of transmitting the virus to their children.⁷² She said we cannot talk of zero infection by 2015 if the government of Lesotho does not address the issue of food insecurity.⁷³

The researcher also interviewed a programme manager of an organisation called the Society and Aids in Africa Lesotho (SWAALES) and another from Women and Law in Southern Africa Research and Education Trust Lesotho (WILSA) who had the same opinion that food security is a big problem in the country and they had made a partnership to address the issue of food insecurity in the country especially for people living with HIV/AIDS.⁷⁴ They provide food packages in many villages within the country and a priority is given to people living with HIV/AIDS. However, the coverage is not enough in that they only help six districts out of ten.⁷⁵

The study has shown that different organisations have committed themselves to help the government of Lesotho to fight hunger as well as meeting the immediate food nutrition and other basic needs essential for HIV/AIDS affected households so that they can live with dignity and security. These organisations include, Action Aid, FAO, IFAD, UNICEF, Catholic Relief Services (CRS), World Vision, Care Lesotho and many more.⁷⁶ It is however important to note that all these organisations initially were mainly providing food aid interventions that have a positive impact on beneficiaries' lives. Food aid interventions reduce people's dependency on dangerous and livelihood-eroding coping strategies and improve diet diversity and quality as well as household food security. A major disadvantage of food aid is that most of the time it provides a short term safety net in Lesotho. The result is

⁷² As above.

⁷³ As above.

⁷⁴ Interview with both Mr Moeti programme coordinator at SWAALES and Mrs Mohlabula- Nokana at the workshop dealing with domestic violence that was held at Maseru Sun Cabanas from 23- 31 May 2013.

⁷⁵ As above.

⁷⁶ Lesotho's gardens of hope www.fao.org (accessed 7/08/13).

that too many people are dependent on food aid in Lesotho. Moreover, these organisations are now phasing out their food aid programmes; consequently there is a possibility that more people are going to be food insecure in the future.

2.4 LONG TERM STRATEGIES THAT ARE PUT IN PLACE TO ADDRESS FOOD SECURITY IN LESOTHO

It is clear from the data collected that food aid interventions must include an exit strategy and should be linked with long- term food security initiatives such as income generating projects as well as capacity building to sustain the projects to reduce dependency. To tackle the challenge faced by HIV affected families on hunger, FAO, UNICEF and WFP launched a project in Lesotho's Mafeteng district, one of the country's most affected sites in terms of the HIV epidemic.⁷⁷ The project targeted the families of HIV affected children and focused on food security and nutrition, health, education and social welfare. As part of the project, communities were provided with equipment and seeds. They were also trained and mobilised for construction of the keyhole gardens, a labour –saving agricultural technique that can be successfully used to grow food in harsh climates making the best use of the poor soil.⁷⁸

In collaboration with Lesotho's Ministry of Agriculture and Food Security, the project engaged partners already working with the targeted communities such as the NGO Send A Cow, The Lesotho Red Cross Society and the Rural Self- Help Development Association.⁷⁹ The project will be extended to other districts. Action Aid is also dealing with the issue of capacity building and is holding workshops across the country for purposes of enhancing implementation of food security and this is done in collaboration with the government of Lesotho and LENEPWA.⁸⁰

The government of Lesotho through the Ministry of Agriculture and Food Security has implemented block farming programmes aimed at sustainable agriculture and

⁷⁷As above.

⁷⁸As above.

⁷⁹As above.

⁸⁰www.gov.ls/articles/action aid -support people.htm.

natural resource as part of an IFAD funded project. With respect to food security and commercial farming, the government of Lesotho approached farmers who could plough twenty adjacent fields for Basotho. On the proceeds the government would take seventy per cent while the owners of the fields take only thirty per cent. This programme of block farming which could be vitally important for Basotho people falls short in many respects and those shortcomings will be discussed in detail in the coming chapter.

2.5 CONCLUSION

While reports show the progress made by Lesotho by providing the life-prolonging ARV medication the concern that remains is that the success will not be sustainable in the presence of widespread poverty and food insecurity. As Greenblott has rightly pointed out: ‘for PLHIV as for all humans, food is a human right, but for this particular vulnerable group the need to ensure consistent and reliable access to nutritious food has the element of some urgency.’⁸¹

⁸¹Greenblott (n 28 above) 1.

CHAPTER THREE

IDENTIFYING ROLES AND OBLIGATIONS OF LESOTHO ON THE RIGHT TO FOOD

3.1 INTRODUCTION

Human rights are the fundamental inherent rights of all human beings to which people are entitled simply by virtue of being born into human family.⁸² They require the state to take positive measures to create an enabling environment in which people may enjoy those rights.⁸³ These rights are enshrined in most constitutions and in international human rights treaties. It has been argued that a functional protection requires not only ratification of relevant human rights treaties but also their constitutional protection by states that have ratified them and further implementation.⁸⁴ This chapter therefore views the obligation of Lesotho under international, regional and domestic human rights laws on the right to food in particular of people living with HIV/AIDS.

3.2 THE DEFINITION AND SUBSTANCE OF THE RIGHT TO ADEQUATE FOOD UNDER INTERNATIONAL LAW

The United Nations (UN) Special Rapporteur on the right to food has defined the right to food as;⁸⁵

the right to have regular, permanent and free access either directly or by means of financial purchase, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which consumers belong, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.

⁸² FAO *Constitutional and legal protection of the right to food around the world*, (2011) 7. Available at www.fao.org.

⁸³ As above

⁸⁴ As above.

⁸⁵ Munzura-Chawira (n 48 above)1.

This means that the right to food is realised when everyone has equal and physical access at all times to adequate, safe and nutritious food by means of its procurement. This right is currently expanded to address the special needs of people living with HIV/AIDS because of the interrelationship between comprehensive treatment to HIV and access to nutritious food.

The right to food has two components which are availability of food and access to it.⁸⁶ That means it must be available to each person. In other words, each person should be able to obtain it either directly from land or other natural resources or from distribution systems that purvey the food to those who require it.⁸⁷ Secondly every person must have access physically and economically to food.

Accessibility requires economic and physical access to food to be guaranteed. Economical accessibility means that food must be affordable. In other words individuals should be able to afford food for an adequate diet without compromising any other basic needs. For example, it has been suggested that affordability of food can be guaranteed by ensuring that the minimum wage or social security benefit is sufficient to meet the costs of nutritious food and other basic needs.⁸⁸ It must also be physically accessible to all including the physically vulnerable such as children, the sick, people with disability or the elderly.⁸⁹

Several human rights treaties and declarations recognise the right to food. These include the Universal Declaration of Human Rights (UDHR) article 25,⁹⁰ the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) article 14⁹¹ and the Convention on the Right of the Child (CRC) article 21⁹². There is also the Declaration of the World Summit on Food Security which restates that that the right to food be given a more concrete and operational

⁸⁶ *The right to adequate food* by the Office of the High Commissioner for Human Rights, Fact Sheet no.34 available on www.ohchr.org.

⁸⁷ As above.

⁸⁸ As above.

⁸⁹ As above.

⁹⁰ UDHR 1948.

⁹¹ CEDAW adopted 1979.

⁹² CRC adopted 1989.

content.⁹³ However the main legal basis of the right to food is the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has been ratified by not less 160 States⁹⁴ and Lesotho is no exception. In article 11.1, States parties recognise ‘... the right of everyone to an adequate standard of living for himself and his family, including adequate food...’. Article 11.2 talks about the fundamental right of everyone to be free from hunger.⁹⁵

The right goes beyond freedom from hunger; it also addresses the issue of adequate standards which requires food to be in quantity and quality sufficient to satisfy the dietary needs of individuals.⁹⁶ It has been argued that adequacy requirement is very vital for people living with HIV/AIDS as food is the most appropriate under the circumstance.⁹⁷ The authoritative interpretation of article 11 is the General Comment 12 of the Committee on Economic, Social and Cultural Rights (CESCR) which provides⁹⁸

The right to food is realised when every man, woman, child alone or in community with others has physical and economic access to all times to adequate food or means for its procurement.

The committee has further indicated that the right to food is linked to the right to health. This is because the right to health includes addressing HIV/AIDS and this can only be achieved by implementing the right to food. FAO also in its Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security also address the issue of HIV and Food being closely related.⁹⁹ These guidelines are used as a tool for implementing the right to adequate food at the national level. They do not create new obligations

⁹³ www.fao.org. Member states’ representatives gathered in Rome not only confirmed the political will to improve global food security governance but also strongly recalled the need to for a swift progress on the right to food at the country level.

⁹⁴ www.ohchr.org Status of ratification.

⁹⁵ FAO (n 22 above) 11.

⁹⁶ As above.

⁹⁷ As above.

⁹⁸ CESR General Comment 12, 1999, para 8.

⁹⁹ FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food security. Adopted by the 127th FAO Counsel, November 2004. Available at www.Fao.org/rightto food.

but draw on existing legal instruments. It is argued that these guidelines have increased momentum towards a right-based approach to food security and HIV/AIDS. Guideline 10.4 stipulates that ‘States should address the specific food and nutritional needs of people living with HIV/AIDS or suffering from other epidemics.’¹⁰⁰

The United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS¹⁰¹ and the Universal Political Declaration on HIV/AIDS both of which were endorsed by all UN Member States recognise that food security and nutrition are interlinked with HIV. Article 28 of the Political Declaration¹⁰² in particular highlights the right to food as availability and adequacy and it states

The United Nations Members States resolve to integrate food and nutritional support with the goal that all people at all times will have access to sufficient, safe and nutritious food to meet their dietary needs and food preferences, for an active and healthy life, as part of the comprehensive response to HIV/AIDS

All these instruments describe the normative content of the right to food. There are also several instruments at the AU level that comprehensively talk about the right to food and they will be discussed later.

Governments have also unanimously endorsed Millennium Development Goals related to food and HIV. The first goal aims to reduce by half the proportion of people who suffer from hunger, while the sixth goal is to halt and begin to reverse the spread of HIV by 2015.¹⁰³

¹⁰⁰ As above

¹⁰¹ United Nations General Assembly special Session Declaration of Commitment of HIV/AIDS 2001.

¹⁰² Political Declaration on HIV/AIDS 2006,(A/RES/60/242).para 28.

¹⁰³ The eight Millennium Development Goal which ranges from eradicating extreme poverty to halting the spread of HIV and providing universal primary education all by target date of 2015-agreed to by all the world’s countries and the world’s leading development institution available on <http://www.un.org/millennium goals/>.

3.3 LESOTHO'S OBLIGATIONS ON THE RIGHT TO FOOD UNDER INTERNATIONAL HUMAN RIGHTS LAW

Lesotho is a state party to the CRC, CEDAW and ICESCR which recognise the right to food. Lesotho ratified the ICESCR in September 1992. Under international law once a state has ratified the treaty it is bound to respect that particular treaty. Article 2(1) of the ICESCR obliges the state parties to take steps to the maximum of their available resources with the view of achieving progressively the full realisation of the right to food by all appropriate means. There is no doubt that Lesotho is bound by the ICESCR. Progressive realisation is the standard used in assessing governments' compliance with the provisions of the ICESCR.¹⁰⁴ However the fact that progressive realisation takes time as stated under the ICESCR, should not be misinterpreted as depriving the obligation of all meaningful content.¹⁰⁵

The ICESCR imposes an obligation on any country that has ratified it, Lesotho included, to move expeditiously and effectively as possible towards realising the goal. The obligation to take such steps entails restrictions on measures that reduce enjoyment of the right to food and the duty to take measures that improves the enjoyment of that right. Given the lack of conceptual clarity of many human rights the concept of minimum core obligations by states was introduced.¹⁰⁶ Under this concept there are certain elements that states must guarantee under any circumstance irrespective of their available resources. This stems under the general comment 3 which provides¹⁰⁷

A minimum core obligation to ensure the satisfaction of, at very least, minimum essential levels of the rights is incumbent upon every state party. Thus for example, a State party in which any significant number of individuals is deprived of essential foodstuff, of essential primary health care, of basic shelter and housing or of the most basic form of education is, prima facie, failing to discharge its obligations under the Covenant

¹⁰⁴ FAO (n 22 above) 52.

¹⁰⁵ CESCR General Comment 3, para.9.

¹⁰⁶ Engh (n 21 above) 34.

¹⁰⁷ General Comment NO.3, CESCR, para 10.

According to the Maastricht Guidelines violation of the Covenant occurs when a state fails to satisfy what CESCR referred to as a minimum core obligation.¹⁰⁸ This means that Lesotho as state party to the ICESCR should apply the minimum core obligation with respect to the right to food irrespective its available resource. Minimum core content is considered as the essence of a right. Engh¹⁰⁹ describes it as,

the essential element without which the right loses its sustentative significance as a human right, and in the absence of which a State Party should be considered to be in violation of its international obligations.

3.4 THREE DIMENSIONS OF LESOTHO'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

The right to adequate food imposes three dimensions on the states' obligations being the obligation to respect, to protect and fulfil which entails the obligation to facilitate and provide.¹¹⁰ The obligation to respect means Lesotho must not do anything that interferes with people's ability to provide for themselves and families. This means that Lesotho must respect the resources owned by individuals.

The obligations to protect requires the country to protect people's access to food by preventing others, being non-state actors such as individuals or private sector, from depriving people of permanent access to adequate food.¹¹¹ On the other hand, the obligation to fulfil contains the obligation to facilitate, which imposes that the country has to engage in activities that enhance people's access to resources and their ability to use them. The obligation to fulfil also imposes a duty upon the state to provide whenever a person or group of persons are unable for reasons beyond their control to enjoy the right to adequate food by means of

¹⁰⁸United Nations (1997): Maastricht Guidelines on Violations of Economic, Social and Cultural Rights para.9.

¹⁰⁹Engh (n 21 above).

¹¹⁰FAO (n 22 above) 13.

¹¹¹As above.

their disposal.¹¹² This means that the state must provide food directly for example by providing food for HIV/AIDS infected persons when ‘no other possibilities exist, for the elderly when they can no longer be employed and for the sick through food subsidies or resources to procure food’.¹¹³

The CRC also reiterates the obligations of states on the right to food and Lesotho as a state party to the CRC has obligations that must be respected under the CRC. One of its obligations is to submit the reports to the CRC committee to show the implementations of the CRC in the country. The Committee after it had considered the initial report of Lesotho acknowledged that the economic and social difficulties facing Lesotho and human rights situation in general has and still have a negative impact on the rights of children. It noted that the impact of the increasing level of poverty as well as the impact of HIV/AIDS adversely affected the implementation of the CRC.

As part of Lesotho’s obligations to respect, the CRC committee has therefore issued its concluding observations on basic health and welfare of the child in Lesotho. The Committee on the CRC noted that Lesotho since was viewing its policies, it must ensure that it covers all groups of vulnerable children and ensure that the policy provides an effective basis for addressing the challenges, inter alia, poverty and HIV/AIDS. Amongst its recommendations, Lesotho was urged to allocate appropriate resources and develop comprehensive programmes that would prevent and combat malnutrition especially in vulnerable and disadvantaged groups of children. It was also requested to implement fully the National Aids Strategic Plan 2000/2001-2003/2004 and the Policy Framework on HIV/AIDS as soon as possible and to devote to them ample resources to ensure their success.¹¹⁴

The Committee on the Rights of the Child has issued a recent general comment on the right of the child to the enjoyment of the highest attainable standard of the health based on article 24 of the CRC.¹¹⁵ The general comment is based on

¹¹² As above.

¹¹³ As above.

¹¹⁴ Concluding Observations of the Committee on the Right of the Child: Lesotho 02/21/2001.

¹¹⁵ General Comment no.15 (2013) by the Committee on the Right of the Child.

the importance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop within the context of physical, emotional and social well-being to each child potential. At paragraph 43, the committee urged the state parties to the CRC to ensure access to nutritional adequate, culturally appropriate and safe food and combat malnutrition. It further recommends that states to provide effective direct nutrition interventions for pregnant women.

The Committee against Torture which monitors the Convention against Torture has pointed out that lack of adequate food in prisons may also be tantamount to inhuman and degrading treatment.¹¹⁶

3.5 LESOTHO'S OBLIGATIONS UNDER THE AFRICAN SYSTEM

At the regional level, there is the 1981 African Charter on Human and Peoples' Rights (African Charter) and the African Charter on the Rights and Welfare of the Child (1990) (African Children's Charter). The African Charter covers economic, social and cultural rights as well as civil and political rights. The African Charter is an African regional human rights instrument adopted by the Organisation of African Union (OAU) now the African Union.

The African Charter was adopted in 1981 and entered into force on 21 October 1986. In its preamble it states amongst other things, that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.¹¹⁷ The African Charter does not explicitly recognise the right to food, however, several other rights such as the right to health, the right to life and the right to dignity under the Charter can be interpreted as protecting the right to food. In the *SERAC* case, the African Commission on Human and Peoples' Rights found violation of food amongst the

¹¹⁶ Fact sheet no.34 (n 85 above).

¹¹⁷ African Charter on Human and Peoples' Rights 1981.

rights which were said to be violated by the Nigeria.¹¹⁸ In its interpretation in the *SERAC* case, the Commission underlined the right to food as inseparably linked to the dignity of human being, therefore concluded that it was essential for the enjoyment of other rights such as health, education, work and political participation.¹¹⁹

All countries that have accepted the African Charter and the ICESCR have the obligation to take measures to fulfil the right of their people to food and should prove that they have done so before compliance monitoring bodies that have been set up throughout Africa.¹²⁰ The African Charter is binding for the 53 member states of African Union that have ratified it.¹²¹ Lesotho is among the 53 states and as a result, it is bound by the Charter. Lesotho has ratified the African Charter on 10 February 1992.¹²²

Apart from the African Charter, the African Charter on the Right and Welfare of the Child for its part is more explicit. Countries that have ratified it by recognising the child's right to health have effectively committed themselves 'to ensure the provisions of adequate food and safe drinking water'.¹²³ They are also committed to taking, in accordance with the means at their disposal, all appropriate measures to assist parents or other persons responsible for the child and to providing if need be, programs of material assistance and support, notably as regards nutrition.¹²⁴ Implementation of the African Charter on the Rights and Welfare of the Child is binding on 45 countries of the African Union that have ratified it.¹²⁵ Lesotho ratified the African Charter and Welfare of the Child on 27 September 1999.¹²⁶

¹¹⁸African Commission on Human and Peoples' Rights, 155/96 *The Social and Economic Action Center for economic and social rights v Nigeria* 2001 (referred as *SERAC* case).

¹¹⁹As above.

¹²⁰FAO Brochure prepared by C Golay *the right to food a fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous constitutions*.

¹²¹www.achpr.org.

¹²²African Charter (n 117 above).

¹²³Golay (n120 above).

¹²⁴As above.

¹²⁵www.africa.union.org.

¹²⁶African Charter (n 114 above).

The Protocol to the African Charter on Human and Peoples' Rights of Women protects the right to food of women and their access to the productive resources and means required to realise this right.¹²⁷ This Protocol also enshrines the right to health which includes the right to women to nutritional services during pregnancy and breastfeeding, economic rights, the right to social protection and the special right of women to protection in cases of physical danger.¹²⁸ Lesotho is also a state party to this Protocol.

The African Youth Charter also provides framework for youth development and development activities at the national level.¹²⁹ It urges state parties to recognise the right of young people to be free from hunger and should take individuals and collective measures to train young people to take up agricultural activities and to facilitate access to credit to promote youth participation and other sustainable livelihood project. Article 16(2)(h) of the Youth Charter provides for food security for people living with HIV/AIDS. Lesotho has ratified this charter on 31 August 2010.¹³⁰

Besides the treaties under the African System, the African Commission has also developed guidelines on the implementation of the economic, social and cultural rights in the African Charter.¹³¹ At paragraph 86 the right to food is highlighted. Amongst the states obligations, the guidelines stress the fact that necessary action should be taken by states to guarantee the right of everyone from hunger and should mitigate and alleviate hunger even in times of natural disaster and others disasters. States are therefore required to develop policies and laws that ensure food security which includes consistent accessibility and equality food that meets the requirements of nutrition and cultural acceptability. Priority should be

¹²⁷ Article 15 (a) and (b) on the Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2005.

¹²⁸ As above.

¹²⁹ The African Youth Charter 2006.

¹³⁰ As above.

¹³¹ The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African on Human and Peoples' Rights adopted at the 48th session on the African Commission November 2010.

given to vulnerable groups in particular those that are affected and infected by HIV/AIDS and tuberculosis.

In the sub-region, SADC Heads of States have demonstrated long-standing commitment to reversing the HIV and AIDS epidemic and mitigating its impact on the development. In the Maseru Declaration Member States were of the view that HIV/AIDS is best tackled through multi-sectional interventions and agreed to harmonise policies and strategies and to undertake joint programmes in the priority intervention areas including prevention, treatment, care, support, nutrition and food security. Member States undertake to invest in nutrition programmes and promoting the use of nutritional supplements, production, and consumption of locally available foods as a way of improving care, treatment and support for people living with HIV/AIDSs.¹³²

SADC adopted the Strategic Framework which was intended to guide and support Member States to address priorities under the Maseru Declaration and fulfil their commitment to MDG goals and targets.¹³³ This framework builds on what has been achieved under the previous SADC Strategic Framework 2003-2007. In the SADC International Consultative Conference, Member States addressed poverty and how to promote development in the region. Amongst the issues that we extensively discussed in this conference agriculture and food security was mentioned as huge challenge in the region. States therefore committed to allocate ten per cent of their budget to food security and agriculture.¹³⁴

3.6 LESOTHO'S OBLIGATIONS UNDER DOMESTIC LAW

International human rights law lays down obligations which states are bound to respect. By becoming parties to the international treaties, states assume obligations and duties under international law to respect, protect and fulfil human rights. Through ratification of international human rights treaties,

¹³² Maseru Declaration on the Fight Against HIV/AIDS in the SADC Region in the Kingdom of Lesotho signed by SADC Heads of States 2003 in Maseru.

¹³³ SADC HIV/AIDS Strategic Framework 2010-2015, 2009.

¹³⁴ SADC International consultative conference on poverty and development, April 2008.

governments undertake to put in place domestic measures and legislation compatible with their treaty obligations and duties.¹³⁵ Although Lesotho is a signatory to the ICESCR, it does not mean international law apply directly upon ratification. The application of any treaty ratified by Lesotho depends primarily on the national legal system of the country.¹³⁶ This is because unlike monist countries where international law applies directly, Lesotho is a dualist country.

Scholars posit two approaches in respect of reception of international law into the legal system, characterising whether a country is monist or dualist. Monist and dualist countries have different approaches in relation to international law. In order to understand whether the international treaty provision on the right to food apply directly at the national level, it is necessary to know if international human rights and national law constitutes part of one single order (monist) or if they are parts of distinct legal orders (dualist).¹³⁷ These two systems are two different theories on the relationship between international law and national law. Lesotho being a dualist country, for international law to be applicable in the national order, it must be received through domestic legislative measures.

3.7 THE LEGAL FRAMEWORK OF THE RIGHT TO FOOD IN LESOTHO

At the domestic level, Lesotho's human rights obligations are enshrined in the Constitution and Acts of Parliament such the Child Protection and Welfare Act¹³⁸ and the Education Act.¹³⁹ The right to food is stipulated under the right to education and health which states 'A child has a right to access education, adequate diet, clothing, shelter, medical attention, social services or any other services for the child's development'. In 2001 the government of Lesotho introduced free primary education and has enacted law to that effect. To address the poverty crisis that hinders effective and efficient schooling, other packages

¹³⁵ FAO (n 82 above).

¹³⁶ As above.

¹³⁷ As above .

¹³⁸ NO.7 of 2011.

¹³⁹ No.3 of 2010.

which include government sponsored schools and feeding programmes which cater for the pupils nutritional needs were introduced.

3.8 CONSTITUTIONAL OBLIGATIONS

In Lesotho, the Constitution of Lesotho is the supreme law of the country.¹⁴⁰ Chapter II of the Constitution provides for the protection of fundamental human rights and freedoms and they are justifiable. The rights protected under this section are civil and political rights and are largely but not exclusively derived from the ICCPR. The socio- economic rights which should be included in this chapter are laid down in another chapter of the Constitution and they are entitled principles of state policy. Section 25 of the Constitution states that, ‘the principles contained in this Chapter shall form part of the public policy of Lesotho’. It further state that

the principles shall not be enforceable by any court of law, subject to the limits of the economic capacity and development of Lesotho, shall guide the authorities and agencies of Lesotho, and other public authorities, in the performance of their functions with a view to achieving progressively, by legislation or otherwise, the full realisation of these principles.

In a nutshell, the socio-economic rights are not justiciable. Even though the right to food falls under socio- economic rights, it does not appear anywhere in the Constitution.

Other than the two Acts which specifically address nutritional needs of children, there are non-legislative measures which have been put in place with the purpose of realizing the right to food in Lesotho such as Lesotho Vision 2020 both adopted in 2004 and Poverty Reduction Strategy (PRS) of 2003, The Food Security by the Government of Lesotho 2005, and Guidelines on Nutrition and HIV 2004 by the Ministry of Health in collaboration with UNICEF. I shall dwell more in to these issues in the next chapter.

¹⁴⁰The Constitution of Lesotho 1993.

Even though Lesotho does not recognise the right to food under its domestic law, it does not mean that it is exonerated from its obligations under international law. Despite the deficiency in its Constitution, Lesotho as a state party to the ICESCR has to respect the provisions of the Covenant. As mentioned earlier, Lesotho is required to adopt inter alia, the legislative measures necessary to realise the right to an adequate standard of living, including the right to adequate food. The commitment was renewed by the World' leaders in 1996 in the context of Commitment 7.4 of the World Food Summit (WFS) Plan of Action, in which Governments including the government of Lesotho announced that they would make every effort to implement the provisions in article 11 of the ICESCR.

3.9. THE OBLIGATION TO TAKE STEPS TO PROGRESSIVELY REALISE THE RIGHT TO FOOD

Based on the analysis of the government's obligations under international, regional and domestic laws and data collected in chapter two, it is important to discuss whether the government of Lesotho abides by the law as prescribed. The fundamental aspect to answer this question is to ascertain whether the country sufficiently and effectively has taken steps to progressively realise the right to food. The potential solution to this difficulty as to whether the state has met its obligations is by looking at the indicators. These indicators measure the extent to which the law and policies of the state are effectively designed to implement the realisation of the right.¹⁴¹

The legal instruments as well as soft law on human rights provide indicators of state obligations which must be a starting point when considering the capacity to meet human rights obligations. It is argued that these indicators measures the quality and the extent of the effort to implement rights by measuring the scope, coverage, and content of strategies, plans, programs or policies, or other specific activities or interventions designed to accomplish the goals necessary for the realisation of the right.¹⁴² Based on human rights laws on the right to food, the

¹⁴¹ *Measuring the state compliance with the right to education using indicators: a case study of Colombia's obligations under the ICESCR* 2009. Cornell Law Faculty working paper. Available at <http://scholarship.law.cornell.edu/clsops-paper>.

¹⁴²As above.

general comments, concluding observations of different international bodies, FAO food guidelines, recommendations and international human law on the on the right to food, Lesotho has decimally failed to conform with the standards required in ensuring peoples' rights to food. The most pressing issue is not whether there is a policy or the law that has been put in place but rather how they are implemented. Legal framework and national strategies are as vital as technical tools and participatory institutions if the country want success in the long-term.¹⁴³

As already indicated, first of all food security occurs when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preference for active and healthy life.¹⁴⁴ This means that food security is founded on three fundamental elements being food availability, food access and food utilization. The challenge for the government which has ratified the relevant treaties on the right to food in these circumstances is to ensure that it complies with its binding treaty obligation as well as non-binding international instruments because they provide guidelines and principles and impose legal and moral obligations.¹⁴⁵

Building on the ECSCR and the general comment on the right food, different international human rights bodies have further clarified the content of the right to food thus giving meaning to the governments' obligations to this right. The UN Special Rapporteur on the right to food commended further to show that the obligation to facilitate is a positive obligation that requires a state to identify vulnerable groups and implement policies to create their access to adequate food and their ability to feed themselves.¹⁴⁶

As already discussed, the CESCR and FAO guidelines are detailed enough to show what the government has to follow as the best way to respect the right food. The language used by CESCR committee in explaining when violation of minimum core

¹⁴³ www.ohchr.org.

¹⁴⁴ The definition of food security by the World Food Summit in 1996.

¹⁴⁵ As above

¹⁴⁶ The Special Rapporteur Jean Ziegler on the right to food (E/CN.4/2006/44 by the commission on human rights.

obligation occurs, suggest that a state not only has to make effort to ensure the provision of the right but the outcome must be that the right is actually being fulfilled.

3.10 UNDERSTANDING THE CONCEPT OF PROGRESSIVE REALISATION

Engh defines progressive realisations as ‘the standard used in assessing governments’ compliance with the provisions in the ICESCR.¹⁴⁷ Progressive realisation approach comes from article 2(1) of the ICESCR which states,

Each State Party to the present Covenant undertakes the steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including the adoption of legislative measures.

The steps taken must be deliberate, concrete and targeted towards the full realisation of the right.

It is through this principle that the researcher will be able to assess whether government of Lesotho has taken any steps to realise the right to food particularly in the context of HIV/AIDS in the country. Other than food aid provided by different organisations within the country, the government of Lesotho has also taken steps to realise the right to food even though the steps seem to be ineffective and insufficient. The following are put in place to address food insecurity which is a serious threat in the country.

Firstly, there is the Lesotho Food Security policy.¹⁴⁸ It has incorporated the 1996 World Food Summit’s definition of the food security. The objective of the food security policy is to assist in achieving both the World Food summit objectives and the Millennium Development Goals of reducing the number of undernourished by half in 2015 using the 1990 as the base year.¹⁴⁹ The policy provides clear

¹⁴⁷ Engh (n 22 above).

¹⁴⁸ Lesotho Food Security Policy adopted 2005.

¹⁴⁹ As above.

directions in fighting hunger and malnutrition. Its main objectives include, to improve the adequacy and stability of access to food at the household level, to improve the utilisation of food at household level, and to improve adequacy and stability of food supplies at national level. Lesotho's food security policy describes nine sets of actions that will be undertaken in order to promote food security according to the priorities set out by the government.

These actions include promotion of agricultural and food production, Employment promotion, promotion of support services and infrastructure, public transfers and social safety nets, HIV and AIDS and food security, ensuring the availability and stability of food supplies at national level, food utilisation and nutrition and food security information. Apart from the food security policy, the government also has adopted Poverty Reduction Strategy which based a determined plan in pursuance of high and sustainable equity-based economic growth.¹⁵⁰ It contains the long term objectives and strategies to address the major challenges facing the country. These challenges include, HIV and AIDS which is devastating the nation's human resource base, employment creation, improving food security developing infrastructure, developing democracy, governance, safety and security.

Lesotho has also adopted National Vision 2020 which states that Lesotho shall be a stable democracy and the aim is to make the country's economy strong and its environment well managed.¹⁵¹ These improvements have to be manifested in reduced incidents of poverty. The Lesotho Vision 2020 was adopted by the government because it was recognised that there is need for development of long term vision for Lesotho that would guide the national policies and of the country for development.¹⁵² This was triggered by the observation that since independence, development planning in Lesotho had been based on the short-medium term strategies.¹⁵³ In order to implement all these, government has put

¹⁵⁰ Poverty Reduction Strategy adopted in 2003.

¹⁵¹ Lesotho National Vision 2020 adopted in 2004.

¹⁵² National Dialogue for the Development of Long Term Vision for Lesotho, Extract from a broadcast, (2000) available at www.lesotho.gvt.ls.

¹⁵³ As above.

in place the National Action Plan for Food Security (NAPFS).¹⁵⁴ The NAPFS is based on the agricultural development component of the poverty reduction strategy (PRS) as set out in the agricultural section and the National Food security.

Through the NAPFS, the government introduced what is called Block Farming. This programme is prominent part of the NAPFS. The block leader or co-ordinator arranges with a group of people holding contiguous fields to combine them into one area that can be worked by tractors. The profits if any are then shared between the leaders and field owners and this process has been in place since 2006. Through this process, it was believed that the government would have reduced hunger by half in 2015. What has been put in place by the government to address food insecurity is comprehensive especially the Lesotho Food Security policy is detailed enough because it also dealt with the issue of HIV/AIDS, food security as well as the nutrition.

3.11 CONCLUSION

It is upon a national legal system to determine the status and force of the law which will be accorded to treaty provisions within such a legal system. It is only when a human rights instrument and its provisions have become part and parcel of the domestic law that human rights will be meaningful. It is obvious that Lesotho does not have any legal instrument promoting the right to food except the Free Primary Education Act which caters for a specific group of people. But this notwithstanding, it is still faced with international obligations emanating from the Covenant to realise socio-economic rights as well as the regional treaties that are obligatory to the government of Lesotho. This because through ratification of international human rights treaties, the State undertakes to put in place domestic measures and legislation compatible with their treaty obligations and duties.

¹⁵⁴ National Action Plan for Food Security adopted in 2006.

CHAPTER FOUR

FINAL CONCLUSION AND REASONS FOR NON COMPLIANCE WITH THE LAW

4.1 FINAL CONCLUSION

My task in this research was to find out whether there is a negative impact caused by food insecurity to people living with HIV/AIDS in Lesotho and to find out legal measures adopted by the country to realise the right to food especially in the context of HIV/AIDS. While the reports have shown constant supply of HIV/AIDS medication by the government of Lesotho to its citizens, these efforts have not eliminated all socio-economic and structural barriers to accessing treatment and sustaining a long-term medication regime.

Government failure to address food insecurity may lead to gaps in treatment and compromise ARV effectiveness. From the data collected and the literature review provide in this research, it is clear that the link between food insecurity and poor ARV outcome heightens the importance of addressing food security as part of comprehensive care among HIV-infected individuals in the country. The right to food has been underdeveloped as of yet. The understanding of the right, its content, limitations and applications by those who are responsible remain largely unexplored. The progress in the realisation of the economic, social and cultural rights in particular the right to food, is very slow because hunger and malnutrition remain critical.

This caused by the fact that many people have no effective entitlements and ways of holding the government accountable if they suffer from hunger and malnutrition although human rights treaties have specified the adoption of legislative measures for the realisation of the economic, social and cultural rights. To date there been very few cases brought before national courts to adjudicate on the economic, social and cultural rights in this country because there is lack of knowledge on issues of human rights as a whole. This is a very sad situation

because courts are a way and means by which effective remedies for the violations of the rights can be protected and become clearer.

4.2 REASONS WHY THE GOVERNMENT IS NOT COMPLYING WITH ITS OBLIGATIONS

In as much as the government has taken some measures to address food insecurity, if the government does not implement all these or fails follow certain procedures when implementing, then food insecurity will remain for years. Barriers to effectively implement the existing policies in the country should be addressed efficiently. These barriers are addressed below.

4.2.1 The Main Constraints which Explains Lesotho's Poor Performance on Food Security

The process of block farming seems to create more problems than solving the issue of food insecurity in the country.¹⁵⁵ At the heart of this problem is the policy makers' political preference for massive subsidy to ineffective, loss-making domestic grain production arrangements rather than for more balanced food security strategies.¹⁵⁶ Recommendations were made by different stake holders but the government opted not to adopt the. A lot of money is invested to this programme but to no avail. The other problems associated with poor performance of the past programmes are;

- (i) Lack of programme ownership because public sector staff often regards projects as belonging to the donor.
- (ii) Lack of coordination among stakeholders through harmonisation and operational process
- (iii) Lack of monitoring the policy and relevant state holders. The policy must be actively managed if it is to be effective. Since the approval of Food Security

¹⁵⁵ SD Turner *promoting food security in Lesotho: issues and options* 2009.

¹⁵⁶ As above.

Policy in 2005, little has been done to implement it. Lesotho's monitoring management and monitoring of its food security task force has not properly done so. The Ministry of Finance and Development Planning which chairs the committee on food security had the mandate to co-ordinate line ministries but it has not fulfilled this role at all. The co-ordinating structures through which any policy monitoring reports might be delivered such as the National Food Security task force are either inactive or unprepared to receive and act on them.

4.2.2 Non justiciability of the right to food in Lesotho

Justiciability is absolutely essential in the fight for the right to food because making the right to food justiciable means that people can seek remedies and accountability if the right to food is violated. If governments are to be held accountable, for not meeting their obligations under international, regional, and domestic law then its justiciability must be established. If Lesotho does not have a legal framework as a major component of the implementation of the national strategy for the right to food, it will be difficult to strengthen the government's accountability by providing for better access to courts and monitoring.

4.2.3 Lack of Strong Monitoring Bodies on Economic, Social and Cultural Rights

At the national level, the monitoring bodies on economic, social and cultural rights are very weak. This is mainly caused by the fact that legislation is inadequate and also by the fact that these rights are generally not considered to be justiciable by the Constitution. In some other countries the constitution recognises these rights as justiciable and through the constitution some institutions become the overseer of the government to make sure that these rights are respected. In South Africa, for example, the courts with the Constitutional Court at the apex are used to monitor the reasonableness of government action or inaction in the progressive realisation of the rights within

the limits of available resources.¹⁵⁷ This sets an important precedent as the court may review the steps taken towards progressive realisation of the economic, social and cultural rights. This review was used in the landmark case of *Government of the Republic of South Africa v Irene Grootboom and others* dealing with the right to adequate housing.¹⁵⁸

Not only the courts play this important role, the enforcement of these rights including the right to food is also strengthened by the establishment of the South African Human Rights Commission to ensure the implementation and progressive realisation by the government. It is required under the constitution to report annually to parliament on the realisation of economic, social and cultural rights.¹⁵⁹ In Lesotho, there are no such strong bodies to monitor the implementation. The government has talked about the establishment of the Lesotho Human Rights Commission since 2006.

At the international level, the monitoring body for the implementation of the right to food is the CECSR. The problem is that it is not a judicial body and its recommendations are not legally binding. This makes it weak as the enforcement mechanism. Again on the basis of the Covenant, governments are required to report on a regular basis on measures that have to be taken to meet their obligations under the covenant so as to enable the CESCR to examine them and make recommendations and discuss them with the state representatives.¹⁶⁰ However, the effectiveness of the committee is limited because many states Lesotho included do not even submit reports. Even when they did states sometimes do not implements the recommendations made by the CESCR because their decisions are not obligatory. For example the last report on the ICESCR was submitted on 6 August 2004 and the next report is long overdue.¹⁶¹

¹⁵⁷ 'Economic, social and cultural rights, the right to food'. The report by the UN Special Rapporteur Ziegler submitted in accordance with the Commission on Human Rights Resolution 2001/25.

¹⁵⁸ *Government of South Africa and others v Grootboom and others* 2001 (1) SA 46 (CC).

¹⁵⁹ Ziegler (n 157 above).

¹⁶⁰ As above.

¹⁶¹ www.unhchr.ch states reports accessed on the 25/07/13.

The Optional Protocol to the ICESCR which provides for effective supervision to implement the ICESCR by member states plays an important role because it provides for the complaint procedure for individuals, groups and organisations claiming violation of their socio-economic rights. But the problem is that Lesotho is not a state party to the Protocol. The Protocol has only been ratified by 10 countries.¹⁶²

At the regional level, the enforcement mechanism which ensures respect the rights is the African Commission on Human and Peoples' Rights. It receives reports from states as well as complaints from individual and NGOs which make complaints directly for the violation of all rights in the African Charter without distinction. But the African Commission also suffer from the same weakness similar to those of the CDESCR.¹⁶³ However, the progress has been made in the establishment of the African Court on Human and Peoples' Rights so that parties can submit their complaints directly to the court and its decisions are binding. But Lesotho is not a signatory to the Protocol establishing the Court¹⁶⁴ which makes legally binding judgements for violation of all rights protected under the African Charter such as the indirectly the right to food.

The SADC Tribunal was also an enforcement mechanism which was to ensure that every country within SADC respects, protect and promotes human rights, democracy and the rule of law because it was created to entertain human rights related complaints by citizens against their states.¹⁶⁵ It was a forum in which individuals access justice when they have no legal recourse in their own countries. Unfortunately, the Tribunal has been suspended by member states.

¹⁶² <http://treaties.un.org>, United Nations treaty collection.

¹⁶³ Ziegler (n 152 above).

¹⁶⁴ Protocol to the African Charter 1998.

¹⁶⁵ It was established under the SADC treaty by article 9.

4.2.4 Lack of Knowledge of International Human Rights Law

Protection of human rights is one of the primary tasks of judicial and human rights bodies at the national level.¹⁶⁶ In a number of cases, the courts have protected civil and political rights even where such protection requires measures and high budgetary costs for the political branches of government.¹⁶⁷ But one of the problems associated with the litigation of the economic, social and cultural rights is the fact that judges and lawyers have limited knowledge of international human rights law in relation to economic, social and cultural rights in Lesotho. Most judges are not even able to draw inspiration from other jurisdictions. As long as the right does not fall under justiciable rights, then the courts decline to hear such cases claiming not to have powers do deal with the case. An example is the case of *Khathang Tema Bait'sokoli and Mosala V Maseru City Council and others*¹⁶⁸ where the application sought and order declaring applicants' removal from a place called Makhetheng and other areas along Kingsway Street in Maseru where they traded as street vendors as violation of applicants' right to life in terms of chapter 5 of the constitution.

The main issue was whether the right to life should be equated to and include the right to livelihood. The court held that 'the scope of life being the most important and precious human right is only limited to the physical biological existence of people and should not unless the circumstances warrant, be extended to include the right to livelihood'.¹⁶⁹ The court further so say, by interpreting the right to life to include livelihood, then judicial activism would be unruly horse because that would go against the very hallowed ethos of the rule of law. This clearly shows that the judges that decided this matter lacked the knowledge of international human rights law. They had also failed to draw examples or inspirations from other jurisdictions. In cases in which political authorities fail to adopt measures to recognise the right to food, the intervention of the judicial bodies and civil society

¹⁶⁶ C Golay, FAO *The right to food and access to justice: examples at the national, regional and international levels* 2009. www.geneva.academy.ch.

¹⁶⁷ As above.

¹⁶⁸ Const/C/1/2005.

¹⁶⁹ As above.

is essential insofar as they transform the government measures into justiciable rights for beneficiaries.¹⁷⁰

This perspective has been adopted by various national jurisdictions in respect to the realisation of a range of economic, social and cultural rights.¹⁷¹ One of the most examples of the successful court cases are the decisions of the supreme court of India in both *Peerless General Finance and investment Co Ltd v Reserve Bank of India*¹⁷² and *People's Union for Civil Liberties (PUCL) v Union of India and others*¹⁷³ which has recognised the right to food under the right to life stipulated in the Indian Constitution with reference also to the Directive Principles of State Policy concerning nutrition. If the court had been aware of the position in India may be their decision would have been otherwise because it would have drawn inspirations from India or other jurisdictions. In the people's Union case, the Supreme Court¹⁷⁴ presented its argument as follows:

The anxiety of the court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government-whether central or the state....

Subsequently, these cases ignited a series of ongoing interim judicial orders imposing the implementation of several food schemes set up previously by the government of India and providing clear and concrete benchmarks for the government to follow.¹⁷⁵ This case led to the development of a strong civil society group campaigning for the right to food throughout the country. The case also functions as an advocacy tool.¹⁷⁶ According to De Schutter, the case has not only produced ownership amongst the poorest but also has also facilitated the

¹⁷⁰ Golay (n 166 above).

¹⁷¹ As above.

¹⁷² 1992 2 SCC .

¹⁷³ Writ petition (Civil) no. 196/2006.

¹⁷⁴ As above.

¹⁷⁵ O,De Schutter UN Special Rapporteur *Countries tackling hunger with a right to food approach 2010* available at www.ohchr.org.

¹⁷⁶ As above.

acceptance of lawyers and judges of the justiciability of the right to food.¹⁷⁷ This is the total opposite of the position in Lesotho.

In general much more is expected from the civil society and judges in Lesotho. The government is failing because the civil society is not performing one of its specific advantages which to cooperate directly with the hungry and the poor a specially victims of HIV/AIDS in a way that sides with them. Although they cannot solve the problem of hunger alone, they know where the answers must lie. Only this approach ensures effective answers and makes the abstract concept of a civil society concrete. This is the only way that corresponds with a human rights-based approach, examples being India and South Africa.

The problem of food insecurity will always remain in Lesotho as long as the government does not address the root causes of food insecurity. The country has good policies on paper but little has been done to implement them. Lesotho relies heavily on food aid to address food insecurity and the question that remains is what will happen when food aid ends because the households will still be food insecure? The only concrete method to address the issue of food insecurity is for the government to put in place good legislation because it will make the future of the right to food secure. Because it will be a legally binding law, it will provide a constant follow up from all sides in order for the policies to be more effective. Furthermore, judges and lawyers need to be fully cognisant of the right to food if cases are brought to court and dealt with successfully.

4.3. RECOMMENDATIONS

In the research, it has been found that many people suffer from hunger and that food insecurity could result in ARV non-adherence and treatment discontinuation because of its effects on victims of hunger. Lesotho must seriously address the issue of food insecurity by making sure that people receive ARV as life-saving medication and be assisted with food during crucial times. Sustainable strategies should be put in place to make sure that vulnerable families especially those

¹⁷⁷ As above.

affected with HIV/AIDS are more resilient in the long term. In order to address the problems mentioned above, serious measures have to be taken to tackle them. I therefore recommend the following:

4.3.1 Nutritional Education

This must be emphasised especially for people living with HIV/AIDS. There must be an intensive training on both public officials and individuals on the integral part of balanced diet on people living with HIV/AIDS. Government should also integrate HIV and food and nutrition programmes for example by expanding nutritional support including for pregnant women and lactating women and children emphasising appropriate infant feeding as part of the prevention of mother-to-child transmission of HIV. It must support dietary and nutritional intake as part of successful treatment programmes, including through provision of nutritional counselling and linking individual services. Government must ensure that agricultural policies and programmes are HIV response.

4.3.2 Monitoring and Evaluation

Monitoring and evaluation of the right to food is one of the core principles in ascertaining the right to food. Monitoring will can be used as a systematic gathering of information with the view of evaluating compliance with human rights commitments as it will provide feedback for implementation. Lesotho should therefore appoint monitoring bodies to monitor socio-economic rights to monitor progressive realisation of these rights by drawing inspiration from South Africa. I therefore recommend that the Lesotho Human Rights Commission be established which will report on annual basis the measures taken by the relevant stakeholders to advance socio-economic in the country. This body will play a role that that is similar of the CESCR.

4.3.3 Legal Framework Law on the Right to Food

There must be a law that will be put in place to recognise the right to food especially in the context of HIV/AIDS. The advantage in adopting the law on the right to food will help to define the content of the right as well as the obligations of the state authorities, better coordination and more meaningful monitoring. The adoption of a framework law will make it easy to hold the government accountable and will provide access to courts for everyone whose right is violated or neglected.

4.3.4 Training for Judges and Lawyers

Judges and lawyers need to be equipped on issues relating to international human rights law to build a strong civil society and jurisprudence. It has been argued that it is necessary to provide human rights training for lawyers and judges because it is believed that knowledge of international human rights law will go a long way in the enhancing the development of the jurisprudence.¹⁷⁸ Strong civil society will also help to advocate policies, laws and programmes on the right to food that incorporate nutrition and food security in line with scale-up towards universal access to prevention, treatment care and support.

4.3.5 Long term strategies to address food insecurity and Empowerment

The individual and community capacity building must be improved because they can help improve food security and the sustainability of the food system by building for change. Strategies that have been put in place have caused consistent hunger in the country. Capacity building gives people skill on how to produce food for themselves. It makes them own the project even in future and gives people the spirit of working together. It will also have the impact of covering large population unlike now where food project only cover a small population.

¹⁷⁸ M Killander *International law and domestic human rights litigation in Africa* (2010).

4.3.6 Social Security

It is a well-known fact that some people cannot provide food for themselves for various reasons. The government should provide those who cannot help themselves through social security. This can either be in the form of cash transfers or safety nets in the form of food parcels every month to satisfy their dietary needs. This is important for protecting and promoting the food security of the most vulnerable groups particularly people living with HIV.

4.3.7 Setting Goals and Targets

When governments ratify international agreements, they make commitments to pursue these goals for their own countries. Setting out goals and targets can be very helpful for the government of Lesotho to design their programmes in addressing food security. It is argued that such targets are based on measurable indicators that allows for judgements as to whether the ‘trajectory’ is directed towards the goal, and whether the motion is rapid enough to achieve the target by the intended time. If the government have well-formulated targets, when time comes, it will be possible to say whether the target has in fact been successfully reached.¹⁷⁹

¹⁷⁹ G Kent *Freedom from want, the human right to adequate food* (2005) 87.

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