

The Right to Food of Refugees in Ghana:  
A Case Study of the Ampain Refugee Camp in Ghana



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## **DECLARATION**

I declare that this thesis is less than 20,000 words in length, and that except for references to other people's work which have been duly acknowledged, this thesis is the result of my own research work carried out under the supervision of Stener Ekern and has not been submitted for a higher degree at any other university or institution.

## **DEDICATION**

This thesis is dedicated to my son Christopher Eyram Kadogbe and my wife Edem Kadogbe.

## **ACKNOWLEDGEMENT**

I give praise to the Almighty God for giving me the grace to finish this two year Masters programme and the thesis.

My sincere thanks to Stener Ekern for his patience, advice, intense and wonderful supervision. I appreciate it Sir.

I wish to thank my parents and siblings for their support and encouragement in making me stay focussed in spite of the fact I am far from home.

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Finally, I wish to commend the Norwegian State Educational Loan Fund- Lanekassen for the immense support.

## **ABSTRACT**

*This research focuses on the right to food of refugees in Ghana with the case study area being the Ampain Refugee Camp. The study aims to find out how the right to food of refugees is fulfilled in Ghana looking for three key elements namely; food adequacy, accessibility and cultural acceptability. The study also discusses the specific entity, State or International Organisation that has legal responsibility to protect and fulfil refugees' right to food in the study area and also whether refugees can sue when this right is violated. The question that the research addresses is whether being in a poor country can in effect lessen the claim to right to food as a refugee. Empirical data was collected using interviews and focus group discussion. Participants, including officials of UNHCR, WFP, Ghana Refugee Board and refugees themselves, were collected through simple random and purposive sampling techniques. Using legal and empirical methods of analysis and literature review, it is found that the poorer a country's economic condition, the greater the chance that the right to food of refugees will be violated.*

## Table of Contents

	<b>DECLARATION.....</b>	<b>2</b>
	<b>DEDICATION.....</b>	<b>3</b>
	<b>ACKNOWLEDGEMENT.....</b>	<b>4</b>
	<b>ABSTRACT.....</b>	<b>5</b>
	<b>Table of Contents .....</b>	<b>6</b>
<b>1</b>	<b>INTRODUCTION.....</b>	<b>9</b>
1.1	Background of Study .....	9
1.2	Problem Statement.....	15
1.3	Purpose of the Study .....	18
1.4	Research Questions .....	19
1.5	Methodology .....	19
1.6	Structure of the Thesis.....	20
1.7	Ethical Issues .....	21
<b>2</b>	<b>LITERATURE REVIEW .....</b>	<b>23</b>
2.1	Chapter Introduction.....	23
2.2	Origin of the Right to Food .....	23
2.3	Content of the Right to Food.....	24
2.4	Refugees and the Right to Food.....	27
2.5	Refugee Children and the Right to Food .....	28

2.6	Women and the right to food (Pregnant Women and Lactating Mothers) .....	31
2.7	The Sick and Right to Food.....	32
2.8	Drinking Water .....	33
2.9	Economic Situation in Ghana .....	34
2.10	Which entity has responsibility to protect refugees' right to food? .....	35
2.11	Can refugees sue when this right is violated? .....	38
2.12	Chapter Conclusion .....	40
3	DATA ANALYSIS AND DISCUSSION OF FINDINGS.....	42
3.1	Chapter Introduction.....	42
3.2	Food Arrangements at the Ampain Refugee Camp.....	42
3.3	Other Food Donations .....	44
3.4	Drinking Water .....	45
3.5	Food for HIV Patients, Children, Pregnant and Lactating Mothers .....	46
3.6	Meat/ Fish and Fruits .....	47
3.7	Sources of Livelihood.....	47
3.8	The Survey .....	50
3.8.1	Summary of Results of the Survey .....	51
3.9	Discussion of Findings .....	52
3.9.1	Adequacy, Accessibility and Cultural Acceptability of Food .....	52
3.9.2	Being Refugee in a Developing Country and Claims to Right to Food.....	56

3.9.3	Can Refugees sue when their Right to Food is violated? .....	59
3.10	Chapter Conclusion .....	62
4	SUMMARY, CONCLUSION AND RECOMMENDATIONS.....	64
4.1	Chapter Introduction.....	64
4.2	Summary of Study .....	64
4.3	Study Conclusion .....	65
4.4	Recommendations .....	67
BIBLIOGRAPHY .....		69
APPENDIX.....		72



# **1 INTRODUCTION**

“I was in Malawi and met a group of women living with HIV. As I always do when I meet people with HIV/AIDS and other community groups, I asked them what their highest priority was. Their answer was clear and unanimous: food. Not care, not drugs for treatment, not relief from stigma, but food.”

Peter Piot, UNAIDS Executive Director

## **1.1 Background of Study**

Undoubtedly the right to food can be deemed as a fundamental human right. Its origin can be traced to the Universal Declaration of Human Rights (UDHR). But even before the UDHR, Franklin D. Roosevelt’s 1941 Congressional Address made mention of “The Four Freedoms” which captured the third freedom as:

“Freedom from want - which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants - everywhere in the world”.<sup>1</sup>

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<sup>1</sup> “The Four Freedoms” as cited by Ishay, R. M. (2008:213), The History of Human Rights, University of California Press.

This freedom, I believe set the tone for such an important right as the right to food as the four freedoms later found expression or were incorporated into the Preamble to the Universal Declaration of Human Rights. Article 25 (1) of the UDHR states that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.<sup>2</sup>

Quite clearly the UDHR gave credence to the fact that among other things, for one to be in good health one must eat and eat well. After the UDHR, the International Covenant on Economic Social and Cultural Rights (ICESCR) in Article 11 gave more flesh to food as a human right.<sup>3</sup> De Schutter and Cordes (2011:241) noted that:

“Subsequent to the UDHR, and most importantly for the recognition of a human right to adequate food, Article 11 of the ICESCR expressly stated the fundamental right of everyone to be free from hunger”.<sup>4</sup>

Good food is necessary for the physical, psychological and even social development of the individual or group of individuals. For indeed if one does not eat; he or she will be physically weak, may not be able to ‘reason or think’ or act effectively and may not even be able to interact or relate very well with the people around. Thus, food is a fundamental human right which should not be denied to anyone. This right directly and indirectly affects if not all, most of the

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<sup>2</sup> United Nations (1948) Universal Declaration of Human Rights, adopted by UN GA on December 10, 1948, GA Res. 217A (III)

<sup>3</sup> United Nations (1976) International Covenant on Economic Social and Cultural Rights, adopted on December 16, 1966, entered into force January 3, 1976, GA Res. 2200 A (XXI)

<sup>4</sup>De Schutter, O. & Kaitlin Y. C. (2011), Accounting for Hunger- The Right to Food in the Era of Globalisation, Hart Publishing.

rights we have as humans.<sup>5</sup> For instance our humanity can only be sustained and improved when we eat well. We cannot seek the right to education, association, speech and even health among others if we are hungry and physically weak. One can therefore say that this right is very crucial for the survival of the human race and even for development and growth of all countries, communities and even families. For instance, how will a country experience growth and development when its productive workforce is hungry?

But the question is, at what point can one say that a right to food has been fulfilled? Is it when one eats three square meals a day or when one has the means to procure it regardless of how many times one eats in a day and its quality? The right to adequate food is realized when every man, woman and child, alone or in community with others, have the physical and economic access at all times to adequate food or means for its procurement to enable them grow physically, intellectually among others. Adequate food thus means having enough food in quantity and quality, safe and culturally acceptable.<sup>6</sup> The Special Rapporteur on the Right to Food sees the right to food as:

“The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear”.<sup>7</sup>

Every human being is entitled to the right to food irrespective of their status, geographical location among others. But is this the case in reality? Does every human being have access to adequate food? What about refugees who flee their countries as a result of violence or the threat

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<sup>5</sup> Committee on Economic, Social and Cultural Rights. (1999) General Comment No. 12: The Right to Adequate Food, UN Doc. E/C.12/1999/5.

<sup>6</sup>[http://www.cdi.wur.nl/NR/rdonlyres/4036756D-6E2A-41A1-857C-AC99B7D36AC5/111044/70\\_35\\_2011\\_Rights\\_based\\_approach.pdf](http://www.cdi.wur.nl/NR/rdonlyres/4036756D-6E2A-41A1-857C-AC99B7D36AC5/111044/70_35_2011_Rights_based_approach.pdf) - accessed on January 05, 2013

<sup>7</sup> De Schutter, O. The Right to Food as a Human Right available at <http://www.srfood.org/index.php/en/right-to-food> - accessed on January 10, 2013

of violence on their lives and settle in a camp in another country where their activities are limited or restricted somehow? Question: How does being a refugee in a developing country affect a person's right to food as defined in human rights law and who can refugees hold responsible when this right is violated? To answer this question, this study embarked on a survey within the Ampain refugee camp in Ghana, looking for key indicators such as food arrangements and accessibility, safe water, fruits and impediments to these and also an explanation of relevant legal texts.

By definition, a refugee is any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it.<sup>8</sup> It is believed that people flee their country of abode to another when they perceive or are actually threatened by violent attacks without 'any prior' preparation of going to live in another country. How then do they feed themselves when they get to this 'foreign land'? The United Nations High Commission for Refugees and the host country are 'supposed' to cater for them. What happens when the UNHCR is not able to live up to expectation? Again what happens when the host country is also struggling to have all its citizens fed at least two or even three times a day? In order words what happens when the host country is 'poor' and is unable to support the refugees apart from recognising them as refugees and allocates a piece of land for them to occupy?

Ghana has played host to refugees since the last two decades or more. These refugees consider Ghana to be a safe place for them to settle when they flee violence in their countries. In 1990, thousands of refugees fled from Liberia to settle in the Buduburam refugee camp in the Central Region of Ghana following the civil war in Liberia. They lived in the camp and those of school age were taken through some tuition in schools built in the camp. In an interaction with some of

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<sup>8</sup> See Joly D, Nettleton C. and Poulton H. (1992:11) "Refugees Asylum in Europe?"

these Liberian refugees in February 2007 when I visited the camp to ascertain the way of life of the refugees in the camp, one of the things they complained bitterly about was inadequate food and this set me to start finding out how refugees in Ghana are being catered for as far as their right to food is concerned. With Liberia politically stable now, about 75 percent of the refugees have been repatriated to Liberia with some of them opting to integrate into the Ghanaian society.

However in November 2010, violence broke out in Cote d'Ivoire following the presidential elections held and the refusal of the former president Laurent Gbagbo to accept the results as declared by the Electoral Commission in favour of his opponent Alassane Ouattara. Supporters of both candidates went on a 'destruction and fighting spree' where they injured each other. It was reported that hundreds of people lost their lives due to the violence. There were several attempts by regional and international bodies like the UN, ECOWAS and AU to persuade the incumbent President to relinquish power to his opponent who was declared as the winner and recognized by the international community but this call was not heeded to by the incumbent. The violence raged on until Laurent Gbagbo was eventually captured and ousted by troops loyal to Alassane Ouattara with the support of other international forces.<sup>9</sup>

As the conflict raged on, hundreds of Ivorian citizens fled to Ghana while many others fled to other neighbouring countries including Liberia. Those who fled to Ghana were 'settled' in the Ampain refugee camp located in the Ellembele District of the Western Region of Ghana. This camp was created to 'house' the Ivorian refugees when they began to troop to Ghana following the violence. In a news paper report, as at March 26, 2011, at least 3,000 Ivorian refugees were registered in the camp.<sup>10</sup> I was following events closely and looking at the influx of refugees trooping to the camp, I wondered if their right to food and nutrition would not be violated somehow. This is because; the United Nations High Commission on Refugees which is supposed to take over the welfare of these refugees in collaboration with the host country is unable to live fully up to this expectation. This scarcity of food or the inability of the actors to fully live up to

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<sup>9</sup> [http://www.boston.com/bigpicture/2011/03/ivory\\_coast\\_continued\\_unrest.html](http://www.boston.com/bigpicture/2011/03/ivory_coast_continued_unrest.html) - accessed on February 20, 2012

<sup>10</sup> <http://ghanaian-chronicle.com/news/other-news/ghana-records-3000-refugees%C2%A0from-cote-d%E2%80%99ivoire/> - accessed on February 25, 2012.

expectation as far as the food needs of the refugees are concerned came to light in the course of this research. The host country Ghana too is a developing country which has its own challenges as many of its citizens are still poor and hungry. Some few weeks later, my fear was confirmed following a television report on TV3 a Ghanaian Television station that food was in short supply in the camp and also that many of the refugees especially children were likely to suffer from malnutrition.<sup>11</sup> It became clear in the course of the research that organizations such as the UNHCR are perennially under- equipped because they depend on the will of unreliable donors. Departing from these initial observations about a gap between rights and reality, this research seeks to do an assessment of the right to food of refugees in Ghana and also analyse whether refugees in a developing country like Ghana can ‘claim’ a right to food and against whom this claim can be made using the Ampain refugee camp in Ghana as a case study.

Ghana is a developing country located in the western part of Africa with a population of about twenty five million. Ghana gained independence on the March 6, 1957 and became a republic on July 1, 1960. Ghana is a stable democracy and has been described as a “beacon of democracy” in Africa and is peaceful for which reason refugees in Africa find it a safe haven to seek asylum in times of crisis. Although Ghana has now achieved the status of a lower level middle income country, a significant number of the population is still poor. According to the 2010 MDG Report for Ghana, the overall poverty rate has declined substantially over the past two decades from 51.7 percent in 1991/92 to 28.5 percent in 2005/6, indicating that the country is on course to achieving MDG Goal One ahead of the 2015 target of 26 percent. The report again notes that, the proportion of the population living below the extreme poverty line declined from 36.5 percent to 18.2 percent over the same period against the 2015 target of 19 percent.<sup>12</sup> In 2009, Ghana discovered crude oil and natural gas in commercial quantities and it is expected that this will have a positive impact on GDP and Per Capita Income. But for now, many of the population say they are yet to feel these significant growth indicators in their pockets by way of remuneration culminating in the general improvement in the cost and standard of living in the country.

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<sup>11</sup> <http://www.youtube.com/watch?v=JF0NRo38gW8>- accessed on February 25, 2012

<sup>12</sup> National Population Council (2011) Ghana Population Stabilisation Report

The Ampain refugee camp which houses the Ivorian refugees is headed by a Camp Manager who resides in the camp and sees to the daily needs of the refugees. The camp has a clinic with a number of doctors, nurses, nutritionist and other supporting staff. The camp is gated and guarded by a team of policemen from the Ghana Police Service. The camp has a mini market operated by some of the refugees and is safe with restricted entry to the public except with prior permission from the Ghana Refugee Board. It is important to mention that, Ampain the town in which the camp is located, is a town which has many of its inhabitants as 'poor and hungry'. Therefore the inhabitants have their own way of monitoring activities in the camp to see if the food rights the refugees enjoy is better than theirs or not. In the words of an official at the UNHCR in Ghana when I interviewed her, she said: "There is a sensitization of the locals to make them understand that it is not government who supplies the food that is regularly given to the refugees at the camp however, the standards of refugees should not exceed what prevails in the country". This, I can interpret to mean that if the food rights of citizens generally fall below expectation in the country, then it was likely to be same in the camp because if it were otherwise, that is the conditions of the refugees being better than that of the locals then one would expect that the locals would be agitated or will also become 'refugees' in the camp so they can enjoy the improved living conditions as compared to that of the locals or the general living condition in the country.

## **1.2 Problem Statement**

As noted earlier, food is considered as a basic human right. That is to say that the right to food is fundamental to human survival and the protection of other rights. This right fits into what is described according to Nickel (2007) as "The Secure Claim to Have a Life". Nickel is of the view that:

"Having a life, however, requires more than merely being free from violence and harm. One's body must be capable of most normal functions, and to maintain these capabilities people must satisfy physical needs for food, water, sleep, and shelter".<sup>13</sup>

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<sup>13</sup> Nickel, W.J. (2007:63), Making Sense of Human Rights, Blackwell Publishing (2<sup>nd</sup> Edition)

According to Nickel, people do go through periods when they are unable to provide these needs by themselves and in such times people have “claims upon others to assistance”. Relating this view to refugees, I can say that refugees can make claims of the right to food upon others and who these “others” are or are supposed to be, will be discussed in the course of this research. Nickels view of the Right to Food as basic was even mentioned earlier by Shue (1996:24) where in comparing Security and Subsistence, he is of the view that subsistence rights are basic because failure to fulfill them would hinder the enjoyment of all other rights.<sup>14</sup>

The right to food is recognized by the ICESCR and other international legal instruments which in theory make the claim to food a legal obligation but in practice, one would say that the right to food imposes more of a moral or normative obligation than a legally enforceable entitlement because of the principle of “progressive realisation”. They are formulated normatively as such they are not definitions of actions that can be penalised. The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.<sup>15</sup> The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>16</sup>

From the above two definitions of when a right to food is realized, three key elements must be present namely; accessibility, adequacy and cultural acceptability. Accessibility means that people must have both physical and economic access to food, Adequacy means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex among others whereas cultural acceptability is where the food is considered as good and safe to eat by the people or the community in which they belong without violating any ‘taboo’ when eaten. It means therefore that an attempt to protect the right to food of people

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<sup>14</sup> Shue, H. (1996), *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton University Press (2<sup>nd</sup> Edition)

<sup>15</sup> CESCR, (1999) ‘General Comment No. 12’: The Right to Adequate Food, UN Doc. E/C.12/1999/5.

<sup>16</sup> De Schutter, O. The Right to Food as a Human Right available at <http://www.srfood.org/index.php/en/right-to-food>- accessed on January 10, 2013



including refugees in this camp or anywhere in the world should at least comply with the above named elements.

However, as we all know, many people do not have access to food and where they have some access, it is not adequate let alone considering its cultural acceptability. In short, many of the world's population are living in hunger. And many of these people are living in developing countries including Ghana. The millennium development goal 1 is the "eradication of extreme poverty and hunger" yet many people are still hungry.<sup>17</sup> The MDG 1 imposes some additional moral obligation on Ghana to take more steps to eradicate hunger or ensure that the right to food of people living in Ghana is protected including the refugees living in the Ampain refugee camp. The MDG's impose increased obligations on the State because they are 'time bound' and since 2000, successive governments in Ghana have made statements to the effect that they are committed to reducing poverty and hunger in the country. Although FAO estimated the number of hungry people in the world as at the year 2010 to be 925 million making 13.1 percent of the world's population which means that about one out of every seven people are hungry,<sup>18</sup> it does not preclude Ghana as a developing country to be extra willing to protect, provide and fulfil this right of the refugees and all other people resident in Ghana because it has ratified the refugee protocol and also various governments have noted that they will work to improve the living conditions of all people living in the country.

However, as mentioned already we must also consider the fact that the right to food falls within the category of economic and social rights hence it is to be realized progressively. Does this mean that nothing can really be done when this right is violated especially in a State which is developing? In Ghana, many of the population are still poor and hardly eat three square meals a day. Therefore it stands to reason that the country cannot help much as far as the realization of the right to food of refugees living within its borders is concerned. Moreover, and also as mentioned, this limitation comes as a result of the perception of justice or inequality or free riding.

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<sup>17</sup> <http://www.un.org/millenniumgoals/>- accessed on January 15, 2013

<sup>18</sup> [http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm#Number\\_of\\_hungry\\_people\\_in\\_the\\_world](http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm#Number_of_hungry_people_in_the_world)- accessed on January 15, 2013

In light of the above observations, this research will analyse the degree to which the right to food is positive law for the refugees in the camp, coupled with a discussion of who the responsibility to fulfill this law rests and hence is to be penalised if it is violated.

Refugees by the scheme of things fall between jurisdictions and live without access to land or other sources of livelihood. According to international law, the first and foremost duty bearer is the host State because human rights treaties are ratified by States. In addition, the UNHCR is mandated to partner the host State in protecting the rights of refugees.<sup>19</sup> From the data from the field, it seems however that UNHCR is not able to meet fully the requirements of its mandate one of the reasons being reliance on donor support which has proven to be unreliable.<sup>20</sup> This suggests that there is the likelihood that a violation of this right can occur. Could there be other possible ways of realizing this right without totally depending on these agencies? What is really the way forward for refugees in realizing this basic right?

### **1.3 Purpose of the Study**

The aim of this study is to examine the condition of the refugees at Ampain refugee camp as far as their right to food is concerned and to make an assessment of whether this basic right is likely to be violated as a result of the status of the host country being a poor or developing one, or whether also other factors such as the weakness of the international system, lack of 'hard law' obligation on the part of the host government towards non- citizens etc could also contribute to this situation. The research also seeks to find out if refugees can claim the right to food and against whom this claim can be made. In other words, whether refugees can sue when this right is violated and who would be the duty-holder if any. In a nutshell, the research seeks to bring to the fore once more the food rights of refugees as a 'special group' and how this basic right can be improved.

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<sup>19</sup> United Nations (1951) Convention Relating to the Status of Refugees, United Nations (1967) Protocol Relating to the Status of Refugees adopted by the UN GA in Resolution 2198 (XXI).

<sup>20</sup> See Draft of George Kent's "The Nutrition Rights of Refugees" of the year 2000 page 14

## **1.4 Research Questions**

This research seeks to find answers to two main questions;

- a) How is the right to food for refugees in Ghana fulfilled as represented in the Ampain Refugee Camp?

Here the researcher presents what the food arrangements are for refugees in the Ampain refugee camp. Emphasis will be on children, pregnant women and lactating mothers and the sick especially those that are HIV Positive as a more vulnerable group among the refugees. In addition to food, it also looks at the drinking water condition in the camp. The results of this findings from the field will be presented and analysed to see if they meet the standards that the right to food sets according to international law and if not what stakeholders are doing to meet the requirements that such a right sets.

- b) (i) Which specific entity or entities has a legal responsibility to protect refugees' right to food and to what extent?  
(ii) How can we understand this obligation? Can refugees sue when this right is violated?

Here, too, I will do a legal analysis of the right to food and the agencies responsible for their protection and fulfilment and juxtapose this with the results from the survey conducted and make recommendations.

## **1.5 Methodology**

In answering the two main research questions above, two research methodologies were used namely; empirical research and legal analysis. In answering question one, the researcher did a field visit and conducted a survey, quantitative (food intake at the camp etc) as well as qualitative (for example focus group discussions on adequacy of food). In answering question

two however, the researcher has done legal analysis to determine the scope of obligations and the responsibilities of the actors involved in ensuring the protection and fulfilment of this right.

An interview guide was used in collecting the data. This gave me the opportunity to ask open ended questions to determine adequacy, accessibility and cultural acceptability with the possibility of formulating follow- up questions on the spot based on the answers or responses received from the respondents. I also used this guide in the three focus group discussions. I was assisted by a nutritionist in the camp assigned to me by the camp manager who took me round to conduct the interviews and the focus group discussions. He did most of the interpretation as majority of the respondents could not speak English and I could also not speak French very well.

Purposive sampling and simple random sampling techniques were used to get the samples from the population universe. In all, sixteen refugees were interviewed individually. They included, six male and six female and four children. There were also three focus group discussions including a group of men, a group of women and a group of children. Also interviewed were the following; the nutritionist in the camp, the camp manager, officials from the United Nations High Commission for Refugees in Ghana, officials from the Ghana Refugee Board, World Food Programme and the Deputy Minister of Foreign Affairs. I used purposive sampling so as to deliberately choose the respondents who have and still work in the area of this research, hence their responses will answer directly my research questions. I also chose random sampling technique in order that the responses from the refugees that I sampled will reflect the views of majority, if not all of the refugees in the camp because the population universe in the camp as I observed it was homogeneous.

## **1.6 Structure of the Thesis**

This thesis is presented in four chapters. Chapter one presents the introduction which is an overview of what this research is all about including the purpose of the research, the research questions, and methodologies among others. Chapter two presents a review of the literature

drawn from various scholars on the subject. There has been lots of work on the right to food on one hand and the right of refugees on the other hand. I therefore reviewed some of the literature and used some of the studies that have been done separately on the right of refugees and the right to food to show their relevance to this research. The literature included; authoritative books, UN Resolutions and Declarations, research papers and internet search among others. Chapter three presents the analysis of the data from the field and discussion of the findings. It is presented in two main sections. The first section presents a descriptive analysis of the right to food and its content and makes an assessment of whether this right can or is likely to be violated in a refugee camp in a developing country (Ghana) and what the country was doing to manage this unexpected challenge. The second section examines the claim of right to food by refugees and who can be held accountable as the duty bearer. Chapter four which is the final chapter presents a summary and conclusion and makes recommendations based on what the law postulates (legal analysis) and what pertains on the field (findings).

## **1.7 Ethical Issues**

I first secured a permit from the Ghana Refugee Board and also informed the police at the police post at the entrance of the camp before visiting the camp for the survey. This step was not just to meet a requirement or satisfy a formality but, it is in order to safeguard my safety and the safety of my respondents in the camp and also to get reliable data. Measures were taken to protect my respondents from personal harm including preserving their confidentiality and an assurance that they will not be reported to the authorities which may trigger any form of ‘punishment’ for them for openly expressing their opinions on the food situation in the camp. Again, I sought permission from the camp manager who then appointed a nutritionist in the camp to take me round the camp and also assist me in conducting the research and also give feedback to the camp manager. I asked for the consent of my respondents before interviewing them and also took pictures of some of them and with them. In this way, I believe I have maintained objectivity and integrity, respected the rights of the subjects of the research to privacy and dignity. They were very open and frank with their responses to the questions I posed to them during the period of the

survey. One of the respondents remarked “when will you visit us again and we hope you will carry our concerns to all the stakeholders to come to our aid”.

Generally, the research went well. But there were a number of challenges which included; some difficulty in meeting with officials at the various organizations that have a stake in the subject under review as almost all of them had tight schedules. And also, there was some initial fear on the part of the refugees to grant me interviews as they were not sure what the outcome of my research was going to be. From my observations, some had a fear for the unknown thinking my findings may make authorities to become angry with them thereby affecting their rations. But they cooperated after they were briefed by the nutritionist in the camp and they also received assurances from me that their identity would be preserved and protected. Again, it was a bit challenging for me to communicate more directly with them because of language barrier as all of them were French speakers while I was an English speaker. However the role of the nutritionist was phenomenal as he could speak both languages. But again, some of the refugees could speak some basic English so I managed to communicate with them.

In view of these challenges, I wish to recommend that in future, before any such research, the respondents (officials should be given) prior notice of at least two months so they can have ample time to prepare and meet the researcher. The respondents (refugees) should also be informed, briefed or psyched up prior to the research so they don't experience any initial fear or hesitation.

## **2 LITERATURE REVIEW**

### **2.1 Chapter Introduction**

This chapter presents literature drawn from various scholars and reviews its relevance for this research. There has been lots of work on the right to food on one hand and the right of refugees on the other hand. I shall present some basic perspectives on the subject under review and also a presentation of basic socio-economic data about Ghana.

### **2.2 Origin of the Right to Food**

The right to food has its legal foundation traced to Article 25 of the 1948 Universal Declaration of Human Rights (UDHR),<sup>21</sup> which was reinforced by the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 in Article 11,<sup>22</sup> interpreted by the Committee on Economic, Social and Cultural Rights in General Comment Number 12,<sup>23</sup> and Operationalized by Voluntary Guidelines, 2004.<sup>24</sup> These provisions offer useful insights into the obligation to respect, protect and fulfil the right to food of all including refugees. These provisions play very

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<sup>21</sup> United Nations (1948) Universal Declaration of Human Rights, adopted by UN GA on December 10, 1948, GA Res. 217A (III). See Article 25.

<sup>22</sup> United Nations (1976) International Covenant on Economic Social and Cultural Rights, adopted on December 16, 1966, entered into force January 3, 1976, GA Res. 2200 A (XXI). See Article 11

<sup>23</sup> Committee on Economic, Social and Cultural Rights. (1999) General Comment No. 12: The Right to Adequate Food, UN Doc. E/C.12/1999/5

<sup>24</sup> FAO Council (2004) Voluntary Guidelines adopted by 127<sup>th</sup> Session of the Food and Agriculture Organization Council

well into the subject under review and thus reference has been made to them many times. They provide an authoritative base upon which to measure if the right to food has been fulfilled or not within particular contexts. With regards particularly to refugees, mention has been made more of the 1951 Convention relating to the Status of Refugees and the 1967 Refugee Protocol. The instruments referred to serve as a yard stick to measure or assess what happens in the Ampain Refugee Camp in Ghana in this research.

## **2.3 Content of the Right to Food**

As noted earlier the right to food is:

“The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear”.<sup>25</sup>

According to the Committee on Economic, Social and Cultural Rights (CESCR) the right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The Committee considers that the core content of the right to adequate food implies:

“The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”.<sup>26</sup>

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<sup>25</sup> See Note 16 above, p 16

<sup>26</sup> See Note 5, p 11



It is obvious from the foregoing that for this right to be fulfilled, at least three key elements must be present including adequacy, access and cultural satisfaction. The right to food is fundamental and key to the survival of the human race and for the protection and fulfilment of other rights.

“The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all”.<sup>27</sup>

This must apply to all humans and refugees are no exception. Often, when this right is infringed upon, the argument of “progressive realization” has been used. ie, governments claim they cannot do more. That is to say that the infringement is ‘justified’ with Article 2:1 of the ICESCR which states that:

“Each State Party to the present Covenant undertakes to take 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 recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.<sup>28</sup>

One would have appreciated the fact that legal instruments would not have been used to justify the non-fulfilment of an important right as the right to food which is basic and fundamental to the survival of the human race. But the right to Food being an Economic, Social and Cultural right is caught together with other rights in this category in the quagmire of ‘less importance’ in so far as they are frequently tagged as “second generation rights” after Civil and Political

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

Rights.<sup>29</sup> This means that whereas more protection is given to Civil and Political Rights, less protection is given to Economic, Social and Cultural Rights. Various authors have put forward a number of likely reasons for why this is so. For instance some have argued that Civil and Political Rights establish immediately binding obligations, whereas the language of Economic, Social and Cultural Rights by and large represents actions of a progressive nature. Again others have also held the claim that civil and political rights are easily enforceable and the cost implications are not much as compared to economic, social and cultural rights which depend on the economic power of the State(s) in question thereby making it challenging to enforce.<sup>30</sup> But all rights demand an equal respect, fulfilment and protection by all. It is this overly importance placed on civil and political rights at the expense of economic, social and cultural rights that has led to some of the violations that occur when it comes to economic, social and cultural rights. Leckie notes that:

“When people die of hunger or thirst, or when thousands of urban poor and rural dwellers are evicted from their homes, the world still tends to blame nameless economic or ‘developmental’ forces, or the simple inevitability of human deprivation, before placing liability at the doorstep of the state. Worse yet, societies increasingly blame victims of such violations for creating their own dismal fates, and in some countries, they are even characterized as criminals on this basis alone”.<sup>31</sup>

As has been pointed out: Taking economic, social and cultural rights seriously implies at the same time a commitment to social integration, solidarity and equality, including tackling the question of income distribution. Economic, social and cultural rights include a major concern with the protection of vulnerable groups, such as the poor, the handicapped and indigenous

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<sup>29</sup>The Right to Food edited by P. Alston and Tomasevski, Martinus Nijhoff Publishers, 1984:97. See also [http://diplomatie.belgium.be/en/policy/policy\\_areas/human\\_rights/specific\\_issues/economische\\_sociale\\_en\\_culturele\\_rechten/](http://diplomatie.belgium.be/en/policy/policy_areas/human_rights/specific_issues/economische_sociale_en_culturele_rechten/), accessed on February 4, 2013

<sup>30</sup> See Javaid Rehman (2010:142), International Human Rights Law, Pearson Education Limited (2<sup>nd</sup> Edition)

<sup>31</sup> Leckie as cited by Javaid Rehman, International Human Rights Law, Pearson Education Limited, 2010:142 (2<sup>nd</sup> Edition)

peoples.<sup>32</sup> It is one of these vulnerable groups namely; refugees, which is the focus of this research. They are supposed to enjoy equal treatment as citizens of the host state as far as their right to food is concerned.

Another disturbing fact also is that, the content of the right to food itself is quite sketchy. The right to food is interrelated with complex matters that are not easily solved. Therefore it appears to be difficult to give meaning to the content of the right to food and to help Member States of the United Nations to implement this right in a suitable way in their national legal systems. It is no surprise then that a large network of international institutions, each functioning within their own competences and mandates, are involved in the process of further developing the right to food.<sup>33</sup> Even if the content of the right to food would be accepted at the minimum of freedom from hunger, one has to admit that there are neither specific obligations for states to guarantee it and it is challenging to enforce or supervise implementation because of the ‘to the maximum of its available resources’ clause. Hence the obligations that this right imposes are not easily translated into political action. This implies that there is a lot more work to be done in coming out with what the true content of the right to food is so as to give true meaning to it. The lack of a standard or universal content of such an important right can affect its protection. Bearing this information in mind, let’s take a closer look at refugees and the right to food.

## **2.4 Refugees and the Right to Food**

Undoubtedly, when people become refugees, the law in their country no longer protects them but the law in the country in which they seek refuge. They become residents of the country in which

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<sup>32</sup> See Eide, Krause, and Rosas 2001:5 as cited by Kent, George, *Freedom from Want: the human right to adequate food*, Georgetown University Press, Washington, DC., 2005:45

<sup>33</sup> See Hospes O. and Hadiprayitno, *Governing food security- Law, politics and the right to food*, Wageningen Academic Publishers, 2010:43

they now reside and are also under the protection of the international community.<sup>34</sup> Their right to food by implication is to be protected by their ‘new country’ and the international community. But the obligations of the host country and the international community as far as the right to food is concerned as well as other rights are not concrete or are not clearly spelt out.<sup>35</sup> It must be noted that refugees are human beings like all other people and are entitled to ‘all’ fundamental rights as other citizens. But the reality is that, they are treated as a ‘special group’. Yes, they are a ‘special group’ and suffice to say a vulnerable group. Among refugees in general as a vulnerable group are other groups of people who are more susceptible to more vulnerability including; children, women and the sick (particularly those diagnosed to be HIV positive). Refugees in this group need even more protection as far as the right to food is concerned. But one wonders if this is really the case in times of humanitarian crises. The survey conducted for this study will shed more light on whether these vulnerable groups in the camp receive the extra protection in practice. The following pages take a closer look at some of the vulnerable groups in any refugee camp:

## **2.5 Refugee Children and the Right to Food**

To begin with, there is the need to take a look at some provisions in the Convention on the Rights of the Child (CRC). Article 22(1) states that:

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other

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<sup>34</sup> See Article 12:1 of the Convention Relating to the Status of Refugees

<sup>35</sup> Kent, G. (2005:201), *Freedom from Want: the human right to adequate food*, Georgetown University Press, Washington, DC.

international human rights or humanitarian instruments to which the said States are Parties”.<sup>36</sup>

Article 24: 2 States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(c) “To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.”

Article 27: 1 also notes that:

“States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”.

Per the above provisions and the obligation placed on the ‘duty bearers’ of the right to food of refugees, refugee children and children in general should not be hungry. Children are innocent and vulnerable and adequate food must be at their disposal at all times. But in reality, refugee children are among the category of refugees who suffer acute nutrition problems. Refugee children like all other children need to eat very balanced meals in order that they will grow and develop well without any inhibitions. Therefore there is some responsibility on all to ensure that the right to adequate food of children in times of crises is adequately protected. At any time, the

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<sup>36</sup> United Nations (1990) Convention on the Rights of the Child, adopted on November 20, 1989, entered into force September 2, 1990, GA Res. 44/25

supreme interest of the child when it comes to food and nutrition shall come first before the interest of others.<sup>37</sup> Apodaca (2010:34) has said that:

“The obligation to feed hungry children is both a moral and a legal duty accepted by the nation –state and the international community”.

According to the Food and Agricultural Organization (FAO), more than half of children’s death worldwide can be traced to hunger. Malnutrition reduces the body’s ability to fight diseases which has accounted for increase in child mortality. An estimated number of five to six million children die each year having contracted diseases that could have been prevented if they were properly nourished.<sup>38</sup>

Quite apart from death, the other negative effects of children going hungry cannot be overemphasized. Malnutrition diminishes the child’s intellectual ability by hampering his/her cognitive functions ( Fishman et al 2004, as cited by Apodaca 2010), often resulting in poor school performance and attendance, and increasing levels of aggression, hyperactivity, anxiety, or extreme passivity (Behrman et al 2004, as cited by Apodaca 2010). Mention can also be made of the visible physical deformity a child could suffer when continuously hungry, the tendency to shy away and interact with other children to increase his or her social skills including communication, increase in tendency of engaging in some vices like theft among others. Giving children the best of meals is a way of securing their future and the future of the world. The future of any community or nation rests among other things on how its children are catered for. Children should be fed nutritious meals at all times including children in refugees camps. From the above citations, I deduce that the right to food of children must be well protected by all states and should not necessarily depend on how much resources are available. This I believe must

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<sup>37</sup> United Nations (1959), Declaration of the Rights of the Child, GA Res. 1386 (XIV), See Principle number 4, 5. See also UNHCR (1993), Refugee Children: Guidelines on Protection and Care, endorsed by UNHCR Executive Committee in October 1993

<sup>38</sup> Apodaca, C. (2010), *Child Hunger and Human Rights*, London: Routledge.

apply to refugee camps as well where children will be prioritized before the other category of refugees.

## **2.6 Women and the right to food (Pregnant Women and Lactating Mothers)**

Voluntary Guidelines 2004 number 10.10 requires that:

“States are reminded of the cultural values of dietary and eating habits in different cultures and should establish methods for promoting food safety, positive nutritional intake including fair distribution of food within communities and households with special emphasis on the needs and rights of girls and boys, as well as pregnant women and lactating mothers, in all cultures”.

Pregnant women and lactating mothers in any refugee camp also need to be given preferential treatment when it comes to food distribution. They need adequate and nutritious food in order that the unborn children and those born can feed on what their mothers have eaten in order for them to develop well. Article 12:2 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW):

“...States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”.<sup>39</sup>

In times of humanitarian crisis, women particularly lactating mothers and pregnant women are always at risk of suffering from malnutrition if conscious efforts are not made at addressing their nutrition needs”.<sup>40</sup>

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<sup>39</sup> United Nations (1979) Convention on the Elimination of All Forms of Discrimination against Women, adopted by GA Res. 34/180 on December 18, 1979 and entered into force on September 3, 1981.

This issue is also reviewed based on empirical analysis of data from the field to see if in practice pregnant women and lactating mothers in this camp are given the necessary food that will aid both the unborn and the born babies develop very well.

## **2.7 The Sick and Right to Food**

Another very vulnerable group among refugees is people living with HIV AIDS and there is the need to ensure their right to food is well protected. Such people need special attention and care. They are usually on medication most of the time and these drugs will work well when this people eat well. Guideline number 10.4 of the Voluntary Guidelines 2004 notes that:

“States should address the specific food and nutritional needs of people living with HIV/AIDS or suffering from other epidemics”.

Mention should also be made of people suffering from other epidemics including mental patients if any in the camp. This research therefore looks also at whether this happens in practice. The survey will be used to measure this.

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<sup>40</sup> For more on women and the right to food and nutrition, see Women and Food (Resolution VIII) World Food Conference Rome, 5-16 November 1974, Women and Nutritional Self- Sufficiency (Resolution 41) World Conference of the United Nations Decade for Women Copenhagen, 14-30 July 1980 available at page 186 and 189 of Katarina Tomasevski, *The Right to Food: Guide through Applicable International Law*, Martinus Nijhoff Publishers, 1987. See also General Assembly Resolution 35/135 of 11 December 1980 on Refugee and Displaced Women.



## 2.8 Drinking Water

One cannot talk about the right to food without also mentioning good, safe drinking water. The concept of food in human rights law has always included drinking water.<sup>41</sup> Article 24: 2(c) of the CRC talking about the right to food and nutrition of children makes mention of clean drinking water. By extension, this applies to all humans and so it was observed in this research whether refugees in this camp have access to clean drinking water as a vulnerable group.<sup>42</sup> The Committee on Economic, Social and Cultural Rights in General Comment number 15 notes in paragraph sixteen that:

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. The committee notes further that in particular, States parties should take steps to ensure that:... (f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals”.<sup>43</sup>

Is this what happens in practice? This research presents findings on that. Since the empirical analysis is based on refugees in Ghana, there is the need to look at Ghana's economic situation so that one can make fair and balanced inferences and comparisons.

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<sup>41</sup> See Hospes O. and Hadiprayitno (2010:94), *Governing food security- Law, politics and the right to food*, Wageningen Academic Publishers.

<sup>42</sup> The right to water encompasses both drinking water and access to water for the irrigation of food crops... particularly for subsistence farming and vulnerable peoples - Ziegler, 2002 as cited in Hospes O. and Hadiprayitno (2010:94), *Governing food security- Law, politics and the right to food*, Wageningen Academic Publishers.

<sup>43</sup> Committee on Economic, Social and Cultural Rights (2002), General Comment No. 15: The Right to Water, UN Doc. E/C.12/2002/11

## 2.9 Economic Situation in Ghana

Ghana is a developing country located in the Western part of Africa, endowed with rich natural resources. Ghana is the first country of Sub-Saharan Africa to gain independence on March 6, 1957. In the year 2011, the population of Ghana stood at 24,965,816 whereas inflation stood at 8.7% and GDP at \$39,199,656,051 and a GDP growth rate of 14.3%.<sup>44</sup> Ghana is touted as one of the fastest developing economies in Africa with the World Bank re-classifying Ghana and placing it at the level of middle income country.<sup>45</sup> However, it is believed that a significant number of Ghanaians or people living in Ghana are hungry and living in poverty. In 2007, it was estimated that about 28.5% of the population was living below the poverty line.<sup>46</sup> In the year 2002, Ghana opted for debt relief under the Heavily Indebted Poor Country (HIPC) program and is also benefiting from the Multilateral Debt Relief Initiative that took effect in 2006.<sup>47</sup> This, it was believed would cushion Ghana and would also provide the opportunity for the country to be supported with more aid to help alleviate poverty. However, it's been stated that progress towards eradicating hunger in Ghana has been slow, according to agriculture experts. It is even believed that Ghana already produces enough food that could feed its citizens but the distribution pattern, lack of storage facilities and lack of political will to implement effective policies has hindered the progress towards a hunger free Ghana.<sup>48</sup> The empirical analysis will investigate whether this background of Ghana hinders the protection and fulfilment of the right to food of refugees in this camp and if so, what the country is doing to improve on the situation. But even more importantly, is it clearly stated in the sum total of rights obligations which agencies are

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<sup>44</sup> <http://www.worldbank.org/en/country/ghana>, accessed on January 16, 2013

<sup>45</sup> <http://www.guardian.co.uk/global-development/poverty-matters/2011/jul/12/world-bank-reclassifies-28-poor-countries>, accessed on January 16, 2013

<sup>46</sup> [http://www.indexmundi.com/ghana/economy\\_profile.html](http://www.indexmundi.com/ghana/economy_profile.html), accessed on January 16, 2013

<sup>47</sup> Ibid

<sup>48</sup> <http://www.modernghana.com/news/216442/1/right-to-food-must-be-a-reality-for-all-ghanaians.html>, accessed on March 3, 2012

legally responsible for the welfare of refugees or more specifically, ensuring that their right to food is respected, protected and fulfilled?

## **2.10 Which entity has responsibility to protect refugees' right to food?**

Human rights treaties are ratified by States and this makes States the first and foremost duty bearers. Byrnes et al (2007:13) note that:

“The provisions accepted by the state party when ratifying, acceding or succeeding to the convention are formally binding on it as a matter of international law. Although a state has the sovereign right to decide whether or not it becomes party to a treaty, when it does so, it has limited any pre-existing sovereign rights it may have had to act inconsistently with the treaty”.<sup>49</sup>

The state is the foremost duty bearer when it comes to human rights treaties because:

“It has the power and authority to frame laws and regulations and adopt policies that affect all individuals in its jurisdiction.....Human rights are addressed to the State because that authority can directly violate or promote the different rights and help or prevent other agents from promoting or violating them”.<sup>50</sup>

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<sup>49</sup> Andrew Byrnes et al as cited by Apodaca Clair, *Child Hunger and Human Rights*, Routledge, 2010:55

<sup>50</sup> Sengupta 2007:340 as cited by Apodaca Clair, *Child Hunger and Human Rights*, Routledge, 2010:55

From the fore going, it stands to reason that since human rights treaties are ratified by States then the right to food is to be protected by State parties. By extension, the obligation to protect and fulfil refugee's right to food first rests with the host state.<sup>51</sup>

According to the CESCR, this right imposes three set of obligations on states. This includes the obligation to “respect, protect and fulfil”. The committee notes that the obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access whereas the obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil is in two parts. The first part of the fulfil obligation is to facilitate which means the State must pro-actively engage in activities intended to strengthen people's capacity to access this right and to utilize resources and means to ensure their livelihood, including food security. The second part of the fulfil obligation is to provide which means, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to provide that right directly and this obligation also applies for persons who are victims of natural or other disasters.<sup>52</sup> The focus is on “victims of natural or other disasters”. The refugees herein being looked at are victims of a disaster that is armed conflict arising out of a disputed election. The committee opines that a violation of this right occurs when the State fails to ensure that at the very least, the minimum essentials required for one to be free from hunger are not satisfied. However, the committee adds that in order to determine whether an action or omission constituted a violation:

“It is important to distinguish the inability from the unwillingness of a State party to comply”.<sup>53</sup>

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<sup>51</sup> Hospes O. and Hadiprayitno (2010:139) *Governing food security- Law, Politics and the Right to Food*, Wageningen Academic Publishers.

<sup>52</sup> Committee on Economic, Social and Cultural Rights in General Comment Number 12

<sup>53</sup> Ibid

But it must be added that the responsibility of protecting refugees does not only lie on states. Article 35 of the Convention relating to the Status of Refugees states that:

“1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees”.

Thus, on the basis of the above provision, the UNHCR and the host State are to cooperate or partner to ensure that refugees are protected, and so legally, the responsibility for protecting refugees lies on this two entities; the host State and the United Nations High Commission on Refugees. But taking the UNHCR for instance, it relies on donors and partners to support its work. In times when the partners or donors fail to support, the UNHCR becomes challenged in fully carrying out its work.<sup>54</sup> Talking about donors, the UNHCR has signed a memorandum of understanding with The World Food Programme (WFP). As stated in the memorandum, “the ultimate goal of the partnership between UNHCR and WFP is to ensure that food security and related needs of the refugees and returnees that UNHCR is mandated to protect and assist are adequately addressed”.<sup>55</sup> This memorandum is quite apt in setting guidelines on how to ensure that refugees are well catered for. This research will indicate in the next chapter whether this is

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<sup>54</sup> See draft of George Kent’s “The Nutrition Rights of Refugees” 2000 page 13

<sup>55</sup> Memorandum of Understanding Between The Office of The United Nations High Commissioner For Refugees (UNHCR) and The World Food Programme (WFP), 2002:3

what pertains on the ground empirically. To my mind, the government of Ghana is more 'responsible' than its actions suggest. Moving away from these two entities, the international community also has an enormous responsibility in ensuring the protection of this right. There is also a moral or normative responsibility on other entities such as; transnational corporations, NGO's and other donors to ensure that the right to food of refugees is respected, protected and fulfilled. These other entities are not subject of international law as far as human rights protection is concerned. However, it is believed that some of these entities have the capacity to support States and other legally responsible duty bearers to respect, protect and fulfilment of human rights. Olivier De Schutter asserts that:

"We should not be held hostages to an understanding of international law- outdated in fact, and unworkable in practice- that sees international law... as the law of inter-State relations, thus creating an artificial obstacle to the recognition of 'non-State' entities as subjects of international law".<sup>56</sup>

## **2.11 Can refugees sue when this right is violated?**

Although International Law recognizes refugee's right to have access to courts, it is not very clear if refugees can sue when their right to food is violated. Article 16 (1) and (2) of the 1951 Convention relating to the Status of Refugees provides that:

"1. A refugee shall have free access to the courts of law on the territory of all contracting States. 2. A refugee shall enjoy in the contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*".<sup>57</sup>

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<sup>56</sup> Olivier De Schutter (2008:12-13) as cited by Apodaca Clair, Child Hunger and Human Rights, Routledge, 2010:148.

<sup>57</sup> See Note 19, p 18

By the provisions above, refugees should be free to sue when their rights are violated. However, justiciability of economic, social and cultural rights has so far proven to be quite challenging. For instance Hospes and Hadiprayitno 2010:95 have noted that:

“Unlike civil and political rights, the legal binding character of social, economic and cultural rights is under debate”.

With reference to the right in question, food, it is even quite more challenging. I am yet to establish whether there is case law on right to food of refugees. I must state however that, gradually the right to food in general is being litigated on somehow in some countries that have provisions on the right to food in their constitutions. This, I believe will compel more States to take proactive measures in dealing with hunger and malnutrition. For instance in the *People's Union for Civil Liberties v. Union of India & Others (PUCL)* case in 2001, the Supreme Court of India ruled that the right to food was fundamental to guarantee the right to life and human dignity and instructed the State to take certain measures to protect this right to curtail the hunger that had bedeviled the people.<sup>58</sup>

But talking more specifically about refugees, it is difficult to state whether refugees could sue when this right is violated. According to positivism, law is a matter of what has been posited (ordered, decided, practiced and tolerated).<sup>59</sup> Positivist inclined international lawyers for example may posit that since there is no ‘black letter law’ which states that refugees can sue when this right is violated, then they may not be able to sue when this right is violated. These theorists will further opine for instance that the fact that a policy would be just, wise, efficient, or prudent is never sufficient reason for thinking that it is actually the law, and the fact that it is unjust, unwise, inefficient or imprudent is never sufficient reason for doubting it. But to stretch the arguments even wider, reliefs for a violation of this right can be sought even outside the

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<sup>58</sup> More information about this case is available at- <http://www.hrln.org/hrln/right-to-food/pils-a-cases/255-pucl-vs-union-of-india-a-others-.html>- accessed on February 24, 2013

<sup>59</sup> [http://en.wikipedia.org/wiki/Legal\\_positivism](http://en.wikipedia.org/wiki/Legal_positivism)- accessed on January 25, 2013

courts. Some schools of thought say that certain kinds of law are, by their very nature, not appropriately addressed through judicial procedures. Other schools of thought say that establishing a new international mechanism for adjudicating economic rights would not be practical.<sup>60</sup> Refugees can petition the State, UNCHR and the International community as a whole to come to their aid when there is a gross violation of this right. They can also embark on peaceful protests to register their concerns when this right is violated for just like citizens, refugees have the right to association.<sup>61</sup> In my opinion, the court may not necessarily be the ‘best’ medium for refugees to seek for the respect, protection and fulfilment of their right to food. Other non-judicial mechanisms may work even better.

## **2.12 Chapter Conclusion**

The levels of poverty in the world coupled with the seriousness of the debate and the literature reviewed show that the right to food, although fundamental was a right which was most likely to be violated.

“The right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right”.<sup>62</sup>

The literature also shows that being refugee makes one likely to be one of the worst victims of violations of this basic right. These violations may not necessarily be as a result of lack of access, cultural acceptability or safety, adequacy but also the inability or lack of opportunity for refugees to have a stake or a say in determining the kind of food they want to eat. Again, the literature stresses that the content of the right to food is sketchy and does not provide clear provisions on who to hold responsible when the rights of refugees are violated. The literature call

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<sup>60</sup> Dennis and Stewart 2004 as cited by Kent, George, Freedom from Want: the human right to adequate food, Georgetown University Press, Washington, DC., 2005:129

<sup>61</sup> See Article 15 of the Convention relating to the Status of Refugees

<sup>62</sup> Alston and Tomasevski as cited in Kent, George, Freedom from Want: the human right to adequate food, Georgetown University Press, Washington, DC., 2005:49



for more proactive ways of solving the problem of hunger and malnutrition. For instance Apodaca (2010:77) calls for investment of State resources to provide social services to the poor and to finance agricultural infrastructure for people to fulfil their own needs as it is believed this will help poor and rural dwellers to improve the health and nutritional status of children especially. Hospes and Hadiprayitno (2010) are also of the view that the State must protect this right to the extent that it could even become a 'freedom' but at the same time not interfere unduly with the exercise of this right and also protect the enjoyment of this right from interference by others. They add that the State should put measures in place to respect and protect the:

“Functioning entitlements of groups who would otherwise become vulnerable”.

Some also added that the right to food includes water thus attention must be given to water as well. Some have also called for the articulation of clearer laws on the right to food so that people who suffer violations could seek remedies in court or through other judicial means. There are also calls on multinational corporations to assist in solving the issues relating to right to food of refugees and problems of refugees in general. Apodaca (2010:33) has noted that:

“Multinational Corporations have considerable financial resources, technical expertise, and global presence, which put them in a position to ‘alleviate someone’s dire plight’”

Through this review, I have realised that the CESCR defines and interprets the issue of access, adequacy and cultural acceptability in General Comment 12, whereas Apodaca 2010 addresses mainly the issue of children’s’ right to food and nutrition which is equally very relevant in this study because a great number of refugees comprise of children. Kent 2000 and 2005 have addressed more specifically the nutrition rights of refugees, the challenges and the way forward.

With these insights from the literature review, the next chapter of this study presents results of the survey and this will be juxtaposed with the opinions of the authors of the literature reviewed to see if they reflect what the authors and international law say (legal analysis) and what happens in practice (empirical analysis).

## **3 DATA ANALYSIS AND DISCUSSION OF FINDINGS**

### **3.1 Chapter Introduction**

This chapter is devoted to presentation of results of the study. The question that I was seeking to find an answer to was; does being in a poor country minimise the claim of the right to food as a refugee? In other words, is it the case that the richer a country condition, the higher the likelihood to claim a right to food or otherwise as a refugee? The two variables here are; a poor or developing country and refugee right to food.

### **3.2 Food Arrangements at the Ampain Refugee Camp**

Here I present a summary of the briefing I received from the three main organizations responsible for the refugees at the Ampain refugee camp namely; the Ghana Refugee Board, UNHCR and The World Food Programme. After this, I present also a summary of the briefing received from the nutritionist at the camp. This will be followed by some of the responses from the refugees themselves as to what they make of the food arrangements in the camp as a result of the interviews they granted me and also following from the focus group discussions. I will also present some responses from the respondents about whether refugees could or should sue when their right to food is violated and finally, there will be a discussion of some of the findings from the survey juxtaposed with what is contained in international law.

When the Ivorian refugees started trooping to Ghana, the Government of Ghana in collaboration with UNHCR established a reception centre known as Eagle Star at Elubo close to the border between Ghana and Ivory Coast where the refugees were welcomed, screened and later issued with certificates. They were put on wet feeding (they were served cooked food) twice a day during the early days of their arrival. They were later settled in three separate refugee camps namely; Ampain, Fetentaa and Egyeikrom with Ampain hosting the largest number of them. Since Ampain is the case study area of this research, this research is limited to Ampain only. However I presume that findings will not be different from what pertains in the other refugee camps in the country. As at July 2012, the time I started this survey at the Ampain refugee camp, the number of refugees at the camp stood at 3,726. Prior to this date, the number stood at 5,007.<sup>63</sup> Between March and May 2011, the feeding of these refugees was done by the UNHCR. Then WFP took over the feeding of the refugees. WFP's role has been to source, procure and transport the food to the refugee camp. Each refugee was entitled to a monthly ration of a food basket. The individual monthly ration in the camp at the time consisted of 2148k cal/day through:

- 12kg rice
- 1.8kg beans
- 1 litre fortified oil
- 0.15kg iodized salt
- 1.8kg corn soya blend (CSB- a nutrient supplement included to prevent child malnutrition).<sup>64</sup>

Basically, the WFP's objectives for supporting the refugees at Ampain were to: save lives by meeting the minimum food and nutrition requirements of refugees and to provide food assistance

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<sup>63</sup> These figures were given to me by the Associate Community Services Officer at the UNHCR office in Ghana. According to this official, they conduct a periodic verification exercise to know the number of refugees at any given time. This helped them in planning purposes especially when it came to their food rations.

<sup>64</sup> This information was provided by an official at WFP office in Ghana and was later confirmed by the UNHCR and the nutritionist at the camp.

See <http://www.wfp.org/content/emergency-operation-ghana-200321> for some specific information about WFP's response to the Ivorian refugee crisis in Ghana. Accessed on August 05, 2012

to ensure household food security of the refugees to avoid negative coping mechanisms. This is in line with one of WFP's five strategic mandate to "save lives and protect livelihoods in emergencies"<sup>65</sup> which in turn was derived from the human rights treaties discussed in the previous chapter.

In addition to the food basket as enumerated above, the refugees are also given a cooking set for a family of five which includes; two cooking pots, plates, cups, spoons, a knife and a ladle. They are also given charcoal every month to aid them in their cooking. The refugees themselves are more or less supposed to add condiments, vegetables and fruits. But apart from this monthly ration and other provisions, they sometimes receive donations from some organizations and philanthropists.

### **3.3 Other Food Donations**

Some individuals and some faith based organizations make donations to them once a while. Some of these faith based groups include the Catholic Church, the Presbyterian Church among others. They donate items ranging from food stuffs to sachet water. The Ghana Refugee Board as well as the UN Resident Coordinator also makes periodic appeals to Non- Governmental Organizations and philanthropists both in and outside Ghana to come to the aid of the refugees. Just about the time I was carrying out this research, there was a donation of many bags of rice from Brazil for the refugees. Anytime donations are received, there is a standing committee in the camp which decides how to go about the distribution of the items and once an agreement is reached, the National Catholic Secretariat assists them in doing the actual distribution based on the list of beneficiaries provided by UNHCR.

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<sup>65</sup>More information on WFP's response in emergency situations is available at <http://www.wfp.org/stories/how-wfp-responds-disasters-emergency-infographic>. accessed on August 05, 2012

### 3.4 Drinking Water

The camp has access to water both for drinking and for other uses including washing, cooking, bathing among others. There are a number of boreholes to serve their water needs. This is a good development which complies with paragraph 16 of the CESCR in General Comment Number 15 which notes that:

“Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.....”<sup>66</sup>

However, it was initially discovered that the water in the camp had a high content of iron and so Aqua Vitens (a water company in Ghana) was contracted to mechanise the water before it was always distributed. The camp also has mechanised wells provided by Oxfam an NGO. Each quarter, there was a quality water test to see if the water is safe and hygienic. Sachet water is also sold in the camp for them to purchase. Many of the refugees use the water from the boreholes and the mechanised wells for cooking, bathing, washing and the like but preferred to drink the sachet water since they considered the sachet water to be ‘purer’ than the water from the boreholes and wells. Some told me that initially they drank the water from the boreholes and wells but they realised each time the children especially drank the water, they vomited. In view of that each person in the household was given 5 pieces of sachet water by the authorities each day but with time, they were required to buy it themselves.

The pictures below depict the water situation in the camp. The pictures include: a borehole, a sale point for sachet water, an overhead tank for water storage, a tank for treating water before it is distributed etc.

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<sup>66</sup> See note 43, p 33



### 3.5 Food for HIV Patients, Children, Pregnant and Lactating Mothers

Apart from the general feeding arrangement for the refugees in the camp, supplementary feeding is provided for malnourished children, people living with HIV AIDS, mental patients, pregnant women and lactating mothers. The nutrition unit of the camp periodically screens these categories to know their nutrition status. Sometimes they discover that some children were severely malnourished that is; they suffer nutrition deficiency plus other medical conditions like discoloring of the hair, swellings among others. Children from the age of six months to five years were put on protein rich porridge to boost their nutrition status. Lactating mothers were also encouraged to do exclusive breastfeeding till the children were six months old. These steps or developments in the camp fulfils the following provisions: paragraph 10.4 of the Voluntary Guidelines which encourages States to address the specific nutritional needs of people living with HIV/ AIDS or suffering from other epidemics; paragraph 10.10 of the Voluntary Guidelines which entreats States to take steps to promote and protect the nutritional needs of pregnant women and lactating mothers and also Articles 22:1, 24:2 and 27:1 of the Convention on the

Rights of the Child which also encourages States to take appropriate measures to assist children have their right to food and nutrition fulfilled as discussed in the previous chapter.<sup>67</sup>

### **3.6 Meat/ Fish and Fruits**

Meat and fish contain protein which is needed in our diet to help the body repair cells and make new ones. Protein is also important for growth and development during childhood, adolescence, and pregnancy. From eating fruits the body gets vitamins, fibre and other nutrients which enable the body fight certain diseases. However, neither of the above is supplied the refugees. Therefore if they wanted to eat a balanced meal, they were supposed to provide that for themselves. Some therefore sell some of their monthly ration so they can buy fish or meat. Others try to raise some domestic animals particularly fowls so they can kill for meat when they are slightly old. Almost all the refugees indicated that they don't eat fruits since they did not have money to purchase it. For instance when I posed the question to one of the male refugees; are you supplied with fruits? If yes, by whom? If no, do you eat fruits? He responded by saying:

“Where are the fruits? We eat cassava leaves. I like mango very much but since we came I was only able to buy it twice and that is the only fruit I have eaten since we came”.

### **3.7 Sources of Livelihood**

Refugees by the scheme of things do not have a source of livelihood. However, some of the refugees interviewed intimated that because the rations they received was not enough, they have found some ways by which they can make some money in order to buy food to supplement the

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<sup>67</sup> See Voluntary Guidelines 2004 and Convention on the Rights of the Child.

rations they received including buying fish or meat and vegetables. Some of the men work as labourers in farms, the mines among others. Generally, the women engage in petty trading, helping hands in chop bars and restaurants. The refugees with skills are supported by the UNHCR with tools to enable them carry on their work. Some of the people in this category include barbers, hairdressers, tailors and seamstresses among others. Those who don't work engage in some subsistence farming and the main crop they plant is cassava and sometimes tomatoes and pepper. This way, they are able to make some money with which they can buy some of the things they need.

Pictures 4 and 5 below show one of the refugees working as a hair dresser. The other pictures include some of the things on sale by some of the refugees engaged in petty trading in the mini market operated by them in the camp while others sell some of their wares in town and there is also a picture of a cassava farm belonging to one of the refugees and the last picture is a coop where one of the refugees rears chicken which he kills for meat when they are grown.





I would argue that, the refugees taken as a whole form a ‘community’ and so there should be increasing opportunities for them to participate in the realization of their right to food. The memorandum of understanding between the UNHCR and WFP notes that one of their core objectives is to:

“2.3 UNHCR and WFP have a legitimate interest in the creation of suitable conditions for durable solutions. The promotion of self-reliance, although not a durable solution on its own, is one of the essential elements for lasting solutions. The achievement of self-reliance implies a whole range of activities aimed at socio-economic empowerment of refugees and returnees, as part of a local community. Given the need for self-reliance to be featured within a larger context of local development, WFP and UNHCR will make efforts to link self-reliance and reintegration activities to the long-term recovery and development plans of governments and other actors”.<sup>68</sup>

I observed that the UNHCR with its partner WFP are taking steps to help the refugees in activities that are self sustaining including providing tool kits to those who have learnt a vocation or have skills in fulfilment of the above named core objective.

I also observed that the Ghana Refugee Board also appeals to chiefs and land owners and the local population in Ampain to release land for the refugees so they can farm not just for subsistence but even for sale. The Refugee Board also indicated that they are working hard to ensure that those who have professional skills secure permits to work in the country.

What I observed was missing in this arrangement was what plans the actors had for the refugees without skills or those who do not have any vocation in order for them to also acquire some skills or learn any vocation or be assisted in starting a trade or looking for a job to aid them make some income in order that they can be in a position to purchase some of the food items not included in the food basket given to them by WFP.

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<sup>68</sup> Memorandum of Understanding Between The Office of The United Nations High Commissioner For Refugees (UNHCR) and The World Food Programme (WFP), 2002:4

### 3.8 The Survey

Interviews and Focus Group Discussions were the two data collection methods I used during the survey with the sampling techniques being; simple random sampling and purposive sampling. I noted in the introduction to this research that, I employed simple random sampling in order to randomly select the respondents so that their views could represent the views of the majority. This is because the population universe as I observed it was quite 'homogeneous'. I also used purposive sampling as an attempt to deliberately target respondents whose responses as envisaged will contribute directly to answering my research questions. This is as a result of their knowledge and involvement with issues relating to refugees. The interview section was in two parts; one with officials at the various institutions that were responsible for the refugees who were purposively selected and the other with refugees at the camp who were randomly selected.

The interviews with the UNHCR, WFP, Ghana Refugee Board and the Ministry for Foreign Affairs offered me the opportunity to have a one on one personal interaction with the officials where I posed a number of questions to them, some of which include; what role does your organization play in fulfilling the right to food of refugees at the Ampain refugee camp?, Can refugees claim a right to food? If yes, against whom?, Is the right to food of refugees likely to be violated in Ghana considering the fact that Ghana is a developing country?, Can refugees sue when this right is violated? What can be done to improve the food and nutrition rights of refugees in Ghana?, among other questions. The responses to these questions have been summarised and presented in the sub section of this chapter titled "Food Arrangements at the Ampain Refugee Camp", whereas some of the responses have been analysed in the discussion section while some have also found expression in the recommendation section of the next chapter. The interview section with the refugees was also on a one on one basis. In attendance was the nutritionist in the camp who acted as my interpreter especially when I spoke to the refugees who did not have any knowledge at all in terms of speaking or understanding the English Language. (About ninety percent of my respondents in the camp could not speak or understand English.) This section was conducted with the use of an interview guide which sought to find out whether the three key elements of adequacy, accessibility and cultural

acceptability were being adhered to. (Find attached the interview guide on the last page as appendix.) The Focus Group Discussions also offered the opportunity for me to interact with some of the refugees who were randomly selected as a group. In all, there were three focus groups of men, women and children with each group having seven members each. I posed the same questions contained in the interview guide to them in an interactive manner where the participants freely expressed themselves on the questions I posed to them. But with the children's group, I asked just about three questions to ascertain how many times they ate in a day and whether they were satisfied anytime they ate of which all of them informed me they were not satisfied and that they eat only twice a day. The children in the group were aged between eight and twelve.

### **3.8.1 Summary of Results of the Survey**

All the refugees in the survey have lived in the camp for at least a year. And all of them indicated to me that they were there with their families. As such they always eat as a family and not as individuals.

The survey showed that, averagely the refugees ate twice a day as a way of ensuring that their monthly ration is able to last till they received the next one. However, all the refugees in the survey noted that, the monthly ration is only able to last them 21 days. Also, even though supplementary feeding is given to children, these food stuffs are given to their parents to cook for them and the parents regulate strictly how much the children eat because they feared the food will finish in time before they got the next supply. Again, some parents sold some of the rations that were given to them meant for the children. And so all the children of the survey complained that they were most of the time not satisfied when they eat.

Again, all the refugees in the survey noted that the food they are supplied with are food stuffs that are culturally accepted to them and hence don't have any difficulty in eating the food they are supplied. They cited only one instance when they were supplied with maize which they said was not a food stuff that they were culturally used to so they rejected it.

All except two of the refugees in the survey indicated that they never ate fruits since they came to the camp not because they don't like fruits but because they are not supplied with fruits and also because they did not have money to buy them.

All the refugees also indicated that they had access to water for cooking, bathing, washing and the like which they got from the bore holes and mechanised wells. However to some of them, when it comes to drinking water they prefer sachet water to the mechanised wells and bore holes since they consider the sachet water to be purer.

When asked if they thought their right to food was being violated, they answered in the affirmative. Again when asked if they would consider going to court to claim this right, all the refugees in the survey responded in the negative. They noted that they will rather embark on a peaceful protest than go to court. Again, I observed from their responses that they did not know who to claim this right from (duty bearer.)

When asked what recommendations they will make to authorities regarding their right to food, all the refugees in the survey recommended that there should be an increment in the quantity of their monthly rations and also additional food stuffs be added to the food basket including fish or meat, vegetables and fruits. Some were of the view that even if it is not added regularly to the monthly ration, it could be done every two or three months so they could also feel that they are 'humans with a sense of dignity'. Some noted that but for the fact that they became refugees; they always had the chance to choose what they will eat. They did not wait to be fed literally but they worked to buy and cook whatever food they felt like eating.

### **3.9 Discussion of Findings**

#### **3.9.1 Adequacy, Accessibility and Cultural Acceptability of Food**

During the period of the field work, I tried to observe and to infer from the responses given to see whether these three key elements of accessibility, adequacy and cultural acceptability as

regards the right to food of the refugees was present or being complied with. As noted earlier, accessibility means that people must have both physical and economic access to food, whereas adequacy means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex among others and cultural acceptability is where the food is considered as good and safe to eat by the people or the community in which they belong without violating any 'taboo' when eaten. The observations and inferences are therefore presented below:

With the issue of accessibility, it was observed that the refugees have some physical access to food with the supply of their regular monthly ration by WFP. Again, there was also food stuffs sold in the mini market operated in the camp by some of the refugees and food stuffs sold in some of the markets in the town where some of the refugees go to sell some of the monthly rations to buy other food stuffs not in the food basket. Many of the refugees who are engaged in subsistence farming or gardening in the camp also have access to their harvest which supplements their monthly ration. But when it comes to economic access, I must say that because most of the refugees do not have a source of livelihood, it is difficult for them to buy food stuffs like fish, meat, vegetables. Therefore, one would say that even though there is physical access, economic access is a challenge simply because they do not have the money to buy the food stuffs that are not in the food basket.

With regards to adequacy, the quality of the food is good and supplementary food and care is given to the sick, pregnant women, lactating mothers and children but the quantity is inadequate. From the survey, generally the refugees eat twice a day that is breakfast and supper yet the food basket is only able to last for 21 days. Unfortunately however, the monthly ration has been reduced from March, 2012, making their food basket last for only fourteen days according to them and confirmed by the nutritionist in the camp. For instance the twelve kg rice given them previously has been reduced to nine kg. In the words of the nutritionist in the camp:

“The quality of the food given to them is good but the quantity is woefully inadequate and so during times of food distribution, they are very aggressive prepared to save even a grain of food. The food basket is also too small”. He added further that “for a camp that is less

than two years old and rations have gone down, there is trouble looming because it will have a rippling effect where the refugees will start using their survival instincts and only God knows what they will start doing to survive”.

When it comes to cultural acceptability, the food they are served with is generally acceptable. But mention must be made of the fact that, initially they were served with maize or corn as part of the food basket which they fiercely resisted because it was not a food crop they were used to. The authorities did not first find out before serving them with this food which is one of the main food crops in Ghana and was less expensive as compared to rice. The authorities set up a corn milling machine in the camp which was supposed to aid the refugees grind the maize which they can use for food but the milling machine has become a ‘white elephant’ because the authorities realised later that maize was not culturally acceptable to the refugees. This refusal can be deemed as justified under international law (cultural acceptability) but at the same time the authorities were giving to them what was readily available and cost effective (available resources claim).

Other observations that were made during the survey included the following; many of the young ladies in the camp got pregnant because they thought that was a means through which they will get more food because of the supplementary feeding that was given to pregnant women. One of the ladies interviewed said:

“I am not legally married but I decided to get pregnant because I know I will be given more food as a pregnant woman and when I give birth too, I will be given more food”.

This situation is indicative of the fact that the food they receive is not adequate, hence some of the ladies have found getting pregnant as a coping mechanism so they can get more food ration. This situation can be deemed as defeating one of the objectives of the WFP which is providing food assistance to ensure household food security of the refugees to avoid negative coping mechanisms.

Figure 1 the researcher with one of the pregnant ladies after an interview section.



It also came to light that food security in the camp was a challenge when it rains. This is because they do not have storage houses or materials to store their food stuffs and so anytime it rained, because they lived in tents, their food stuffs got destroyed further worsening their plight when it comes to food quantity. This means that accessibility may also include storage facilities. Some of the refugees told me that there were occasions when they lost all the food they had due to heavy rainfall.

Below are some pictures of the researcher with some of the children in the camp.



With the above findings as evidenced from the survey, can one infer or simply draw the conclusion that, being in a developing country limits refugees claim to the right to food against the State or against the agents of the international community as the case may be? I explore this question further in the following paragraphs.

### **3.9.2 Being Refugee in a Developing Country and Claims to Right to Food**

Can a state give something it does not have? We find in this survey that Ghana as a country itself has a large number of its people living in poverty and are hungry. So the question is whether refugees can make claims against such a country when their right to food is violated also, when the ICESCR notes that such a right is to be protected with “available resources”.

We have seen in the survey and the literature review that UNHCR with its partner WFP is challenged hence unable to fully meet the food needs of refugees because they rely on donors who are not very ‘reliable’ all the time. This has been evidenced in this survey where the monthly food rations of the refugees have been cut down barely two years after they were admitted into the camp. This development is unhealthy and can be as observed a catalyst for negative coping mechanism by the refugees. But is it the same with refugees in other parts of the world for example refugees in Europe?

There is information to the fact that there are differences in treatment when it comes to feeding or the food rights of refugees in Africa as compared to refugees in for instance Europe. Whereas the standards of feeding and the general nutrition rights of refugees in Europe is high, the opposite or near opposite is what pertains in Africa with a number of ‘justifiable’ reasons provided for the differentials in treatment. In 1999, a Los Angeles Times story by Miller and Simmons reported in a story titled “Relief Camps for Africans, Kosovars Worlds Apart” where they make mention of differences between refugee camps in Europe and Africa. The report noted that:

“The Office of the U.N. High Commissioner for Refugees is spending about 11 cents a day per refugee in Africa. In the Balkans, the figure is \$1.23, more than 11 times greater.....”<sup>69</sup>

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<sup>69</sup> Miller and Simmons 1999 as cited by Kent, George, Freedom from Want: the human right to adequate food, Georgetown University Press, Washington, DC., 2005:202



The report notes further when it comes to food supplies that:

“World Food Program officials say both European and African refugees are getting about 2,100 calories a day of food rations. But for the Kosovo Albanians, those calories come in the form of tins of chicken pate, foil-wrapped cheeses, fresh oranges and milk. In some ready-made meals, there is even coffee and fruit tarts...That contrasts with Africa where refugees are far less likely to get ready-made meals and have to make most of their food from scratch- a practice reflecting the simpler lifestyles of the area, say U.N. officials. Instead of meals, the refugees are given basic grains such as sorghum or wheat”.

As I alluded to earlier, when making such comparisons between conditions of refugees in Africa and refugees in other continents like Europe, there would be some explanations or ‘justifications’ for the differential treatments. For instance, some may say that the differential treatment may be as a result of an attempt to maintain the refugees’ prior living standards, whereas others would say that most of the donations come from the developed countries and hence if there are humanitarian crises in any of the developed countries, they should benefit most. We also remember the official at the UNHCR in Ghana who suggested that conditions inside the camp shouldn’t be above the levels on the outside. Mears and Young (1998) have enumerated a number of reasons why there are gaps in supply of rations which they deem as context-specific. Some of the reasons or causes are grouped as follows:

- “Restricted access to the affected population for reasons of remote locations, insufficient infrastructure (roads, transport networks, etc), seasonal closures, and possible insecurity.
- Lack of resources and variable donor commitments
- Disagreement over accuracy of beneficiary numbers linked with registration.
- Erratic distribution system.
- Erratic monitoring of distribution and complaints.”<sup>70</sup>

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<sup>70</sup> Mears and Young (1998) as cited by Kent, George, *Freedom from Want: the human right to adequate food*, Georgetown University Press, Washington, DC., 2005:205

Some of the above named general causes or reasons for gaps in the supply rations were manifest in this research. The Ampain refugee camp is located just about 200 metres from the main Elubo- Takoradi road making the camp very conspicuous and so when it comes to access to the camp, there is no challenge. However, I made it clear earlier that the Ghana Refugee Board, the UNHCR and WFP lacked adequate resources to effectively take care of the food needs of the refugees coupled with the fact that their donors are few or in other words not very reliable. When it comes to the registration or the beneficiary numbers, there is almost an absence of disagreement as periodic reviews are done to know the exact number of refugees in the camp. They have refugee certificates with their pictures embossed on them and they also have ration cards. When it comes to the distribution system, I observed that it is erratic. This was confirmed by officials interviewed in the course of the survey. For instance an official at the Ghana Refugee Board told me that in April 2012, WFP almost nearly could not supply the monthly ration because there was shortage of food supplies.

And this is what I seek to ask, whether the conditions of refugees when it comes to food and nutrition be ‘significantly’ lesser than that which they were used to just by virtue of the fact that they are refugees? More challenging is the fact they find themselves in a country which still has about 18 percent of its population living below the poverty line which suggests that they can’t really complain much because like in the words of the official at the UNHCR:

“The standards of the refugees should not exceed what prevails generally in the country”.

This means that it is possible that the amount of food consumed by the refugees can or may actually fall below the actual daily intake of minimum calories to be taken. When this happens or when the right to food of the refugees is violated, what should they do? Will the courts help since the Refugee Convention recognizes the right of refugees to have access to courts? Is that the way to go when your right is violated as a refugee? Who will actually be sued as the duty bearer or the respondent to the suit if any, is it the State or the International Community?

These are questions that are not easily addressed especially as I indicated in the literature review because the Conventions don’t state very emphatically who should see to it that refugees’ right to food is respected, protected and fulfilled and who should be ‘punished’ if a violation occurs. The

wording of the conventions and protocols lacks ‘instrumental’ verbs to make them easy to enforce. For instance the ICESCR in talking about right to food in Article 11 uses words like “recognize” whereas the preamble to the Convention Relating to the Status of Refugees in its Preamble (C) Welfare Service under paragraph 2 uses a word like “facilitate” and a phrase like “states undertake to cooperate”. Rehman 2010 in comparing the wording of the ICCPR and ICESCR notes that:

“Whereas the ICCPR relies on an authoritative terminology such as ‘everyone has the right’, ‘no one shall be’, and has provided definitive rights, the ICESCR relies on imprecise terminology; usage of such terms as ‘recognition’ arguably makes it difficult to regard them as legally enforceable rights”.<sup>71</sup>

However, the question must still be asked whether refugees can sue when their right to food is violated?

### **3.9.3 Can Refugees sue when their Right to Food is violated?**

All the refugees interviewed said it will not be ‘right’ for them to sue even when their right to food is grossly violated. For them, having a place to sleep alone shows that the government is accommodating and would have ensured that they were properly fed all the time if it had the means. They noted that the only way they could sue was to complain to the authorities or engage in a peaceful protest. When the researcher asked the Deputy Minister for Foreign Affairs if the refugees could sue when their right to food was violated, he responded by saying that:

“They are not to be legalistic because strictly speaking they cannot claim those rights against the State”.

This position was also reiterated by an official at the Ghana Refugee Board who said:

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<sup>71</sup> Javaid Rehman, International Human Rights Law, Pearson Education Limited, 2010:143 (2<sup>nd</sup> edition)

“The refugees cannot necessarily claim a right to food against the state especially because the country is a developing one”.

But he also added that:

“Once the country has signed the protocols, it is bound one way or the other to ensure that the refugees are well catered for in spite of the country’s problems”.

It must be added also that, when it comes to Economic, Social and Cultural Rights say for instance the right to food, it is not just about when a State ratifies a protocol then that state can be sued when it fails one way or the other to fulfil such a right. That is to say that when protocols are ratified, one way or the other, they find expression in domestic legislations, constitutions, among others and this makes it a bit easier to hold duty bearers legally accountable to it by their citizens when violations occur. Ghana could at most be ‘sentenced’ for not having a law or policy in place.

However, it has been observed that many states do not have provisions on the right to food in their constitutions or legislations making it difficult to claim such a right even though Olivier De Schutter the United Nations Special Rapporteur on the Right to Food has noted that in recent times a number of States are taking steps to include the right to food in their Constitutions. For instance he cites countries like South Africa, Ecuador that included the right to food in their constitutions in 1996 and 2008 respectively whereas Guatemala and Brazil for instance have also adopted a framework law on the right to food in 2005 and 2006 respectively.<sup>72</sup> Such initiatives it is believed will act as a booster to individuals to go to court to make claims when their right to food is violated.<sup>73</sup>

In addition, with more specific reference to refugees, one cannot say that it will be easy to go to court to claim the right to food and even more against the state as evidenced first of all by the

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<sup>72</sup> De Schutter, O. (2010) Countries Tackling Hunger with a Right to Food Approach available at [http://www2.ohchr.org/english/issues/food/docs/Briefing\\_Note\\_01\\_May\\_2010\\_EN.pdf](http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_01_May_2010_EN.pdf)- accessed on February 18, 2013.

<sup>73</sup> Ibid

response from the refugees interviewed in this research that they will never consider going to court even if their right to food is grossly violated. I mentioned earlier that the Refugee Convention recognises the rights of refugees to go to court.<sup>74</sup> But it does not mention that they can claim a right to food in Court. Note also that the Committee on Economic, Social and Cultural Rights which by far has interpreted to a very large extent the content, obligations among others of the right to food but has not specifically or categorically stated that refugees can claim the right to food against the State. The committee's comments are not 'legally binding' and are more normative or moral than legal. The committee 'cannot' in the strictest sense punish any State when the right to food is violated. At most, it can criticize Ghana in the form of a 'view', i.e., so-called 'naming and shaming'. A critical look at for instance paragraph 38 of the Committee's General Comment 12 can confirm this fact.

“38. States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task in accordance with its ability. The role of the World Food Programme (WFP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), and increasingly that of UNICEF and FAO is of particular importance in this respect and should be strengthened. Priority in food aid should be given to the most vulnerable populations”.

The Committee is reiterating the “available resources principle” in the above paragraph which does not bind States in any way to be held responsible for violations that may arise as far the right to food of the refugees and internally displaced persons are concerned. At most, the Committee's comments can be described as ‘soft’ law but cannot be legally enforceable. They will not be easy to claim in domestic courts. Curtis (2007) is of the view that there are no firm legal bases or statutes upon which the right to food can be claimed making litigation difficult.<sup>75</sup> But even moving away from domestic courts, the Optional Protocol to the ICESCR makes

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<sup>74</sup> Article 16 (1) and (2) of the 1951 Convention Relating to the Status of Refugees.

<sup>75</sup> Curtis, C. 2007. The Right to Food as a Justiciable Right: Challenges and Strategies. Max Planck Yearbook of United Nations Law, Volume 11, Koninklijke Brill N.V. Printed in The Netherlands

provision for an individual or group complaints mechanism but the individual must have exhausted all domestic remedies.<sup>76</sup> Can one exhaust domestic remedies when a particular state has not included the right to food in their constitutions or passed legislations which deal with the right to food? What about the fact that many States have not yet ratified the optional protocol including Ghana and those complaints cannot or may not be brought against such states?<sup>77</sup> Suffice to answer in the negative because, one ‘cannot’ claim what is not in the Constitution whatever form that constitution maybe whether written or unwritten and if that claim is not backed by any act of parliament or judicial decision or any other recognized act or convention and an action ‘cannot’ be brought against a state in respect of a particular protocol when that state has not ratified the said protocol.

### **3.10 Chapter Conclusion**

The right to food of the refugees at the Ampain refugee camp in Ghana was likely to be violated because the food they were given by way of monthly ration was not sufficient. This is attributable to the fact that WFP the organization responsible for feeding them is facing serious challenges for which reason it has cut down on the monthly rations to the refugees in this camp and as at July 2012 when this research was being conducted, WFP had only food stuffs that could feed the refugees up to September 2012 according to the Ghana Refugee Board. Moreover, the government of Ghana apart from making sure they are housed in a refugee camp and providing security for them and also making appeals to organizations and philanthropists to come to the aid of the refugees, does not by itself help them with any form of aid as far as food stuffs are concerned primarily because it faces economic challenges and also because of fears of being accused of unduly favoring refugees at the expense of the local poor. Analysis of

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<sup>76</sup> United Nations (2008), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on December 10, 2008 by GA Res. 63/117.

<sup>77</sup> Ibid.

international law and the literature reviewed coupled with the findings from the field also show that refugees cannot ‘sue’ in the strict legal sense because the rights in question aren’t formulated sufficiently precise, even if the same rights provide refugees with moral clout. The refugee situation in Ghana therefore suggests that, the poorer a country’s economic condition, the lesser the likelihood of refugees to claim a right to food against that State which according to international law is the first and foremost duty bearer, since protocols are ratified by States. In other words, the poorer a country’s economic condition, the greater the chance that refugees’ right to food will be violated and the better a country’s economic condition, the greater the chance that refugee’s right to food will be fulfilled but not necessarily a greater chance of the refugees being able to sue for legal remedies in case of violations.

## **4 SUMMARY, CONCLUSION AND RECOMMENDATIONS**

### **4.1 Chapter Introduction**

This chapter presents a summary of this research followed by conclusion. In addition, a number of recommendations have been made which it is hoped will add to the on-going debate about the right to food. These recommendations are both general and specific. That is to say that they may be applied in a wide sense to the state to improve upon the food security and food needs of citizens but also some of the recommendations targets refugees more specifically since they are the subject of this research.

### **4.2 Summary of Study**

This research is titled “The Right to Food of Refugees in Ghana: A Case Study of the Ampain Refugee Camp in Ghana”. This research was motivated by the fact that the right to food being an economic, social and cultural right suffers the ‘justiciability’ challenge and so the research was interested in finding out how this right of refugees at the Ampain refugee camp in Ghana was being fulfilled. This is against the backdrop that refugees do not have a source of livelihood by the scheme of things when they became refugees and again, the country in which they have sought refuge (Ghana) is a developing one.



The research was also interested in finding out which actors had the legal obligation to fulfill this right of refugees and also whether refugees could sue when this right is violated and whom the suit can be brought against. The main moral question the research was seeking to find an answer to is whether the right to food of refugees is likely to be violated by virtue of the fact that the host country is a developing one. In other words, the study finds out whether there is a relationship between the developmental status of a receiving State and the fulfilment of refugees right to food. It is proposed that, the better the economic condition of the host country, the likely it is that refugees right to food can be realised and vice versa. This explores the relation between two variables, country economic condition and refugees' right to food.

The data collection methods used included; interviews and focused group discussions whereas the sampling techniques adopted included simple random sampling and purposive sampling. The data was analysed using empirical and legal analysis ie I compared the actual situation with the letter of international law.

From this research a number of issues or findings that have been made are in support of the already prevailing challenges as glared from the literature. Some of these include; the right to food of refugees in a developing country is more likely to be violated than in a developed country. Put in another way it is much easier to claim the right to food in a developed country than in a developing one. It is also not clear, who has the legal obligation to fulfil the right to food of refugees and so by extension it is difficult if not impossible for refugees to sue when this right is violated.

### **4.3 Study Conclusion**

Refugees like all other citizens have the right to food and this right is to be respected, protected and fulfilled. They can claim this right when certain measures are put in place by the

international community and states. What is not clear at present is who this claim of right to food of refugees can be made against (duty bearer).

By the scheme of things, refugees do not have a source of livelihood and so this makes their situation and condition especially when it comes to feeding precarious if host states and the international community do not come to their aid and put pragmatic measures in place to address their food and nutrition needs. Currently, refugees depend on food aid coming from UNHCR through its partner WFP. However these bodies also depend on donor support and funding which has become unreliable over the years.

When refugees' right to food is being protected and fulfilled, the 'duty bearers' must bear in mind the dignity of the refugees. The refugees should be made to have a stake when decisions are being taken on their behalf especially when it comes to the right to food. They should have some choice on what they want to eat and what they do not want to eat. They should be supported to engage in self-sustaining activities whereby they can take charge of their own affairs when it comes to food.

The right to food as it is now and for that matter the right to food of refugees largely remains a "work in progress" until such a time when very concrete and proactive measures are put in place to address the food needs of refugees. There must be clear a provision on what this right really is (content) without prejudice to the CESCR's definition of what the core content of this right is and who the actual duty bearer is. This research concludes that the right to food of refugees is likely to be violated in a developing country. However, it must be added that the violation may not be due to the unwillingness of the State to respect, protect and fulfil this right but its inability to do so owing to economic conditions and the prevailing general living conditions that exists in such a state.<sup>78</sup> It is worth mentioning as noted earlier in this research that, the living conditions of refugees in a particular state should not exceed that of the citizens of that state. That is to say that, the condition of refugees must be improved however, authorities should be mindful of general local conditions.

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<sup>78</sup> See CESCR in General Comment Number 12

## 4.4 Recommendations

First, I would also like to add my voice to the already raging debate that a rights- based approach should be adopted to tackle the problem of hunger and challenges regarding refugees' right to food and right to food in general. The objective of a rights- based approach to solving refugee crises is not necessarily to demand that more resources be provided but also ensuring that the resources that are available are used efficiently and effectively to address the needs of refugees.<sup>79</sup>

Again, regional countries and the international community should make more conscious efforts to support countries hosting refugees both in cash and in kind so the refugees don't become too much of a burden on the host state especially when it is a developing country.

Also, there should be consistent and conscious efforts at encouraging refugee repatriation when there is enough reason to believe that peace has been restored and refugees can start life over again with some support from the international community and donors when they return to their countries of origin.

Also worth considering, are legislations on naturalization to recognize refugees so they can be integrated into the larger society and pursue their food needs as well as other needs without inhibitions.

More also, civil society, the media and other 'whistle blowers' should be encouraged to commit more resources to reporting and bringing to the fore issues regarding refugees so the world would be constantly reminded of the condition of refugees. This may even play into the minds and psyche of people to be careful not to do things that may serve as a catalyst to make people become refugees. All these would help improve the right to food situation of refugees.

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<sup>79</sup> Kent, G. (2000), The Nutrition Rights of Refugees (draft)

There should also be a consistent and conscious attempt to encourage, lobby and appeal to many more donors and international non- governmental organizations to come to the aid of refugees. Here transnational corporations can be well targeted to play an active role in the feeding of refugees. Indeed transnational corporations do have a role to play. This I indicated earlier that transnational corporations have the resources to support in this regard. This they can do by committing regularly part of their profits to refugees as part of their corporate social responsibility programmes.

Refugees or their representatives must also be involved in all stake holder decisions that affect them. Their involvement will aid them better articulate their grievances and will also make the authorities better appreciate and take more concrete and long lasting steps to address their needs.

Host countries should also take steps to offer land to refugees to go into both subsistence and commercial farming which is a direct way of them having access to food when the crops mature and therefore they will not always have to wait for their 'meagre' monthly rations which keep dwindling. Some of these produce can also be sold so they can get the needed funds to purchase their needs.

Many more host states should also enact legislations on the right to food. By so doing they will be legally bound to take steps to improve the conditions of citizens and by extension to refugees living in their jurisdictions.

There should also be the possibility of refugees to go to court to demand or make claims to their right to food. However, this will happen when it is clearly spelt out who is to protect this right. Olivier De Schutter, the erstwhile Special Rapporteur on the Right to Food notes that:

“The right to food will only be truly realized where victims have access to an independent judiciary or other complains mechanisms to complain about violations”.<sup>80</sup>

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<sup>80</sup> De Schutter, O. (2010) Countries Tackling Hunger with a Right to Food Approach, available at [http://www2.ohchr.org/english/issues/food/docs/Briefing\\_Note\\_01\\_May\\_2010\\_EN.pdf](http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_01_May_2010_EN.pdf)- accessed on February 18, 2013.

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## APPENDIX

### NORWEGIAN CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF OSLO

#### INTERVIEW GUIDE

##### SECTION A

1. Sex
2. Age
3. Country of Origin
4. Marital Status
5. Educational Level
6. Occupation
7. Position (if any)

##### SECTION B (applies to the refugees)

1. When did you come to the camp (How long have you been living in the camp?)
2. Why did you come to the camp?
3. Are you here with your family or you are here alone?
4. How many are you in the family here (if any)
5. Do you eat three square meals a day?
6. If no, how many times do you eat in a day?
7. Do you eat as a family or individually?
8. Who supplies you with food? (UNHCR, Government or Yourself)
9. Are you supplied with food items or cooked food?
10. Are you supplied with fruits? If yes, by who? If no, do you eat fruits?
11. Are you satisfied with the food you get?
12. Do you enjoy the food you eat?
13. Where do you get drinking water from?
14. Is it clean, safe and enough to drink?



15. Do you have water shortage? If yes, what do you do?
16. Do you have food shortage? If yes, what do you do? Or do you complain and to who?
17. Do you get prompt responses when you complain?
18. Do you think your right to food is being violated as political refugees?
19. Who do you think should be responsible for your needs as refugees (Host Country, UNHCR, or other Multinational Corporations)
20. What recommendations will you make to the authorities in charge of refugees?
21. Will you consider going to court to claim your right to food?

SECTION C (applies to authorities in charge of the refugees)

1. What responsibility does your organization have towards the refugees at Ampain Refugee Camp?
2. Can refugees claim a right to food?
3. If yes, against whom?
4. Is this right likely to be violated especially in a developing Country?
5. Can refugees sue when this right is violated?
6. What can be done to improve the lot of refugees especially when it comes to their right to food?