ASSESSMENT OF THE LEGISLATIVE SAFEGAURDS PRESENT IN KENYA WITH REGARDS TO UNHEALTHY FOODS IN LIGHT OF THEM BEING IDENTIFIED AS A CONTRIBUTING FACTOR TO NON-COMMUNICABLE DISEASES

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Third, I would like to appreciate to my family for their support throughout the time of my studies.

DECLARATION

I, ZINZI NATASHA MUTISO, do hereby declare that this dissertation is my original work, both in substance and in style; the same having never, to the best of my knowledge and belief, been presented in any other university or institution for any award. Where reference has been made from other scholars the same have been duly acknowledged.

Signed: ZINZI MUTISO . Date: 24/4/2017.

Accordingly, this work has been presented to the undersigned supervisor.

Lillian Makanga

Signed: ………………… Date: 21/3/2017.

ABSTRACT

Non Communicable Diseases (NCDs) pose a significant threat to economic production and growth. One of the risk factors that can be attributed to the rise of NCDs is an unhealthy lifestyle which consists of consumption of unhealthy food, tobacco use, lack of physical activity etc.

This paper focuses on the risk factor that is unhealthy foods to examine if there are sufficient legislative measures protecting consumers. The important of food should not be taken lightly – the fact of the matter is as much as it's a commodity in the market it is intrinsic to our human survival.

Looking at the legislative measures in protecting consumers was an examination on the information and safeguards available to consumers when faced with unhealthy food options i.e. did they have necessary information on food and nutrition to make an informed purchases, are there alternative options to purchase, and what current codes and standards were in place with regards to food?

The fact of the matter is consumers require better legislative safeguards when it comes to unhealthy foods. The main way tackle this is providing better consumer education whether in the form of risk communication, labeling or nutrition.

LIST OF STATUTES AND CONSTITUTIONS

The Constitution of Kenya (2010)

Constitution of the World Health Organisation (1946)

Food, Chemical and Substances Act (1978)

Standards Act (Act No 17 of 1973)

Age of Majority (1977)

LIST OF CASES

Uday Foundation for Congential Defects v Union of India & Others, [2015] W.P. (C) No. 8568/2010, High Court of Delhi

LIST OF ABBREVIATIONS

African Charter on People and Human Rights - ACHPR

The Codex Alimentarius - The CODEX

Food and Agriculture Organisation - FAO

Food and Standard Authority India - FSSAI

International Convention of Economic, Social and Political Rights- ICESCR

Kenya Bureau of Standards- KEBS

Non Communicable Disease- NCD

Universal Declaration of Human Rights- UDHR

World Health Organisation - WHO

Chapter 1: Introduction

World Health Organisation (WHO) has declared NonCommunicable Diseases (NCDs) a serious burden and barrier to global development and growth in the 21st century.[1] Research and study into NCDs has identified the risk factors that are contributing to their rapid increase - unhealthy diet, tobacco use and physical inactivity.[2]

The continued rise of NCDs is only set to negatively impact the socioeconomics of a nation with developing countries adversely affected most. Poverty levels will rise as households will have the added costs of spending their earnings on healthcare. The socially disadvantaged will face even greater struggles as they have limited access to health care and their continued exposure to these risk factors only serve to worsen the situation. Treatment of these diseases is often long-term and expensive which will push more individuals into poverty.[3]

In recent years, there has been a growing and significant rise of NCDs in developing countries. In Kenya for example as of 2014, an estimated 27 percent of the deaths were as a result of NCDs, the probability of dying too young from an NCD was reported to be at 18 percent and an estimated 30 percent of adults were overweight and 9 percent were obese while 18 percent of pre-school children were obese.[4]

By identifying the risk factors that contribute to NCDs the fight and prevention against them can be carried out more effectively. Research has attributed an unhealthy diet a major risk factor. Thus, individuals who consume food and drink that are high in saturated and trans fats, sugar, salt and calories with little nutritional value are at a much greater risk of developing NCDs.[5]

Safeguards for consumers with regards to healthier food options can be categorized into the following; providing consumers with information about food so that wiser choices can be made; conveying information of nutrient on a food label; encouraging use of sound nutrition principles in the formulation of foods which are beneficial to public health.[6]

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[1] *Sixty-Fourth World Health Assembly,* WHA64/2011/REC/1.
[2] http://www.who.int/mediacentre/factsheets/fs355/en/ on 31 October 2016
[3] http://www.who.int/mediacentre/factsheets/fs355/en/ on 31 October 2016
[4] http://www.who.int/nmh/ncd-task-force/unf-kenya/en/ on 24 February 2016.
[5] *First global ministerial conference on healthy lifestyles and no communicable diseases control*, 2011, WHO.
[6] *First global ministerial conference on healthy lifestyles and no communicable diseases control*, 2011, WHO.

Statement of the problem

In Kenya, the manufacture, production and sale of processed foods is primarily controlled by two Acts these are the Food, Drugs and Chemical Substances Act, Cap 254 and the Standards Act, Cap 496.

Cap 496 is to have its functions performed through Kenya Bureau of Standards (KEBS) which is mandated to "promote standardization in industry and commerce; assist government or any local authority or other public body or any other person in preparation and farming of any specifications or codes of practice; and prepare, frame, modify or amend specifications and codes of practice"[7]. Section 5 provides the standards of procedure that are to be complied with these include labeling, packaging, selling or advertising any food and failure to which constitutes an offence.[8] In essence KEBS provides the standards and ensures they are complied with.

When it comes to food the local codes and standards mainly deal with the issues of hygiene and sanitation. However, there is scientific research that attributes the rise of NCDs to consumption of unhealthy foods.[9] This therefore begs the question of whether there is sufficient regulation on food as there needs to be codes and standards that deal with a myriad of issue not just hygiene and sanitation. As highlighted above, there already exist institutions and statue that should facilitate the creation of codes and standards that regulate the issue of unhealthy foods in Kenya.

To regulate and safeguard food trade in the international sphere WHO and Food and Agriculture Organisation of the United Nations (FAO) formed The CODEX Alimentarius (the CODEX). The CODEX is an international instrument that provides for international food standards, guidelines and codes of practice contribute to the safety, quality and fairness of this international food trade.[10] Kenya has been a member of the CODEX since 1969.[11]

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[7] Section 4, *Standards Act* (Act No. 17 of 1973)

[8] Section 5, *Food Drugs and Chemical Substance Act* (2013)

[9] http://www.who.int/mediacentre/factsheets/fs355/en/ on 10 November 2016

[10] http://www.fao.org/fao-who-codexalimentarius/about-codex/en/ on 10 November 2016

[11] http://www.fao.org/fao-who-codexalimentarius/members-observers/members/detail/en/c/15672/ on 10 November 2016

Locally, the CODEX works as a voluntary guide for local authorities mandated to set standards[12] for instance in the case of labeling products the CODEX provides the method of labeling nutritional information on products. This paper seeks to examine how effective this voluntary guide when it comes to products sold in the local market.

There are lack of education programs on the importance of healthy food and nutrition, this only serves to enable consumers to make better informed decisions on the diet and health. Governments like India have taken it upon themselves to implement policy that encourages healthy eating. The Food and Safety and Standards Authority India (FSSAI) submitted draft guidelines to ensure that schools in New Delhi discourage children from eating junk food and develop healthy eating habits with emphasis placed on nutrients and nutritional value of healthy eating.[13]

Hypothesis

1. NCDs are lifestyle diseases;
2. NCDs pose a significant risk to the economy, society and the environment;
3. individuals in developing countries are at risk of developing and dying from NCDs;
4. the state and international community are aware of the risk; and
5. the CODEX Alimentarius is insufficient to protection local consumers

Research Objective

The objects of the research are the following;

1. Provide the risks posed to the state by the rise of NCDs and how healthy diets can aid curbing this rise;
2. examine and evaluate the effectiveness of CAP 254 and CAP 469 and the CODEX in Kenya;
3. examine and evaluate the need of access to information for consumers to make more informed decisions; and
4. provide the legal rationale for Kenya to adopt local codes and standards; and
5. examine comparative jurisdictions

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[12] http://www.fao.org/fao-who-codexalimentarius/about-codex/en/ on 10 November 2016

[13] http://www.downtoearth.org.in/news/fssai-draft-guidelines-do-not-propose-ban-on-junk-food-in-schools--41872 16 December 2016

Research Questions
The following questions will be asked in the course of this research:

1. How effective is the CODEX as a voluntary guide for codes and standards in Kenya?
2. Do CAPs 254 and 249 require local supplementary codes and standards to be more effective?
3. Will access to information enable consumers to make more informed decisions?
4. Why is it in the best interest of the state to have clearly outline national codes and standards?

Methodology
This study will rely on secondary data and primary data.

Qualitative and quantitative data will be gathered through several means and methods; carrying out field research on local and international processed foods in supermarkets such as Nakumatt, Tuskys, Niavas; using information published by institutions such as KEBS and CODEX Alimentarius Committee; the Department of Public Health.

Works by scholars, professionals and commentaries with knowledge in the respective fields applicable will also be used.

Interviews with relevant parties will also be used.

Literature Review
NCDs are diseases of long duration and generally slow progression.[14] The four main types of NCDs are cancer, cardiovascular diseases (like heart attacks and stroke), diabetes and, chronic respiratory diseases (such as chronic obstructed pulmonary disease and asthma). Globally they result in 30 million deaths per year where almost three quarters of these deaths occur in low and middle income countries.[15] In Kenya, death rate related to NCD's is at 27 percent and the rate of hospital admission is at 50 percent.[16]

In Kenya, cases of cancer are reported to be on the increase with an annual estimation of 37,000 new cases and an annual mortality rate of over 28,000. The frequent incidences of cancers in

[14] http://www.who.int/ncds/introduction/en/ 14 November 2016
[15] http://www.who.int/features/factfiles/noncommunicable_diseases/en/ on 14 November 2016
[16] http://www.who.int/nmh/events/2014/kenya-ncd-prevention/en/ on 14 November 2016

women tend to be breast, cervical and esophagus and while in men they are esophageal, prostate cancer and kaposi sarcoma. Diabetes is also on the rise with some patients looking at even greater risks from long term complications such as foot, cardiovascular, eye, nerve and renal complications. The mortality rate of cardiovascular diseases ranges from 6.1% to 8 % and there has been on the increase in the cases of hypertension.[17]

A study conducted on childhood obesity in Nairobi by the Department of Food Science and Technology of Jomo Kenyatta University of Agriculture and Technology concluded there was a prevalence of overweight and obese children. The participants used were school going children aged 9-14 years attending both public and private school. The study had the following findings; girls who attended private schools had the highest proportions of obesity or risk of obesity and overweight/obesity was higher among children who had no siblings compared with those with at least one sibling. Obesity was therefore said to be a public health challenge to nutritionists and policy makers.[18]

The possible effects of NCDs are extremely negative, out-of-pocket expenditure associated with the acute and long-term effects of NCDs results in massive health spending for households.[19] A study carried out in India showed that about 25percent of families with a member with Cardiovascular Disease and 50percent of cancer experience grave expenses and an estimated 10percent and 25percent respectively are driven to poverty.[20] With higher numbers of people suffering from NCDs there is a significant challenged posed to the health system to provide treatment, care and support.[21] In macroeconomic terms the threat NCDs present to the economic burden of the GDP of a country is high that it will have a negative impact on development.[22]

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[17] https://globalhealth.amsa.org.au/2015/09/22/vector-issue-17-review-article-ncds-in-kenya/ on 14 November 2016

[18] Kyallo F et al , 'Overweight and obesity among public and primary school children in Nairobi, Kenya' Vol 5, Department of Food and Science and Technology, JKUAT (2013)

[19] Mwai D N, 'Non-Commuicable Diseases in Kenya : Economic Effects and Risk Factors', Unpublished Doctor of Philosophy in Economics Thesis, University of Nairobi, 2014, 85-89

[20] 'Thakur J S, Prinja S, Garg C C, Mendis S and Menabde N, 'Social and Economic Implications of Noncommunicable diseases in India' PMC 2011, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3354895/ on 20 November 2016

[21] Mwai D N, 'Non-Commuicable Diseases in Kenya : Economic Effects and Risk Factors', Unpublished Doctor of Philosophy in Economics Thesis, University of Nairobi, 2014, 77-83

[22] Mwai D N, 'Non-Commuicable Diseases in Kenya : Economic Effects and Risk Factors', Unpublished Doctor of Philosophy in Economics Thesis, University of Nairobi, 2014, 5

Consumers need assistance to estimate the relative contribution that food products are to have on overall health and dietary intake[23] this requires an informed consumer being able to assess the nutritional content and information made availed in different products.[24]

The Indian government has made several attempts to make healthier food options in schools across the country. The most significant of which was the ban of selling junk food in schools in the state of Delhi.[25]

Conceptual/Theoretical Framework

Since the conception of society the notion of the common good has been an ever present factor that contributes to its' function. It's often described as the set of conditions that enable social living where persons or groups of persons are enabled to move and fully and readily achieve their goals and perfection.[26] The idea of common good has been central to many concepts of society.[27]

Philosopher Thomas Aquinas was of the opinion that laws are required to be directed towards the common good. Society plays an important role in allowing man to attain his or her well-being. [28]

With reported cases of NCDs on the rise[29] and taking from the notion of common good, the state has a role to play in circumventing the risks these diseases pose to society and as it has been shown that good nutrition can help reduce the risk of NCDs such as heart disease, stroke, diabetes and some types of cancers[30] there needs to be an action plan to ensure common welfare.

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[23] Gurthrie J, Mancino L and Lin C-T J, 'Nudging Consumers toward better food choices: policy approaches to chaning food consumption behaviour' ISI Journal (2015), 2-4

[24] Gurthrie J, Mancino L and Lin C-T J, 'Nudging Consumers toward better food choices: policy approaches to chaning food consumption behaviour', 5

[25] http://www.downtoearth.org.in/blog/punjab-sets-an-example-by-banning-junk-food-in-schools-46063 on 10 December 2016

[26] https://www.britannica.com/topic/common-good on 6 December 2016.

[27] Azetsop J and Joy T, 'Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central*, 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ on 6 December 2016.

[28] Robinson A, ' An A to Z of Theory Thomas Aquinas: The State and the Common Good' Ceasefire 2015 https://ceasefiremagazine.co.uk/thomas-aquinas-state-common-good/ on 7 December 2016

[29] http://www.who.int/mediacentre/factsheets/fs355/en/ on 6 December 2016

[30] Azetsop J and Joy T, 'Access to nutritious food, socioeconomic indivualism and public health ethics in the USA : a common good approach' *BioMed Central*, 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ on 6 December 2016 .

Ensuring the common good in society is the backdrop to respecting and ensuring human rights and fundamental freedoms.[31] Health is a categorized as a basic human right and is interdependent to exercise other human rights.[32] It's recognized in numerous international instruments, regional and local instruments such as the Universal Declaration of Human Rights[33], International Covenant on Economic, Social and Cultural Rights[34], African Charter on Human and Peoples Rights[35] and the Constitution of Kenya[36]. The realization of the right to health is interdependent on realization of other human rights - food and access to information.[37]

It would be erroneous to pursue the right to health as merely the absence of disease when in fact a wide range of socio-economic factors promote conditions that promote conditions in which people can lead a healthy life and extends to underlying determinant of health such as food and nutrition.[38]

Scope of the Study

This paper will aim to examine, assess and provide an evaluation of the legal protections a developing nation such as Kenya has put in place to circumvent the risks posed by NCDs with regards to exposure to unhealthy foods and food safety and nutrition. Seeking to answer the question of whether greater measures need to be implemented.

The paper will conclude with a possible proposal available to Kenya, primarily using India as a comparative jurisdiction.

Justification of the Research

Laws pertaining to the control of production and manufacturing have existed since accident times. The Code of Hammuribi makes several references to grain and cattle stocks, the former being used as the currency of fines. Ancient Egypt carried laws on the labeling of wines, similar to those in existence today.[39]

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[31] *CESCR General Comment No. 14, The right to the highest attainable standard of health,* 11 August 2000, 4
[32] *CESCR General Comment No. 14,* 4
[33] Article 25, *UDHR*, 10 December 1948, 217 A III
[34] Article 12 , *ICESCR*, 3 January 1976, 2200A (XXI)
[35] Article 11, *ACHPR*, 21 October 1986, CAB/LEG/6713
[36] Article 43, *Constitution of Kenya* (2010)
[37] *CESCR General Comment No. 14,* 4
[38] *CESCR General Comment No. 14,* 4
[39] 'Origins of the Codex Alimentarius' in Understanding the Codex Alimentarius, FAO and WHO ISBN 92-5-104248-9 (1999).

As modern science has evolved, there has been new creation of more reasoned way of controlling how the food sector operates. For example, the crisis involving bovine spongiform encephalopathy (BSE) or 'mad cow disease', brought about the following issues; firstly, scientists suggested that there the possible link between beef consumption and the human form of BSE, that people could contract the disease just by eating meat or even beef products such as gelatine. Second the existing laws were shown to be hopelessly inadequate in dealing with a crisis such as this.

As governments have scientific evidence showing the link in the rise in NCDs and the rise in consumption of unhealthy foods, it would only be prudent to review their current policies on food quality and safety and revise where needed. As adequate policy should be reflection of this there should be an examination of the current legal protections granted to the exposure to unhealthy foods and food safety and nutrition.

Limitations

The study will have a number of limitations:

1. Most agencies are not up to date digitally, which may require several site visits to collect information.
2. There might be a lack of willingness among interviewees in giving information.
3. Cost of Research: a number of journals and books are only available through purchase.
4. Time will be an important limitation for this research as there is a limited amount of time to interview and collect information that will be pertinent to this research.

Chapter Breakdown

1. Introduction
2. Conceptual Framework
3. Methodology
4. Findings and Discussion
5. Conclusion and Recommendations

Chapter 2: Conceptual Framework

Using the conceptual framework this chapter will provide the legal rational this paper is premised on.

The common good refers to "the set of conditions that enable social living by which persons or groups of persons are able to more fully and readily achieve their goals and perfection"[40] and includes such things as protecting life, preserving the state, and promoting the peace.[41]

As Thomas Aquinas observed people tend to look after on their own self-interest, which then requires government intervention to direct people toward the common good[42]. By taking up this important role the state must ensure it controls "the divergence of interests" between individuals or groups to promote the common good.[43]

Government intervention in the food markets is a controversial topic where many believe that governments' role is essential in determining what we eat while others believe that government intervention is an outright intrusion on consumer's freewill.[44]

Establishing the governments' role in the food market

The government ensures the common good through its welfare enhancing function as well as its regulatory role to ensure that human rights are respected.[45] This welfare-enhancing role is described by the United Nations as a "function designed to enable individuals, families, groups and communities to cope with the social problems of changing conditions."[46] This can be done by putting in place remedial measures such as removing disabling conditions, or preventative measures such as creating new conditions or elimination the causes of the problems, or supportive measures such as education and training or community support. The level of

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[40]Velasquez M, Andre C, Shanks T and Meyer M J, ' The common good' *Santa Clara University*, 2014 https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/the-common-good/ on 7 December 2016

[41] http://www.crf-usa.org/bill-of-rights-in-action/bria-22-4-c-st-thomas-aquinas-natural-law-and-the-common-good on 7 December 2016

[42]http://www.crf-usa.org/bill-of-rights-in-action/bria-22-4-c-st-thomas-aquinas-natural-law-and-the-common-good on 7 December 2016

[43]'Azetsop J and Joy T, Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central*, 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ on 6 December 2016

[44] 'Reyman C, Debate Sparks Food for thought on the role of the government in curbing obesity' *Grantwatch* , 7 August 2012 http://healthaffairs.org/blog/2012/08/07/debate-sparks-food-for-thought-on-the-governments-role-in-curbing-obesity/ on 16 December 2016

[45] *CESCR General Comment No. 14,* 4

[46] https://sustainabledevelopment.un.org/futurewewant.html on 16 December 2016

importance placed on welfare is determined by the philosophy and value preferences of the government.[47]

Although food is necessary for human survival, food is often categorized as a commodity available to consumers with purchasing power rather than as a universal human right. Food is purchased and sold by individuals under free competition and is subject to the "invisible hand" of the market. The capitalist mindset that shapes the food environment favors the commoditization of food pushing the idea that food is just a marketable commodity like any other commodity. However, food differs from other commodities in the market as it is explicitly and intrinsically linked to our human existence. Thus while many other commodities allow for social benefits, food ensures survival.

Through the lens of the common good approach

The position as to whether there should be any government intervention as it would infringe on free-will is attached to the fact that many nations including Kenya[48] are free-market economies. Therefore they rely on the forces of demand and supply to influence market operations.[49] In essence buyers and sellers transact freely when they voluntarily agree on the price of a good or service this is said to lead to free competition in the economy without any intervention from outside forces.[50]

The above I would say does not fully capture how important food is in society, as mentioned above it is intrinsically linked to our human existence.[51] Therefore, the two are not mutually exclusive concepts as in addition to food being a marketable commodity it ensures our human survival. From this it would only make sense that this that the discussion of food safety and nutrition is done within the ambit of the common good.

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[47]'Azetsop J and Joy T: Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central*, 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ on 6 December 2016

[48] http://www.heritage.org/index/country/kenya on 7 December 2016

[49]'Depersio Greg: what are some examoles of free market economies' *Investopedia,* 2015 http://www.investopedia.com/ask/answers/040915/what-are-some-examples-free-market-economies.asp on 7 December 2016

[50] http://www.investopedia.com/ask/answers/042215/what-difference-between-capitalist-system-and-free-market-system.asp on 7 December 2016

[51]'Azetsop J and Joy T: Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *PMC,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ on 6 December 2016

When framed within the common good perspective, the insufficient safeguards for consumers against unhealthy food brings into question the degree of social cohesiveness.[52] The fact of the matter is free market economies such as Kenya's promote individualism where consumers are to be responsible for their consumption. However, knowing the importance of food as not merely just a commodity in the market would it not be morally disruptive to continue to support this individualism, as it seemingly goes against the idea of the common good in society?

The common good puts into question the government stance of promoting individualism with the continued behavioral patterns towards consumers eating more unhealthy diets increases and the consequential effects of that would have on society.[53]

In looking at the key cause in the lack of safeguards for consumers against unhealthy food it could be understandable to peg it down to government structure.[54] Recourse to the common good approach would be helpful in that it paves the way for essentially having governments work towards this concept of common good.

This is where the idea of fundamental cause[55] comes into play i.e. when looking at the fundamental cause through the lens of the common good there should be an emphasis placed on the idea that there's a need to be an appreciation for the reasons behind poor diet and the consequential effects such behaviour is to have are on nations[56] such as Kenya. It would only be responsible for policy makers to pay attention to the consequential effects of citizens consuming unhealthy diets as to better combat their negative effects such as the burden of NCDs.

When looking at the lack of safeguards for consumers against unhealthy food solutions to the problem require a degree of rethinking and reprograming. The common good widens the focus,

[52]'Petrini C and Gainotti S: A personalist approach to public-health ethics' *WHO*, 2008 http://www.who.int/bulletin/volumes/86/8/08-051193/en/ on 6 December 2016

[53]'Kearney J: Food consumption trends and drivers' *PMC*, 2010 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2935122/ on 6 22 December 2016

[54]'Azetsop J and Joy T: Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central* , 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016

[55]'Azetsop J and Joy T: Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central* , 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016

[56]'Link B G and Phelan J C: Understanding sociodemographic differences in health – the role of fundamental social causes' *PMC* 1996 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1380543/ 23 December 2016

"assigning responsibility for poor diet and its public health consequences not only to individuals but also the government, corporate business and larger social forces."[57]

As an analytical tool, the common good assesses the fact that socioeconomic inequalities have an impact on individual well-being and on society.[58] There are both negative economic and human costs that can result by the increase in the consumption of unhealthy food [59] which should not be underestimated. This negative food pattern is linked to an increase in the worsening health status for both children and adults and for children poses risks in development of the cognitive, social and emotional functions.[60] In addition to this lower income households are confronted with the dilemma of trade-off between paying for basic needs such as housing and food versus medical care- whereby such scenarios result in added to individual's helplessness.[61]

An added issue to examine is the issue of accountability. Whereby we ask who is to be held accountable for the negative health impact caused by poor diet and nutrition? As there is evidence to show that healthy food choices are as a result of a combination of factors that are beyond the consumers control. [62]

There is growing evidence of the addictive effects that sugar has on the human brain. Where as in the past it was a rare source of energy and existed in only fruit and vegetable - which in addition to sugar have water, fiber and other constituents, it was not as readily available and easily accessible as the "modern" sugar that is in a lot of the products we consume.[63]

As defined by Diagnostic and Statistical Manual of Mental Disorders substance use is present if at least two to three symptoms from a list of eleven are present.[64] It has been found in animal

[57]'Azetsop J and Joy T: Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *PMC*, 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016
[58]'Azetsop J and Joy T: Epistemological and ethical assessment of obesity bias in industrialized countries' *Biomed*, 2011 https://peh-med.biomedcentral.com/articles/10.1186/1747-5341-6-16 23 December 2016
[59]'Link B G and Phelan J C: Understanding sociodemographic differences in health – the role of fundamental social causes' *PMC* 1996 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1380543/ 23 December 2016
[60] http://www.who.int/ncds/en/ 23 December 2016
[61]'Lakshaminarayanan S: Role of government in public health: current scenario in India and future scope' *PMC* 2011 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114612/ 23 December 2016
[62] 'Azetsop J and Joy T, Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *PMC*, 2013 < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/> 6 December 2016
[63]'Lucan S C and DiNicolantonia JJ : Sugar Season. It's everywhere, and addictive.' *The New York Times*, 2014 https://www.nytimes.com/2014/12/23/opinion/sugar-season-its-everywhere-and-addictive.html 13 January 2017
[64] http://dsm.psychiatryonline.org/doi/full/10.1176/appi.books.9780890425596.dsm16 13 January 2017

studies that sugar produces at least three symptoms consistent with substance abuse and dependence: cravings, tolerance and withdrawal. Separate drug-like qualities that of sugar results in are cross-sensitization, cross tolerance, cross-dependence, reward, opioid effects and other neurochemical changes in the brain.[65] One shocking study found that given the choice, rats will choose sugar over cocaine in lab settings because the reward is greater i.e. the effects are more enjoyable.[66]

Children can be classified as vulnerable members of society because unlike adults they lack a sense of discernment. In the way the food industry operates children are exposed to all sorts of marketing gimmicks and strategic product placement. Studies have found that food preferences, choices, intake or purchase requests are influenced by and large by these tools that companies use. This is not only hazardous to their current state of health and well-being but puts their long-term health at a major risk.[67]

Consumers need access to the right information as this empowers and increases choices which then translate into the rejection and abandoning of unhealthy foods. Knowledge helps in making the right choices. Thus, education is important because it helps individuals to make informed decisions that impact their very well-being including on the health related fronts.[68]

Lastly, fulfilling human rights is an issue that comes into play in the common good perspective. For this discussion regarding human rights there shall be a focus on the right to health and the right to access healthy food which are inherent in the right to an adequate standard of living for health and well-being.[69]

Human rights are premised on a number of principles: universality, inalienability, equality, non-discrimination, interrelatedness, interdependence, indivisibility, participation, inclusion,

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[65]'Lucan S C and DiNicolantonia JJ : Sugar Season. It's everywhere, and addictive.' *The New York Times*, 2014 https://www.nytimes.com/2014/12/23/opinion/sugar-season-its-everywhere-and-addictive.html 13 January 2017

[66]'Avena M N, Rada P and Hoebel G B, Evidence for sugar addiction: behavioral and neurochemical effects intermittent, excessive sugar intake' *PMC* 2009 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2235907/ 20 December 2016

[67] 'Story M and French S, Food advertising and marketing directed at children and adolescents in the US' PMC 2004 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC416565/ 20 December 2016

[68]BEUC The European Consumer Organisation, *Durable goods: more sustainable products, better consumer rights*, 2015, 10 -15

[69]'Azetsop J and Joy T, 'Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016

accountability and the rule of law.[70] These principles bring out the definition of human rights as rights inherent to all human beings whatever nationality, place of residence, sex, national or ethnic origin or any other status.[71]

The constitution of WHO categorizes the right to health as "the highest attainable standard of health as a fundamental right of every human being."[72] Other legal instruments that recognize this right to health are UDHR[73], ICESCR[74], ACHPR[75] and the Constitution of Kenya[76].

The principle of interdependence enables one to understand that the right to health is dependent on other related rights such as food, access to information, education etc. Adopted at the twenty-second session of the committee on economic, social and cultural rights was "Article 12: The Right to the Highest Attainable Standard of Health"[77] recognized the limitations in the language used in Article 1 and took notice to acknowledge the right to health should include a wide range of socio-economic factors that promote conditions in which people can lead a healthy lifestyle extending to underlying causes of health such as food and nutrition.[78]

Access to healthy food is a right that promotes for food adequacy and composes both food quality and food quantity. It facilitates the ability for individuals to function properly in order to participate in society's affairs.[79] By ratifying the UDHR states must ensure adequate living conditions for all citizens and have direct obligation gave to ensure adequate food through means and methods at their disposal.[80] This is to mean that national governments have the duty, under international law, to respect, protect, and fulfill the right to adequate food. The right to food is grounded in the respect for equality between persons.

When some people are marginalized and don't have access to health promoting foods fundamental equality can said to be at jeopardy. Having the basic material goods to sustain a

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[70] http://www.unfpa.org/resources/human-rights-principles on 7 December 2016
[71] http://www.knchr.org/HumanRights/Whatarehumanrights.aspx on 7 December 2016
[72] Article 1, *Constitution of The World Health Organisation* , 1948
[73] Article 25, *Universal Declaration of Human Rights*, 10 December 1948, 217 A III
[74] Article 12 , *International Covenant on Economic, Social and Cultural Rights*, 3 January 1976, 2200A (XXI)
[75] Article 11, *African Charter on Peoples and Human Rights*, 21 October 1986, CAB/LEG/6713
[76] Article 43, *Constitution of Kenya* (2010)
[77] *CESCR General Comment No. 14,* 4
[78] *CESCR General Comment No. 14,* 4
[79] United Nations Human Right, *The right to adequate food*, 2010, 7-10
[80] http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html on 7 December 2016

healthy life is an expression of respect for the dignity of each person. Achieving this equality requires institutional backbone which is key for a good and healthy society. Thus, the human rights obligation to improve healthy food accessibility requires one national stakeholders and the global community to advocate for and to implement strategies – which have identified the means of action for the various duty bearers.[81]

Therefore, this right to food is an interrogation on the market philosophy that promotes socioeconomic exclusion and disregards the claims of the poorest among the poor. Access to quality food is an important dimension of the right to food which requires protection by law.[82]

The Law and Unhealthy Food

In its preamble Cap 254 sets out that it is to make provisions for the prevention of "adulteration of food, drugs and chemical substances". Section 5 provides for the standards of procedure that to be complied with which include labeling, packaging selling or advertising reinforcing that a failure to comply with the rules set out constitutes an offence.[83] In addition to this extra protection is granted to consumers whereby goods sold should be ensure quality and meet purchaser's demands otherwise failure to which could constitute an offence.[84] All of this is in only serves to reinforce the Constitutional provision that provides for consumer rights which is to ensure that goods provided to the consumer are to be of a reasonable quality and consumers are to have the information necessary for the consumer to gain full benefit from goods and services.[85]

KEBS is set up through CAP 496 where its' functions are to establish and promote standards in the various industries.[86] Therefore, KEB is tasked with not only to with setting up codes and standards regarding unhealthy foods sold within the Kenyan market but to monitor compliance with this codes and standards.

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[81]'Azetsop J and Joy T, 'Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016

[82]'Azetsop J and Joy T, 'Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016

[83] Section 5, *Food Drugs and Chemical Substance Act* (2013)

[84] Section 6, *Food Drugs and Chemical Substance Act* (2013)

[85] Article 46, *The Constitution of Kenya* (2010)

[86] Section 4, *Standards Act* (Act No. 17 of 1973)

FAO and WHO harmonize food and labeling standards and fights for food security through the CODEX. Locally the CODEX has no binding force to for food product manufactured and sold locally it works as a voluntary guide while local authorities are tasked with ensuring there are mandatory local codes and standards to be complied with.[87] The question to be address here is as follows: are the pieces of legislation sufficient to regulate the consumption of food in particular unhealthy food?

The answer shall be explored more in chapter 4 of this paper.

[87] Food and Agriculture Organisation of the United Nations, *CODEX ALIMENTARIUS Understanding CODEX*, 2016, 13-14

Chapter 3: Methodology

This chapter deals with the methodology to be used for the paper and in dedicating a chapter solely to this seeks to achieve the following two objectives:

1. To provide a further understanding to the methodology that will be used in this study; and
2. to outline and explain the various types of qualitative and quantitative methods that are being used.

It would be prudent to recognize that this particular study is not purely legal but seeks to examine the medical and economic fields. Thus, the information to be gathered in fulfilling the research questions and hypotheses put forward needs sufficient material from a wide variety of sources.

To begin with this study is an examination of NCDs; its' causes and impact to individuals and society at large. To fully comprehend this I will be conducting an interview with Dr. Mellany Murgor head of the Nairobi based Young Professionals Chronic Disease Network. The choice to carry out an interview is that it will allow for in-depth exploration into the topic of NCD's.

To ensure the above the interview needs to be carefully planned so as to have clarity between the interviewee and interviewer and the information gathered on the paper is useful to the paper. The interview will be looking to assess NCDs as lifestyle diseases – posing questions that seek to answer what lifestyle diseases entail and the factors that put individuals at risk to obtaining lifestyle diseases.

As this study is Kenya specific there needs to be further information given on the fact statistics on rates of NCDs in Kenya – acquiring, management and life expectancy. The medical sector is most impacted by diseases in terms of treatment and management so there will be the question on the effects NCDs has on this.

The actual interview will be conducted via telephone and despite the difficulty that may posed in fluidity and pace of interview taking this method was most prudent with regards to arranging a time that is most suitable to the both interviewer and interviewee.

As the CODEX has many different facets and applies to many products in carrying out field research I'll looking at the labeling on prepackaged foods. This will entails going around three

main supermarkets: Nakumatt, Tuskys and Chandarana to examine if packaged food products abide by the CODEX guidelines on food labeling. Adequate food labeling gives consumers an appropriate profile of nutrients contained on the food and considered to be of nutritional importance.[88] By carrying this out I will be looking for the mandatory information that must appear on packaged food products as provided by CODEX[89]:

1. This the name of the food

This shall be indicated and should make clear the nature of the food – if any additional "trademark", "brand", "coined", "fanciful" name shall be used the former must be present.

2. List of ingredients

Ingredients shall have the necessary title which should consist of or includes the term 'ingredient'. Ingredients that are known to cause hypersensitivity must always be declared these are:

- Cereals containing gluten; i.e. wheat, rye, barley, oats, spelt or their hybridized strains and products of these;
- Crustacean and products of these;
- Eggs and egg products;
- Fish and fish products;
- Peanuts, soybeans and products of these;
- Milk and milk products; and
- Sulphite in concentration of 10mg/kg or more.

For permitted food additives they shall be labeled as per their specific name or recognized numerical identification.

3. Net contents and drained weight

The metric system shall be used where the net contents shall be declared as follows:

- Liquids food, by volume

[88]CCFL CAC/GL 2-1985 (2016) Guidelines on nutrition labeling, 2
[89] CCFL CODEX STAN 1-1985 (2010) General standard for labeling of prepackaged foods, 2-5

- Solid foods, be weight
- Semi-solid or viscous food, by weight or volume

4. Name and address

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor shall be declared.

5. Country of origin

The country of origin must be declared, failure to which shall be classified as misleading or deceiving the consumer

6. Lot identification

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

7. Date marking and storage instructions

This is the "date of minimum durability" which shall be declared by the words "best before..." where the day is indicated; "best before end...." in other cases which shall be accompanied by either the date itself or reference to where the date is given.

8. Instructions for use

Instructions for use including reconstitution, where applicable, shall be included on the label, as necessary, to ensure correct utilization of the food.

9. Quantitative ingredients declaration

This is the ingoing percentage of an ingredient by weight or volume which shall be declared as a numerical percentage.

10. Irradiated foods

There shall be written statement indicating that foods that have been treated with ionizing radiation. This also pertains to irradiated products that are used as ingredients in another food.

Carbohydrates present in food should be indicated as “carbohydrate ....g, of which sugars ...g”[90]

When indicated that any form of fatty acid or cholesterol is present in a product the following should be provided[91]:

Total Fat		...g
of	saturated fatty acids	... g
which	trans fatty acids	...g
	monounsaturated fatty acids	... g
	polyunsaturated fatty acids	...g
cholesterol		... mg

Assessment of the above will require observation of packaged foods available in the stated chain chains.

To assess consumer knowledge on health and nutrition and nutrition I will carry out a random questionnaire at the supermarkets indicated above over a five day period asking 20-25 people per day. This will include; testing on the knowledge on what are NCDs and risks factors, the recommended nutritional guidelines by WHO that constitute a healthy diet, self-assessment on how informed they are about health and nutrition and proposals on how to make consumers more informed.

In addition to all the above this paper will involve gathering information from works by scholars and professionals in the three sectors (legal, medical and economic), legislation both local and international, information published by international organisations such as WHO, FAO, KEBS and the Department of Health.

[90]CCFL 2-1985 (2010), 7
[91] CCFL 2-1985 (2010), 8

Chapter 4: Findings and Discussion

This chapter is a presentation of analyzed data and research findings drawn from my study which was a composition of:

1. questionnaire (*Annexure 1*);
2. telephone interview;
3. observation; and
4. secondary data

It should be noted that the study is premised that the right to health and the right to access healthy food as inherent and intertwined in the right to an adequate standard of living and well-being.[92]

To refer back to the research objectives the following is being looked into:

1. Provide the risks posed to the state by the rise of NCDs and how healthy diets can aid curbing this rise;
2. examine and evaluate the effectiveness of CAP 254 and CAP 469 and the CODEX in Kenya;
3. examine and evaluate the need of access to information for consumers to make more informed decisions; and
4. provide the legal rationale for Kenya to adopt local codes and standards; and
5. examine comparative jurisdictions

With the given methodology we should be able satisfy the above objectives.

Questionnaire

This was carried out in order to provide a true reflection into the mindset of consumers. In considering that NCDs are lifestyle diseases and exploring the place of healthy foods in the control and spread, socio-demographic features should be taken into account such as knowledge, attitude and perception of foods (healthy or unhealthy).

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[92] 'Azetsop J and Joy T, Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016.

The rationale behind carrying out the questionnaire in supermarket came from the idea that the diet and nutrition in homes is mostly determined by the individuals who are doing household shopping. It would only make sense to establish their knowhow on their knowledge of food and nutrition.

1. Gender

The description of gender is necessary in establishing which of either gender is keener on nutritional value of foods and which methods of awareness are the different genders likely to respond to.

Over half of the participants (60 percent) were female (*Annexure 2*). The fact that there is a higher rate of women in supermarkets than men means that more women are determining the food and nutrition options in homes. It is important for them to have comprehensive knowledge on food and nutrition and the impact diet has on health. Therefore, the following should be asked: (1) how information on food and nutrition to effectively pass on this demographic in society i.e. women? ; and (2) will the information have any effect on consumer purchases?

The fact of the matter food and nutrition holds immense value in society and where every person is entitled to information regarding the nutritional content of food with regards to the food purchases they make.[93]

2. Age of Respondents

In Kenya, the age of majority 18 [94] this was relevant in order to comply with the law with regards to consent in carrying out the questionnaire. Minors were avoided as to have participated would pose greater challenges such as obtaining consent from their parents or guardians. This would be a constraint on time and financial resources.

Minor's eating habits' are mainly controlled by their parents or legal guardians. Therefore, getting a sense of adult's information on food and nutrition could assist in informing minor's

[93] 'Azetsop J and Joy T, Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016.
[94] Section 2, *The Age of Majority Act* (1977)

consumption. The questionnaire required that respondents provide his/her age those aged over 18 qualified as respondents.

Age is a sensitive area of topic for a lot of people- I thought it best not to ask for a specific age but put age groups so participants would feel more comfortable to divulge.
Out of the 100 respondents: 15 percent were between the ages of 18-30(A); 35 percent between the ages of 31-45(B); 47 percent between the ages of 46-60(C); and 3 percent between the ages of 61-75(D) (*Annexure 3*).

As much as this focused on persons above the age of 18, it was not to downplay the fact that children do not require access to information regarding food and nutrition. They were excluded because of the constraints stated above.

3. Level of Education

The was useful to help make a determination to see if the years of formal education can be linked to information and acquisition of knowledge on current news in this particular instance health and nutrition. The educational background of respondents was considered necessary in understanding the awareness of respondents on the nutritional value of food and the link to NCDs.

Education is vital for empowerment and the increased choices which then translate into informed decision making food purchases. Out of the 100 participants: 27 percent had primary school level education(A); 31percent had high school level education(B); and 42 percent had a college/university level education(C) (*Annexure 4*).

It should be noted that individuals who completed up to: (1) primary level education consisted of all of the over 61 year olds, 51 percent of the between 46-60 year olds, and 2 percent of the 31-45 year olds; (2) secondary level education consisted of 23 percent of the between 46-60 year olds and 48 percent of the between 31-45 year olds; and (3) technical college/university level education consisted of all of the under 30 year olds, 48 percent of the of the between 31-45 year olds and 25 percent of the between 46-60 year olds.

From the above information the questions that can be asked are: (1) does the level of education influence information individuals have about NCDs? (2) does age influence information individuals have about NCDs?; and (3) is it a combination of both age and level of education that influence information individuals have about NCDs?

4. Knowledge of Respondents on Non-Communicable Diseases and Knowledge of respondents on the factors that contribute to NCDs

This was used to garner the status on level of knowledge on NCDs. The identified factors that are contributing to their rapid increase are unhealthy diet, tobacco use and physical inactivity.[95] This was considered to better inform on the current status of awareness on; (1) NCDs; and (2) their risk factors.

Just under half of the participants were knowledgeable on what they are. The findings reveal that 52 percent of the respondents did not know what they are while the other 48 percent knew what they are (*Annexure 5*).

Of the 52 percent none were able to contribute to the risk factors. Out of the other 48 percent: 29 percent gave all three contributing factors, 33 percent gave two correct contributing factors and 38 percent gave one correct contributing factor (*Annexure 6*).

Most of the positive responses came from individuals who had attained at least secondary level of education. I wouldn't necessarily say that level of education informed individuals on food and nutrition – what is more likely is that the level of education affords people better opportunities in life, with which they can access better resources such as medical care, exposure to different world cultures and ideas etc. These indirect effects of education could largely contribute to their awareness on NCDs.

With regards to the age of the participant most of the positive responses came from the middle aged this is the 31-40 age group and 46-60 age group. As NCDs are lifestyle diseases, they are

[95] http://www.who.int/mediacentre/factsheets/fs355/en/ on 17 January 2017

slow progressing and mostly affect people "middle-aged" and older – this would inform why the participants in those age groups were the best informed about NCDs. The question here to be asked is how do other the age demographics in society become better aware of these lifestyle diseases so as to better combat them.

It should be noted when participants listed the contributing risk factors, unhealthy food was mentioned only in cases where the participant knew all three factors and in 5 other responses where the participant knew either 1 or 2 of the contributing factors.

5. Recommended nutritional guidelines by WHO

For consumers to make more informed choices on food and nutrition they need to know the required food recommendations prescribed. As the WHO prescribes a world-wide standard it would only be right to use their recommended guidelines as the standard.
Not surprisingly only a small majority of a population is aware of these guidelines – while only 18 percent respondents were aware the other 82 percent of respondents were unaware (*Annexure 7*).

This information should be made easily accessible – how can this be done?

8. Education on food and nutrition

Access to information is essential for consumers to make informed decisions on food and nutrition. To determine the best approach it would be necessary to get information from all stakeholders in the market. Getting consumer's opinion on this ensures that the people the decision affects make a useful contribution as to the methods of carrying this out.

The question posed to the participants had them give an opinion on whose role they thought it was to provide this access to information. 11 percent said it was the governments' role; 14 percent said it was the consumers role i.e. onus on the consumer; 9 percent said it was the role of

international organisations; and 66 percent said it was to be a combination of all three (*Annexure 8*).

Interview

There has been a significant increase in the reported cases of NCDs in Kenya. This statistic only serves to further burden a country that's plagued by communicable diseases. Reported cases of NCD hospital admission cases are currently at 50% and the mortality rate is at 27%. These figures are only expected to increase due to the fact that a major propellant of NCDs is unhealthy lifestyle which more and more Kenyans are taking on.[96]

NCDs can are can be described as lifestyle diseases as they are chronic often lasting the duration of a person lifetime. Cancers, cardiovascular, diabetes and chronic respiratory diseases are among the major NCDs that are affecting the Kenyan demographic.[97]

There are a number of contributing factors that should be taken into consideration when determining the risk of acquiring a NCD: behaviour which includes; tobacco use; alcohol intake; diet; physical activity etc. These factors can't be looked at in isolation in that patients' history of disease whether individual or familial should also be considered.[98]

The fact of the matter is NCDs present added social and economic trials to the economy. With Kenya looking to achieve certain millennium goals, the burden of disease threatens those goals as poverty is very much attributed with NCDs. As stated earlier, NCDs result in increased health care costs which directly increase household costs. This puts individuals who are already vulnerable and socially disadvantaged at risks of suffering even more from NCDs as the have limited access to health services. [99]

Observation

As discussed above, access to information is critical for consumers to make healthy food choices. The CODEX prescribes for the mandatory information that should appear on packaged food products.[100] However, this information is not compulsory and works as a means to regulate

[96] Telephone Communication with Murgor M on 28 January 2017
[97] Telephone Communication with Murgor M on 28 January 2017
[98] Telephone Communication with Murgor M on 28 January 2017
[99] Telephone Communication with Murgor M on 28 January 2017
[100] CCFL CODEX STAN 1-1985 (2010) General standard for labeling of prepackaged foods, 2-5

products that are being produced for export and import. The information to be provided (*listed in chapter 3*) can work to be of added value to consumers in making decisions on food purchases. From the information collected and gathered on prepackaged food products, 20 percent of them had the mandatory information present on the product. (*Annexure 9*)

With this observation the following was deduced; (1) the name of the food was almost always indicated save for four products where the manufacturers named the product in languages that were not either English or Kiswahili so for consumers in the Kenyan market be non-comprehensive or failed to provide any name; (2) 58 percent of the packaged foods failed to provide the nutritional value of the products and therefore failed to provide the required carbohydrate and cholesterol information; and (3) these observations were on a wide array of packaged food products- meat products, condiments, juices, junk food where each of the categories had manufacturers failing to provide the necessary information.

From the above there are clearly some discrepancies in local legislation where products are not mandated to provide the mandatory information as prescribed by the CODEX. It was observed that local manufacturers are taking advantage of this where an astounding 60 percent of the packaged food products failed to provide the information.

As stated above information only serves to benefit the consumer therefore this added information would only serve to benefit consumers.

Secondary Data

Access to information

Economists have identified two types of information public and private. Private information is categorized as asymmetric meaning different players in a market have different levels of information. Asymmetric information may represent a quality of uncertainty about a commodity which can cause adverse effects in the market low quality goods may become the norm.[101]

As NCDs are a public health concern the information relating to them needs to categorized as public information. As such all players in the market have equal opportunity access to the

[101] Huffman E W, 'Does information change behaviour' OCED World Forum, Busan, 27-30 October 2009

information. Consumers have the right to expect information on food quality and elements that are helpful and clearly presented so that informed choices can be made.[102]

Research by Rousu et al. sought to examine whether placing GM (representing genetically modified foods) would have any effect on the buying patterns of consumers. The results showed with the foods labeled GM purchasing rate reduced by 15 percent relative to plain labeled similar product foods.[103]

With regards to the information provided to the public the following must be considered: risk communication, labeling and nutrition.[104]

1. Risk Communication

To manage public health risk the European Union dubbed this a fundamental responsibility for public authorities. This is critical to allow for consumers to be informed and in minimizing the risks of undue food and safety concerns that may arise. To be effective it should be transparent in the transferring of information between the relevant parties on the nature of risk and measures to control the risk. The fact of the matter is the consumers and need to be recognized as such and have their concerns taken into account.

2. Labeling

Adequate labeling is to ensure that consumer have the necessary and correct information so that they make informed choices. There must be binding rules on labeling to ensure that the consumer has the information on the quality of products whether this includes the composition, use of product and storage. This in conjunction with the risk information will allow consumers to make informed purchases.

3. Nutrition

To ensure protection of public health consumer need to consider the nutritional value of the foods they consume, the intake of essential nutrients is required to maintain good health and

[102] Commission of the European Communities, *white paper on food safety*, 2000, 5-6
[103] Huffman E W, 'Does information change behaviour' OCED World Forum, Busan, 27-30 October 2009
[104] Commission of the European Communities, *white paper on food safety*, 2000, 31-34

well-being. There is the need to have consumers access on to the correct information about the food they consume.

Local Standards

In chapter two the question raised was whether the current legislation is sufficient to regulate the consumption of unhealthy foods.

CAP 496 establishes KEBS, a regulatory body which is mandated to set standards and codes and ensure compliance.[105] The fact of the matter is local standards focus primarily on hygiene safety when food is concerned. In regulating food there needs to be codes and standards that deal with a myriad of issue not just hygiene for example as discussed above access to information which includes labeling.

In the recent years there has been an effort by KEBS to review standards taking special interest in those that are older than ten years. There have also been semi-annual standards development plan.[106]

The scientific research that shows unhealthy foods are putting our health at risk is relatively new and thus codes and standards are yet to catch-up.

Section 5 of Cap 254[107] is only as effective as the codes and standards provided. Thus, legal enforcement can only be effective when codes and standards are prescribed.

These standards and procedures need not be novel in fact the CODEX is a sufficient back drop to furthering the codes and standards. The guidelines prescribed in the CODEX merely need to be put into legislation.

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[105] Section 4, *Standards Act*

[106] https://www.export.gov/apex/article2?id=Kenya-trade-standards on 25 January 2017

[107] Section 5, *Food Drugs and Chemical Substance Act*

Chapter 5: Conclusion and Recommendations

Conclusion

Science has shown that NCDs are caused by unhealthy eating habits and lack of physical exercise. Even as such, the right to health is an inalienable right that is recognized both locally and internationally. This created the effect that of obligation of the government to ensure that its citizens are of sound health which is achievable first, through health food.

The rise of NCDs is to be a red flag both at the local and international levels. Their effects have and continue to shake the economies of nations with proven studies showing they heighten the suffering and poverty among families.[108] There is therefore the need to put these scourge in check. That is the role of any government.

The various principles of human right were discussed: universality, inalienability, equality, non-discrimination, interrelatedness, interdependence, indivisibility, participation, accountability and the rule of law.[109] These principles bring out the definition of human rights as right inherent to all human beings.

The government is tasked with guaranteeing and protecting these rights. When making an assessment of this with regards to nutrition is directly related to the right to health there are some conflicting views. As stated in chapter two where some believe that government intervention in the food market is necessary some believe that government intervention is an outright intrusion on consumer's freewill.[110] How then should the government navigate this terrain?

Following the research conducted there were a number of observations to be made. First and foremost, NCDs should be considered a major concern in the 21st century. The fact of the matter is the reported incidences in developing countries are on the rise which will only serve to have a negative impact on individuals and the society at large. How does the role of the government come into play? From all that has been discussed in the paper, the government should play a more prominent role in curtailing the rise of NCDs. This can be done through mitigating the risk

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[108] 'Lakshaminarayanan S: Role of government in public health: current scenario in India and future scope' *PMC* 2011 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114612/ 23 December 2016

[109] http://www.unfpa.org/resources/human-rights-principles on 7 December 2016

[110] 'Azetsop J and Joy T, Access to nutritious food, socioeconomic indivualism and public health ethics in the USA: a common good approach' *BioMed Central,* 2013 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4231366/ 6 December 2016.

factors that contribute to NCDs, which one method as put forward in this paper should through the legislation of foods in particular unhealthy foods.

Second, there are discrepancies in the standards and codes regarding food and nutrition. The main focus in local regulation focuses around sanitation and hygiene. As discussed, the foods contributing to the rise of NCDs are primarily unhealthy foods. Begging the question as to whether standards and codes should broaden to include regulation of unhealthy foods?

Third, consumers seem to be are lacking the sufficient awareness on food and nutrition related to health. Without the necessary information consumers are bound to continue their purchasing habits by buying unhealthy foods which is only putting them at a greater risk of acquiring NCDs. As discussed in chapter four the following information that should be provided falls into these categories of risk communication, labeling and nutrition. The question that then follows is who responsibility is it to effectively communicate the information?

Fourth, it was interesting to observe and be informed of the myriad of risk factors that can be associated with NCDs. It would be single minded for regulators to only look at the regulation of food and consider a job well done. The fact of the matter is where action can be taken to handle the other risk factors attempts must be made to remedy the situation. However, looking at it from the lens of how important food is not just a commodity but as a means by which human beings maintain their existence – taking time to remedy the legislation around food and nutrition when dealing with NCDs is important.

Recommendations

There are different interests to be considered when putting forward recommendations. It's best to make recommendations based on comparative jurisdictions where policy reflects a more health conscious and nutritious approach to food which will enable them to be effective and relevant.

1. Implement local standards and codes: In several European countries the CODEX has been taken from guideline status to actual legislation.[111] The CODEX can be translated into local codes and standards for example with regards to labeling of food products, ingredients that foods contain etc.

[111] Food and Agriculture Organisation of the United Nations, *CODEX ALIMENTARIUS Understanding CODEX*, 2016, 15-17

The United Kingdom has been effective in establishing effective working between industry-government to have healthier food. These collaborative efforts resulted in the salt-intake-reduction programme – this has assisted in reducing citizen's sodium intake by 15percent between 2003 and 2011 and has been linked to the reduced instances of cardiovascular disease.[112]

2. Implementing standards that target vulnerable groups in society: With the growing burden that NCDs pose on the economy the state of New Delhi in India is taking drastic steps to curtail the issue. The High Court of New Delhi in the Uday Foundation case[113], issued an order to regulate junk food consumption among school children. The court directed the Food Safety and Standards Authority of India (FSSAI) to implement guidelines that allow for wholesome, safe, nutritious and hygienic foods to school children in India. The guidelines are to contain:
    - Restrictions on food items being sold in schools or even around schools
    - Advertisement and promotion of junk foods directed to children is to have a regulated frame work under which it operates
    - Canteen policy to be implemented based on colour coding i.e. green labeled foods are the healthy food options and should make up around 80 percent of the foods available, healthy menu options should be made available.
    - School should educate on nutrition thus a good structured curriculum on balanced diet and its health impacts should be created.

    Kenya can use similar mechanisms to ensure vulnerable groups such as children are educated on nutrition and be encouraged to consume healthier foods.
3. Education: consumers should have the information on food and nutrition to ensure their food choices are more informed. This can take the form of health campaigns, collaborative forums involving the public and private sectors, television or radio programs/ short skits that focus on the issue that is NCDs and related risks.
4. Fiscal disincentives and incentive: After the harmful effects cigarettes were proven to have governments introduced high taxes on cigarettes as a way to reduce smoking. Governments can place taxes and subsidies to motivate consumers to choose healthier

[112] Gostin O L, *healthy living needs global governance*, Georgetown University Law Center, Vol 511, 2014, 4.
[113] Uday Foundation for Congential Defects v Union of India & Others [2015] W.P. (C) No. 8568/2010 High Court of Delhi.

versions of food: which could take the form of incentivizing producers and retailer to grow, use and sell fresh fruits and vegetables; or decentivizing the food industry in the production of processed foods with saturated fats and free sugars.

Annexures

Annexure 1
PART A

1. Sex

   Male ☐ Female ☐

2. Age

   18-30 ☐ 31-45 ☐ 46-60 ☐ 67-75 ☐ 76 + ☐

3. What is your level of education

   Primary ☐ Secondary ☐ College/University ☐

PART B

4. Do you know what non-communicable diseases are?

   Yes ☐ No ☐

5. List three risk factors that are linked to acquiring a non-communicable disease?

   1 2 3

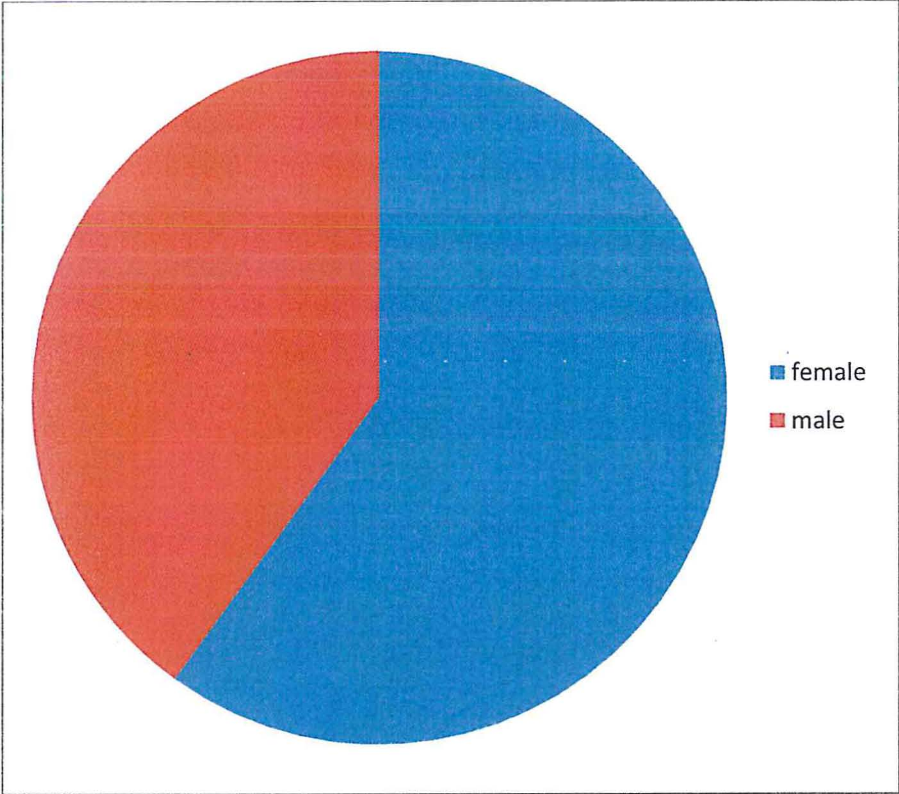
6. Do you know the recommended nutritional guidelines by the world health organisation?

   Yes ☐ No ☐

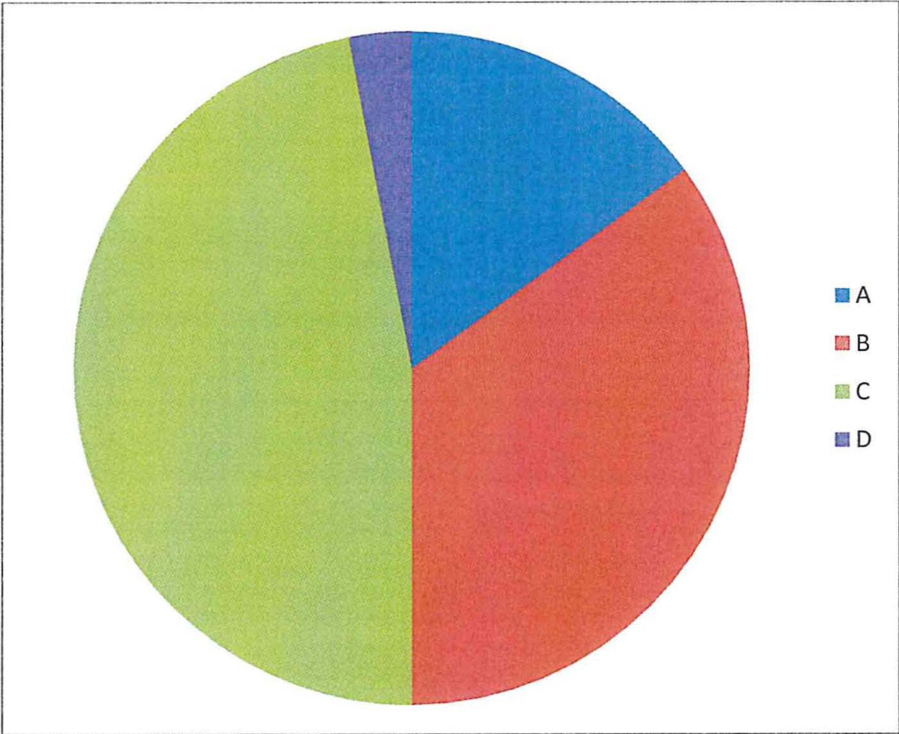
7. How can consumer awareness about the issue be increased allowing for better choices on health and nutrition?

   Government ☐ Consumers ☐ International Org ☐Mixture ☐

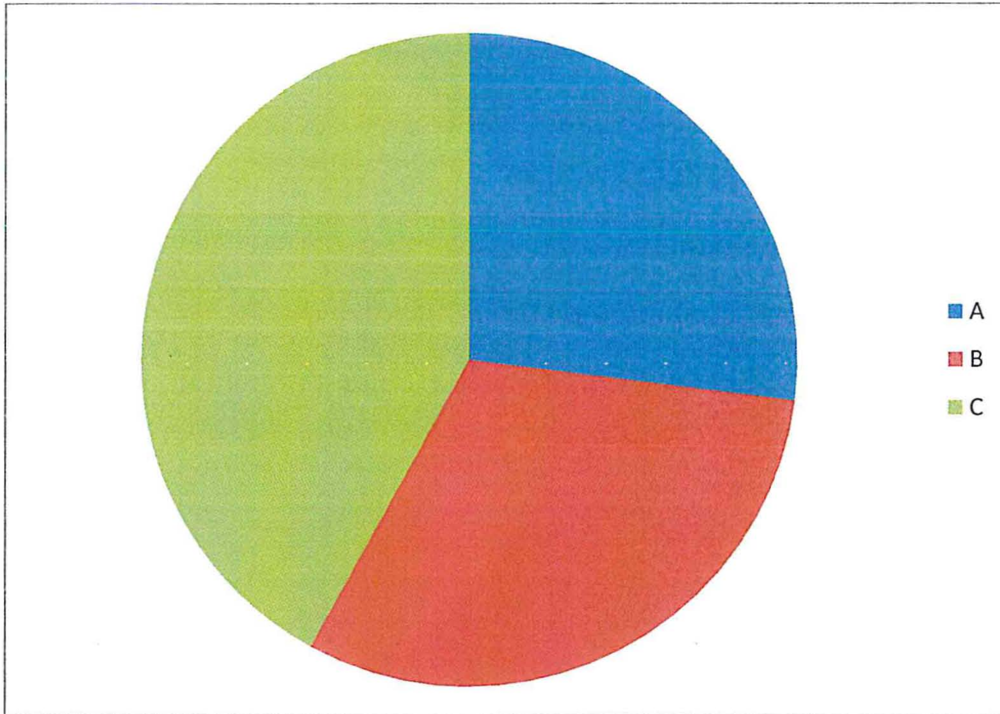
Annexure 2



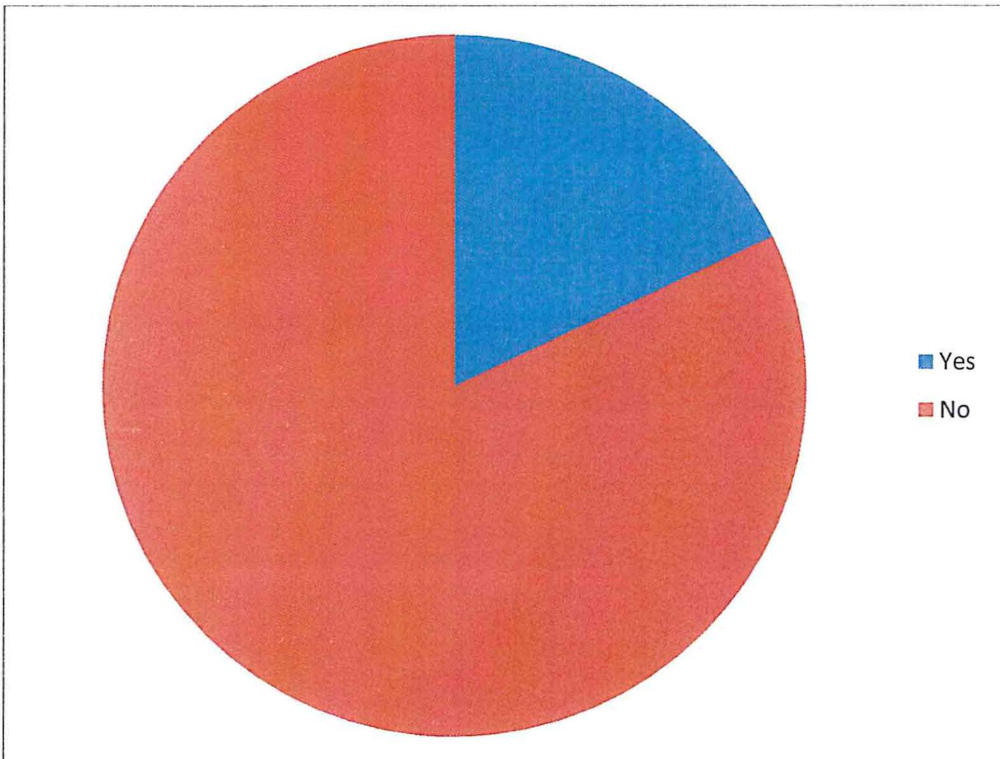
Annexure 3



Annexure 4



Annexure 5



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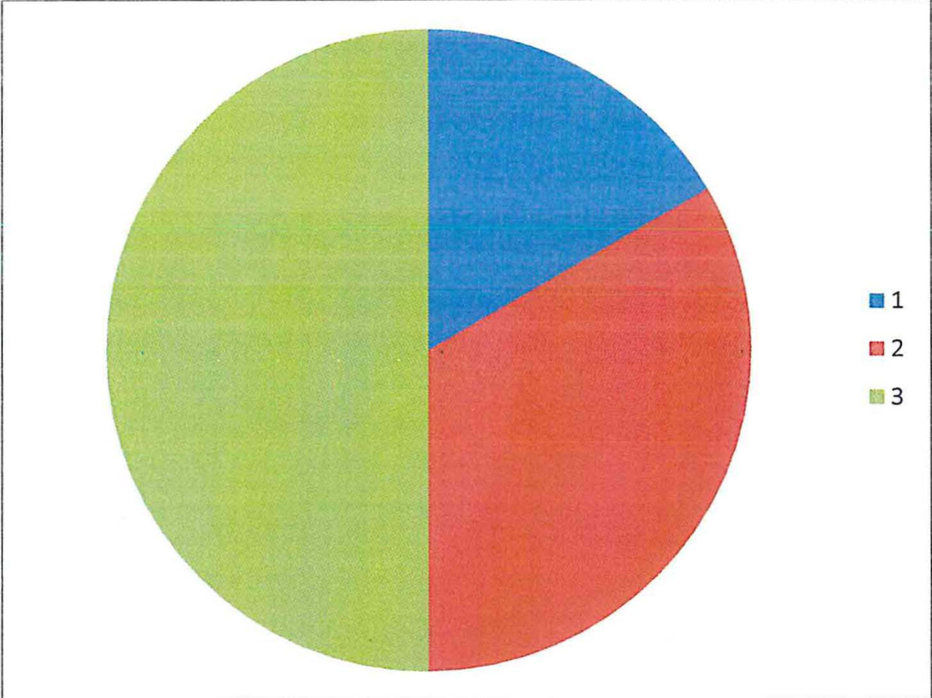

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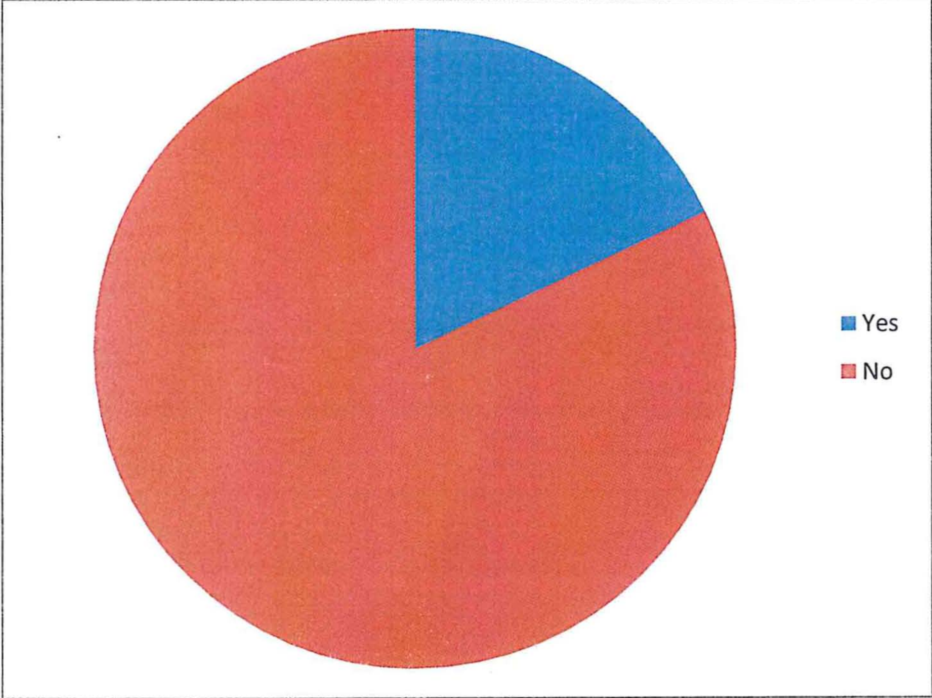
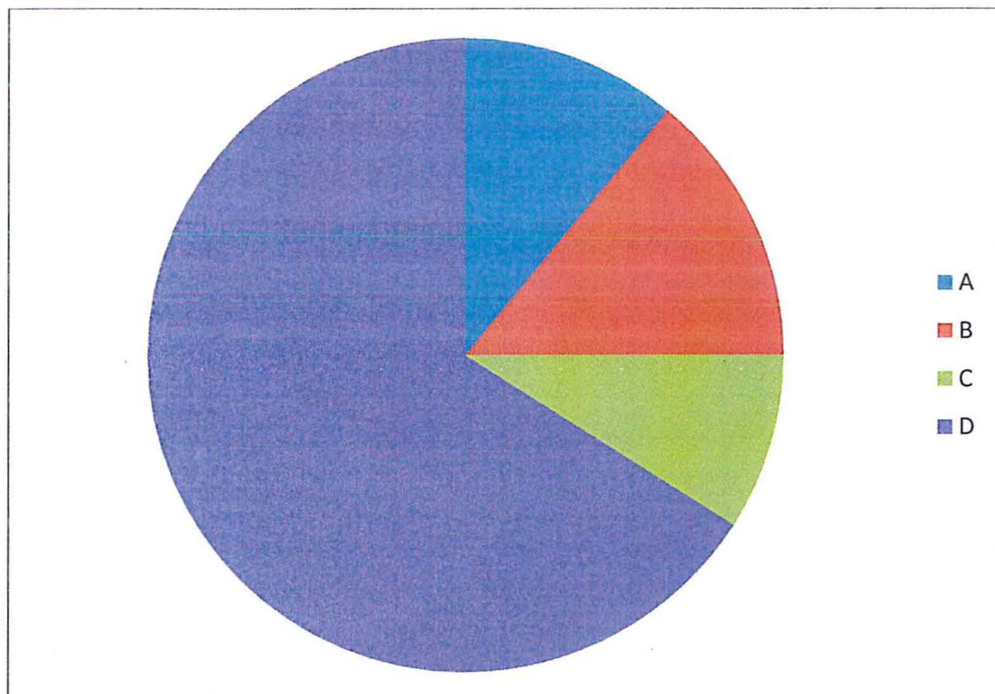


Annexure 8



Annexure 9

	Product	Mandatory Information (Yes/No)	Carbohydrates (Yes/No)	Fatty Acids/ Cholesterol (Yes/No)	Comment
1.	Nakumatt blue label potato crips	Yes	Yes	Yes	
2.	Quencher fisto mixed fruits flavour drink	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
3.	Krackles chip sticks	Yes	Yes	Yes	
4.	Safari mix wots	No	Yes	Yes	No indication of the nar of food
5.	Nutty by nature sweet chilli and lime flavoured peanuts	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
6.	Nutty by Nature salted cashew roasted	Yes	Yes	Yes	
7.	Quencher pineapple flavour drink	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
8.	Amigo nguma crips	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
9.	Amigo matoke salted crips	No	No	No	There is no declaration o: quantitative ingredients No nutritional informati

					on the food
10	Depy's matoke crips	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
11	One stop snack foods Bombay bhel	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food No indication of the nan of food
12	One stop snack food moong added chevda	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
13	Givay flavour peanuts	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
14	OR jugupak	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
15	OR talpak	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
16	NuVita choco biscuits	Yes	Yes	Yes	
17	Britania shortcake biscuits	No	No	No	No declaration of quantitative ingredients

					No nutritional informatic on the food
18	Borneo crispy coco biscuit	No	No	No	No declaration of quantitative ingredients No nutritional informatic on the food
19	Marilan chocolate troufle brigadeiro	No	No	No	No declaration of quantitative ingredients No nutritional informatic on the food No indication of the nan of food
20	Nuteez peanut butter	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
21	Peptang plum red jam	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
22	Peptang strawberry jam	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
23	Winnie's pure natural honey	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
24	Raha drinking chocolate	Yes	Yes	Yes	
25	Clovers cocoa	Yes	Yes	Yes	

	powder				
26	Supa soya	No	No	No	No declaration of quantitative ingredie No nutritional infoı on the food
27	Instant soya drink	No	No	No	No declaration of quantitative ingredier No nutritional inforn on the food
28	Lucky star sardines	Yes	Yes	Yes	
29	Peptang baked beans in tomato sauce	No	No	No	No declaration of quantitative ingredients No nutritional informa on the food
30	Kenylon baked beans in tomato sauce	No	No	No	No declaration of quantitative ingredients No nutritional informati on the food
31	Peptang whole peeled tomatoes	No	No	No	No declaration of quantitative ingredients No nutritional informatioı on the food
32	Blue Band original medium fat spread	Yes	Yes	Yes	
33	Prestige margarine	No	No	No	No declaration of quantitative ingredients No nutritional informatioı on the food

34	Nutella hazelnut spread with cocoa	Yes	Yes	Yes	
35	KOL red plum jam	No	No	No	No declaration of quantitative ingredients No nutritional information on the food
36	Horlicks chocolate flavour	No	No	No	No declaration of quantitative ingredients No nutritional information on the food No indication of the name of the food
37	Farmer choice spicy chicken sausages	Yes	Yes	Yes	
38	Farmers choice beef sausages	Yes	Yes	Yes	
39	Farmers choice chicken burger	Yes	Yes	Yes	
40	Farmers choice beef burger	Yes	Yes	Yes	
41	Quality meat products nyama snack	No	No	No	No declaration of quantitative ingredients No nutritional informat on the food
42	Pick n peel apple juice	Yes	Yes	Yes	
43	Afria multi-vitamin fruit juice	Yes	Yes	Yes	
44	Royco mchuzi mix	Yes	Yes	Yes	
45	Peptang tomato sauce	No	No	No	No declaration of

					quantitative ingredients No nutritional informatic on the food
46	Heiz tomato sauce	Yes	Yes	Yes	
47	Kentaste coconut milke	Yes	Yes	Yes	
48	Royale mayonnaise	Yes	Yes	Yes	
49	Remina salad dressing	No	No	No	No declaration of quantitative ingredients No nutritional informatic on the food
50	Heinz chilli mayonnaise	Yes	Yes	Yes	

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