

Review

## **The Right to Food for Refugees: What the Law Says and What Needs to Change**

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**Abstract:** Every person, regardless of where they were born or what country they live in, has the right to food. This is not a new idea; it has been written into international law for decades. Yet for millions of refugees living in camps like Kakuma in Kenya, this right remains out of reach. This paper looks at the laws that protect refugees' right to food, how those laws apply in Kenya, and why there is still a big gap between what the law promises and what refugees actually experience. It also offers clear, practical recommendations to United Nations agencies on how to close this gap and make the right to food a lived reality for all refugees.

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### **1. Introduction: Why Food Rights Matter for Refugees**

When people flee war, violence, or persecution, they often leave behind everything they own, their homes, their jobs, their farms, and their food sources. They arrive in new countries with nothing, entirely dependent on assistance. One of the most basic needs they have is food. Without it, nothing else matters: not education, not healthcare, not the chance to rebuild a life.

Food is not a gift that governments or aid organizations choose to give. It is a legal right that is recognized in some of the most important international agreements ever written. Despite this, food insecurity among refugees remains a serious and growing problem. In Kakuma and Kalobeyei in northern Kenya, refugees have faced severe cuts to food assistance in recent years, sparking protests and raising urgent questions about accountability.

This paper examines the legal foundations of the right to food, how those laws apply to refugees in Kenya, and what practical steps United Nations agencies and the Kenyan government should take to uphold those rights.

## **2. The Right to Food in International Law**

The right to food is one of the oldest and most widely agreed-upon human rights. It is found in treaties, declarations, and guidelines adopted by countries all over the world. Here is a plain-language overview of the most important ones.

### **2.1 The Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights was agreed upon right after the Second World War, when the world was determined to never again let human suffering go unchecked. Article 25 states clearly:

*"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."*

This declaration applies to every human being, not just citizens. Refugees are fully covered.

### **2.2 The International Covenant on Economic, Social and Cultural Rights (1966)**

This treaty goes even further. Article 11 recognizes two things: first, that everyone has the right to adequate food as part of a decent standard of living; and second, even more strongly, that everyone has a fundamental right to be free from hunger. Being free from hunger is not the same as simply having access to food. It means that no one should ever go without the basic calories they need to survive. This is the floor, the absolute minimum that any government or humanitarian organization must ensure.

### **2.3 The Convention on the Rights of the Child (1989)**

Children are especially vulnerable in refugee situations. Article 24 of this convention requires governments and responsible actors to actively fight disease and malnutrition among children by making sure they have access to nutritious food. When refugee children in Kakuma go without meals, this convention is being violated.

### **2.4 The Convention on the Elimination of Discrimination Against Women (1979)**

Refugee women, particularly those who are pregnant or breastfeeding, have specific nutritional needs. Article 12 of this convention guarantees women's access to adequate nutrition during pregnancy and after birth. Food cuts that ignore these needs put mothers and newborns at serious risk.

## 2.5 The Convention on the Rights of Persons with Disabilities (2006)

Articles 25 and 28 recognize that people with disabilities have the right to food security on an equal basis with others. Refugees with disabilities are often among the most food-insecure and must be specifically considered in food assistance programs.

## 2.6 Regional Laws: Africa and the Americas

The African Charter on Human and Peoples' Rights protects the right to life and development rights that cannot be meaningfully exercised without access to food. The Protocol of San Salvador, applicable in the Americas, goes even further by explicitly naming food as a standalone right under Article 12.

## 2.7 UN Tools for Implementing the Right to Food

### The UN Special Rapporteur on the Right to Food

Established in 2000, this independent UN expert monitors how countries around the world are living up to their food rights obligations. The Special Rapporteur investigates violations, publishes reports, and advises governments and UN agencies. Their work is a key accountability tool.

### Voluntary Guidelines on the Right to Food (2004)

Adopted by the Food and Agriculture Organization (FAO), these guidelines give governments practical, step-by-step guidance on how to implement the right to food in their national laws and policies.

### UN Declaration on the Rights of Peasants (2018)

Article 15 of this declaration specifically protects the right of small-scale farmers and food producers to adequate food and nutrition, recognizing that food sovereignty and food production are inseparable from food security.

## 3. What the Right to Food Actually Means: Four Key Elements

International law breaks the right to food down into four core elements. Understanding these is important when assessing whether food assistance programs, including those in Kakuma, are truly meeting their obligations.

Element	What It Means
Availability	There must be enough food for everyone. Either people can grow or buy their own food, or it must be provided to them.
Accessibility	Food must be physically reachable and affordable. People who cannot reach food because of

	distance, disability, or poverty are being denied this right.
<b>Adequacy</b>	Food must be nutritionally sufficient and culturally appropriate. A diet that keeps people alive but leaves them malnourished or that violates their cultural or religious values does not meet this standard.
<b>Sustainability</b>	Food security must be long-term. People should not live in constant fear of the next food cut or the next crisis.

Applying these four elements to the refugee context in Kenya reveals serious shortcomings. Refugees in Kakuma face insufficient food rations (availability), restricted movement that limits market access (accessibility), monotonous and nutritionally incomplete rations (adequacy), and ongoing uncertainty about future assistance (sustainability).

#### 4. What Governments Must Do: Three Levels of Obligation

International law places three levels of obligation on governments and, by extension, on bodies like the UN acting within their territory.

<b>Obligation</b>	<b>What It Requires</b>
<b>1. Respect</b>	Do not take actions that make people's food situation worse. Do not destroy food sources, restrict markets, or cut assistance without justification and due process.
<b>2. Protect</b>	Stop other actors, companies, armed groups, or other entities from interfering with people's right to food.
<b>3. Fulfill</b>	Take active steps to ensure people have enough food. This includes funding programs, removing barriers to food access, and providing direct assistance when needed.

Cutting food rations without prior consultation, without transparent justification, and without alternative support mechanisms violates all three levels of obligation simultaneously.

## **5. The Right to Food for Refugees in Kenya: Legal Framework**

### **5.1 Kenya's Refugees Act (2021)**

Kenya's Refugees Act of 2021 replaced the 2006 law and significantly expanded the rights of refugees on Kenyan soil. While food is not listed as a standalone section, several provisions directly relate to the conditions needed for food security:

- Section 23 guarantees refugees the right to healthcare, which is inseparable from nutritional health.
- Section 24 gives refugees the right to work and engage in trade, which is essential for economic access to food.
- Section 25 recognizes freedom of movement critical for accessing markets and food sources.
- Section 26 provides for the right to own property, enabling small-scale food production and economic stability.

### **5.2 Kenya's Constitution (2010)**

Kenya's Constitution is one of the most progressive in Africa. Article 43 explicitly lists the right to adequate food as a constitutional right for everyone in Kenya. Because Article 21 states that constitutional rights apply to all persons, not just citizens, refugees are legally entitled to food security under Kenyan constitutional law.

Additionally, Article 2(5) incorporates international treaties ratified by Kenya directly into domestic law. Since Kenya has ratified the key international food rights instruments, those protections carry the force of Kenyan law.

### **5.3 The 1951 Refugee Convention and 1967 Protocol**

Kenya ratified both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. These are the two most fundamental international agreements on refugee protection. Article 23 of the 1951 Convention specifically requires that refugees lawfully staying in a country receive the same treatment as nationals when it comes to public relief and assistance, including food aid.

### **5.4 The 1969 OAU Refugee Convention**

Kenya is also a party to the Organization of African Unity's 1969 Convention on Refugee Problems in Africa. This convention uses a broader definition of who qualifies as a refugee, including people fleeing generalized violence and civil disorder, not just individual persecution. It reinforces the principle that African states must share the responsibility of hosting and supporting refugees.

### **5.5 Other Applicable International Instruments**

Several other treaties ratified by Kenya add further layers of protection for refugees' food rights:

- The International Covenant on Civil and Political Rights (ICCPR) protects the right to life (Article 6), a right that cannot be separated from access to food.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly guarantees the right to adequate food (Article 11) and the highest attainable standard of health (Article 12).
- The Convention on the Rights of the Child (CRC) provides special food and health protections for refugee children (Articles 22 and 24).
- The African Charter on Human and Peoples' Rights protects the right to life, dignity, and development, all of which require food security.

### **6. The Reality on the Ground: Challenges in Kakuma and Kenya**

Despite this impressive body of law, refugees in Kenya, particularly in Kakuma and the Kalobeyei Settlement, continue to struggle with food insecurity. The gap between legal promise and lived reality is large and deeply troubling. Below are the main challenges.

#### **6.1 Severe Cuts to Food Assistance**

In recent years, the World Food Programme (WFP) has significantly reduced food rations in Kakuma. At times, refugees have received as little as 40–60% of their recommended daily caloric intake. These cuts are driven largely by funding shortfalls, but they represent a direct failure to meet the legal standard of adequate food.

#### **6.2 The Encampment Policy**

Kenya's policy of confining refugees to designated camps severely limits their ability to find food through work or trade. While the 2021 Refugees Act formally recognizes freedom of movement, in practice, refugees face significant restrictions. This contradicts Article 26 of the 1951 Convention and undermines refugees' ability to support themselves economically.

#### **6.3 Limited Access to Livelihoods**

Despite the legal right to work, refugees in Kenya historically faced major barriers to formal employment. Without income, they cannot purchase food when rations are insufficient. Economic access to food, one of the four core elements of the right to food, is severely compromised.

#### **6.4 Differentiated Assistance Systems**

New categorization systems that assign different levels of assistance to different groups of refugees risk violating the non-discrimination principle found in Article 3 of the 1951 Convention, Article 27 of the Kenyan Constitution, and numerous other legal instruments. Refugees must receive equal treatment regardless of their nationality, religion, or place of origin.

#### **6.5 Documentation Delays**

Refugees without valid documentation often cannot access food distributions or essential services. Delays in processing refugee identity documents, despite the legal right to documentation under the Refugees Act, create a bureaucratic barrier to food access.

#### **6.6 Climate Change and Environmental Pressure**

The region around Kakuma is increasingly affected by drought, erratic rainfall, and environmental degradation. These conditions worsen food insecurity for both host communities and refugees, making sustainable food solutions even more urgent.

### **7. Recommendations to UN Agencies**

The following recommendations are addressed specifically to United Nations agencies, including WFP, UNHCR, FAO, UNICEF, and the Office of the UN High Commissioner for Human Rights, operating in Kenya and globally. They are based on the legal framework described above and the realities on the ground.

#### **Recommendation 1: Treat Adequate Food as a Non-Negotiable Right, Not a Preference**

WFP and UNHCR must formally commit in policy documents, operational plans, and donor agreements to treating the right to adequate food as a legally binding obligation, not a charitable preference subject to funding availability. Ration cuts that fall below minimum caloric thresholds must be treated as rights violations requiring urgent corrective action, not simply as regrettable budget outcomes.

#### **Recommendation 2: Build a Dedicated Emergency Fund to Prevent Ration Cuts**

UN agencies should work with donor governments to establish a guaranteed emergency reserve fund specifically for refugee food programs. This fund should be triggered automatically when rations fall below a defined minimum threshold, ensuring that bureaucratic funding gaps do not translate into hunger for the most vulnerable people in the world.

### **Recommendation 3: Involve Refugees in Food Program Design and Decisions**

International law requires that rights-holders be meaningfully included in decisions that affect them. Refugee communities in Kakuma and Kalobeyei must have genuine seats at the table, not just token consultations when food programs are designed, modified, or cut. This includes representation from women, youth, persons with disabilities, and marginalized nationalities.

### **Recommendation 4: Address the Specific Nutritional Needs of Vulnerable Groups**

Standard food rations are often inadequate for pregnant women, breastfeeding mothers, young children, the elderly, and persons with disabilities. UN agencies must design differentiated nutrition programs that specifically address these groups' needs, in line with the Convention on the Rights of the Child, CEDAW, and the Convention on the Rights of Persons with Disabilities.

### **Recommendation 5: Expand Livelihoods Programs to Support Economic Food Access**

UNHCR, WFP, and partner organizations should dramatically scale up livelihoods programs, including vocational training, small business support, and access to microfinance, so that refugees are not entirely dependent on food distributions. Economic self-reliance is both a right under the 1951 Convention and a sustainable path to food security.

### **Recommendation 6: Advocate Strongly for Freedom of Movement**

UNHCR should engage the Kenyan government more forcefully on the encampment policy, arguing on the basis of Article 26 of the 1951 Convention and Article 25 of the Refugees Act 2021 that freedom of movement is both a legal right and a practical tool for food security. Refugees who can move freely can find work, access markets, and reduce their dependence on aid.

### **Recommendation 7: Accelerate Refugee Documentation Processes**

UNHCR and the Kenyan Department of Refugee Services must urgently reduce the backlog of undocumented refugees. No refugee should be denied food access because their paperwork is delayed. Interim documentation must be made available quickly and recognized by all service providers.

### **Recommendation 8: Ensure Non-Discriminatory Assistance**

Any categorization or targeting system used to determine food assistance must be regularly audited for discriminatory effects. UN agencies must publicly report on how they

ensure equal treatment regardless of nationality, ethnicity, religion, gender, or disability status. Independent human rights monitors should be empowered to review these systems.

**Recommendation 9: Use the UN Special Rapporteur on the Right to Food**

The Office of the High Commissioner for Human Rights, together with WFP and UNHCR, should formally invite the UN Special Rapporteur on the Right to Food to conduct a mission to Kakuma and Kalobeyei, documenting the situation and providing authoritative recommendations. This would bring international attention and legal weight to the crisis.

**Recommendation 10: Invest in Climate-Resilient, Local Food Solutions**

FAO, WFP, and UNHCR should jointly invest in programs that build local food production capacity in and around refugee camps. This includes supporting small-scale farming, water harvesting, nutrition gardens, and climate-smart agriculture, both for refugees and host communities. Long-term food sustainability is only possible if it is grounded in the local environment and economy.

**8. Conclusion**

The right to food for refugees is not an aspiration or a charitable goal. It is a legal obligation, one that has been written into some of the world's most authoritative international agreements and into Kenya's own constitution and refugee laws.

When a refugee in Kakuma goes to bed hungry, it is not simply a tragedy. It is a violation of the law. It is a failure by states, by international organizations, and by the global community to live up to commitments that were made in many cases more than seventy years ago.

The good news is that the legal tools already exist. The frameworks are there. What is needed now is the political will to enforce them, the funding to back them up, and the genuine participation of refugees in shaping the solutions that affect their lives.

Refugees are not passive victims waiting for help. They are rights-holders, people with legal entitlements that must be respected, protected, and fulfilled. Treating them as such is not only the right thing to do. It is what the law demands.

*"The most basic right of all is the right not to go hungry. Everything else — dignity, safety, opportunity — depends on it."*

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