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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

THE LEGAL PERSPECTIVE OF HUMAN RIGHTS AND DEVELOPMENT IN KENYA

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Award of master's degree in International Studies at the Institute of Diplomacy
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DECLARATION

This Thesis is my original work and has not been presented for a degree in any other University.

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DEDICATION

This project work is dedicated with a lot of love and gratitude to my family and friends who have always supported me and stood by my side.

ACKNOWLEDGEMENT

I acknowledge the divine grace of Allah in blessing me with the courage, strength, and determination in undertaking this exercise. Secondly, I would like to express my sincere and special gratitude for the invaluable support given to me by my supervisor Dr. Kiamba who has patiently offered me unwavering support and assistance that has led to the successful completion of this research project.

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List of abbreviations

ACHPR	African Charter on Human and Peoples Rights
AU	African Union
CDF	Constituency Development Funds
CEDAW	Elimination of All Forms of Discrimination against Women
CUN	Charter of the United Nations
IBHR	International Bill of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights (
IHRL	international human rights law
RTD	Right to Development
SECs	Social, economic and cultural rights
UDHR	Declaration of Human Rights
UN	United Nations
UNDR	U.N Development rights Declaration
UNGA	United Nations General Assembly

Abstract

This study aimed to understand the legal perspective of human rights and development in Kenya. The primary legal obligation of Human rights and development and the right to development, in particular, is well captured in the various international treaties that form the Universal Bill of rights under the customary international law. The subject of Human rights and development is, therefore, a continuously growing jurisprudence in Kenya and in the world at large. The realization of the right to development remains a challenge in Kenya. This has been guided by three main objectives. To examine the relationship between development and human rights, to investigate the existing legal frameworks that incorporate development and Human rights in Kenya, and finally to examine the challenges and opportunities of Human Rights and Development in Kenya.

The study relied on a descriptive survey design using both qualitative and quantitative forms of data. Primary data was collected through the use of questionnaires well as the structured interview. Secondary data was collected through newspapers, reports, journals, and students' thesis in repositories. The right to development sees development not only as economic growth but the general well-being of all individuals.

The legal aspects of the right to development as a human right can be drawn from the Charter of the United Nations (CUN) and the International Bill of Human Rights (IBHR) the integration of the right to development with other human rights. There has been documentation of a number of international and regional laws on human rights and development. These laws have been the guiding principles of the right to development.

The study recommends that the right to development to be incorporated in the constitution of Kenya. There is also a need to introduce a new development model in Kenya that will ensure that the right to development is realized.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.0 Introduction

The study seeks to investigate the legal perspective of human rights and development in Kenya. The study comes at a time when there is a global shift towards development for all where rights to development are being given emphasis by global bodies like the United Nations. The legal perspective of human rights and development, therefore, is a critical subject both domestically and internationally that need to be looked into. This chapter, therefore, discusses the background of the study, states the problem statement, provided the objectives, the research question literature and empirical review, hypotheses, theoretical framework, and the research methodology.

1.1 Background to the study

Human rights are termed as the basic rights and freedoms that every single person enjoys or ought to enjoy. In the global context, the United Nations acknowledges human rights through the 1948 universal declaration of Human rights, which was later in 1966 enhanced internationally by adding the covenant on civil and political rights, and this gave the legal treaty status of the 1948 Declaration.¹ On the other hand, development can be defined as the enhancement of the human being's standard of life, it means making a better life for everyone, it means having the basic

¹ Belden F., human right theory, (University of Illinois, Urbana Champaign, 2009) p1

² Richard P and Elaine H, Theories of Development, Contention, Argument, Alternatives, 2nd Edition, (The

needs, a healthy place to live in, and people being treated with dignity and respect.²

Development is a basic necessity of human growth and as well as the growth of a state. From the above definition, it is evident that development is among the many goals of human rights. To this end, human rights serve as both objective on its own as well as a contribution to quality and effective development assistance. Human rights dictate that every individual has the right to development. Lack of development in this sense is seen as an infringement of the right of an individual.³

Therefore, the right to development has to be assured to every individual within a state. It is for these reasons that the legal obligations to the right to development were put in a number of international human rights frameworks like the International Covenant on Civil and Political Rights. Individual member states that take part in various human rights instruments, therefore, have an obligation in promoting and protecting individual human rights, not forgetting the emerging right to development. This also underscores the importance of human dignity as states in the various normative frameworks. This has seen the increased drives in terms of moral and political perspective as they consider integrating human rights into development. Human rights,

² Richard P and Elaine H, Theories of Development, Contention, Argument, Alternatives, 2nd Edition, (The Guilford Press, New York 2009) p3

³ Richard P and Elaine H, Theories of Development, Contention, Argument, Alternatives, 2nd Edition, (The Guilford Press, New York 2009) p14

in this sense, are seen as constitutive of development.⁴

Globally, the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration on Human Rights are the most recognized treaties that form the universal Bill of Rights and part of customary international law that emphasizes on the benefits of human rights in development. Human rights and development find its legal foundation in the doctrine of the right to development ('RTD'), which is stated in Article 1 of the ICCPR. Article one of the ICCPR stipulates that "every person has the right to self-determination. This entails the right to freely determine their political status and freely pursue their economic, social, and cultural development." It goes on and says that "every person may, for their own ends, freely dispose of their natural wealth and resources ... at no time should an individual be deprived of its own means of subsistence."⁵

The primary legal obligation of Human rights and development and the right to development, in particular, are well captured in the various international treaties that form the Universal Bill of rights under the customary international law. The subject of Human rights and development is, therefore, a continuously growing jurisprudence in Kenya and in the world at large. To this end,

⁴ Lankford M., Human Rights and Development: A Comment on Challenges and Opportunities from a Legal Perspective, (Journal of Human Rights Practice Vol 1 | Number 1 | March 2009) p21

⁵ Piron L and O,Neil T., Integrating Human rights into development: A synthesis of donor approaches and experiences, (2005) p11

promoting the right to development remains a justiciable human right. This was confirmed by the landmark ruling of the African Commission on Human and People's Rights. The ruling was on the right to the development of the Endorois People. The Endorois People have taken their cases before the African Commission on Human and Peoples' rights, alleging that their basic right to social, cultural, and economic development has been by Kenya.⁶

The emphasis on human rights in development means that the world is entering a new phase where there is a more participatory and inclusive development. The Human rights angle of development appreciates the ability of all people to take part in development, as well as an effective and equal share of national resources to ensure human development, is equitable. In Kenya, the right to development is enshrined in the constitution. This simply implies that the government has the role to ensure development meets human rights standards. There cannot be meaningful development without respect for human rights. Equally, human rights cannot be fully achieved without development. This, therefore, makes human rights and development complementary and key elements of human interaction both at the state and at the international level. It is, therefore, the responsibility of the government to take the necessary mechanism to ensure that development policies meet up with other human rights. The right to development is one of the key Marxism that each state should ensure that all citizens enjoy. The government, in this sense, should take up measures ensuring the realization of the right to development. Such measures can be in the form of economic, education, legislation, social reforms, financial, or

⁶ Kivutha K, Fundamental Rights and Freedoms in Kenya (OUP: Nairobi, 1990) p3

implementing administrative.⁷

This study will, therefore, examine the legal perspective of human rights and development. The study will look into details the development as a human right requirement. As well as the legal doctrine and arguments around human rights and development and in particular the right to development as enshrined in the Universal Declaration of Humana rig International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Kenya constitution 2010 under the bill of rights. There is a need to examine the legal perspective of human rights and development.

1.2 Statement of the research Problem

According to the International Covenant on Economic, Social Rights, which Kenya is a signatory to, all human beings are entitled to Economic and social rights. In Kenya, the chapter on the Bill of Rights in the current constitution provides for enjoyment of Economic and social rights under Article 43 (1) (a)-(f) on six sectors which include health, adequate food and of acceptable quality, housing, clean and safe water, education and social security.

It is the desired majority of Kenyans to enjoy these basic rights. However, the implementation of these legislations beyond the passing of the laws has become a problem. Similar to other rights, ‘RTD’ the right to development has a myriad of challenges varying from their enactment, implementation to enforcement. Economic rights remain unrealized as good laws sit on shelves. In this regard, many individuals in society do not enjoy their economic rights, mostly the right to

⁷ Mbondenyi M.K. and Ambani J.O The Constitution of Kenya: Principles, Government and Human Rights (Law Africa Publishing, 2012) p6

development because it has not been fully realized.

Various economic and social theories have crystalized that there is a need to discuss and understand the often omitted legal perspective of human rights and development. Kenya's implementation of development policies that are in conformity with human rights provision has faced various challenges. Despite the introduction of devolution, most development projects are being done by the national government. However, most of these development projects are not participatory and inclusive, with different sections of the population feeling left out. The overall problem of this study, therefore, is the lack of legal obligation on human rights and development. This makes it difficult to achieve equitable and participatory national development in Kenya.

1.3 Objectives of the study

The general objective of the study is to assess the legal perspective of human rights and development in Kenya.

Specific objectives

1.3.1 To examine the relationship between development, and human rights

1.3.2 To investigate the existing legal frameworks that incorporate development and Human rights in Kenya.

1.3.3 To examine the challenges and opportunities of Human Rights and Development in Kenya.

1.4 Research questions

1.4.1 What is the relationship between development and human rights?

1.4.2 What are the legal frameworks that incorporate development and Human Rights in Kenya?

1.4.3 What are the Challenges and Opportunities of Human Rights and Development in Kenya?

1.5 Justification of the Study

The human right has become a critical aspect of development policy and programming in the 21st century. Various international doctrines like the 1993 Vienna World Conference on Human Rights, the 2000 Millennium Summit, and the 2005 World Summit all recognize that development and human rights are interdependent and mutually reinforcing. The same is supported by the concept of 'Larger freedom' as often fronted by the United Nations which links security, human rights, and development as the key pillars of International relations

1.5.1 Policy justification

The human right to development remains one of the elements of economic rights and social rights. A state hence is obliged to put in place the necessary procedures needed to achieve the right to development. Kenya is a member state to the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, and the African's Charter for Peoples' rights; hence they are bound by the legal obligations of these treaties. Domestically, the Constitution of Kenya 2010, Article 43 states that "the government has an obligation to respect, protect and fulfill the realization of the right development for all Kenyans."

There is a necessity to understand this growing sector and to analyze the legal perspective of Human Rights and Development in Kenya. The study will assist policymakers in taking part in the development and human rights to understand issues at stake in addressing the legal aspect of

development and human rights. This will help in modifying existing strategies or formulating new policies and frameworks that will govern the respect for human rights in relation to development.

1.5.2 Academic Justification

There is inadequate academic literature on the legal Perspective of Human Rights towards development. Hence there is a need for proper intellectual understanding of legal aspects of rights and development. The study will generate new and useful knowledge in the fields of academia, such as strategic studies for researchers, students, and lecturers as a source of information.

1.6 Literature Review

This part of the study will be reviewing the relevant literature. The literature reviews will be done thematically as per the study's variables. The literature review will consider the conceptualization of human rights, and development, the nexus between human rights and development, and the right to development. Overall, the reviews will cover the extant knowledge of the discourse of human rights and development.

1.6.1 The concept of Human Rights and development

From an international relations point of view, the term development is often used when describing the developed north and the developing or underdeveloped south. In the context of the development community, development is described as the usage of economic, social, and even legal measures to bring change or provide better living standards within a country. As a

discipline, development touches on broad areas like political governance, infrastructure, and planning, economies, health, human rights, as well as sustainable exploitation of natural resources for the betterment of its citizens. The broad scope of development means that it defies the conceptual definition.

Kibwana observes that human rights defined by both domestic and international law should be fully observed and respected. He notes that it is not only governments that violate human rights. Private individuals, as well as corporations, also violate human rights and should be held accountable. He contends that for human rights to be fully enjoyed by individuals, they should be effectively and fully enforced. Thus, enforcement of human rights becomes critical in ensuring that there are effective accountability and transparency for human rights protection.⁸

Ruggie in seeking to provide clarity on the issue of human rights and business proposed the "Protect, Respect and Remedy" framework. While acknowledging that the state has the primary duty to protect against human rights abuses, he observed that corporations also have a responsibility to respect human rights. He contends that corporate responsibility with regard to human rights comprises doing no harm, which means corporations should avoid violating human rights and, in addition, should take positive actions to address adverse human rights impacts which they have contributed to. Consequently, Ruggie points out that the effective discharge of the corporate responsibility to respect human rights requires due diligence to be carried out by

⁸ Kivutha Kibwana, *Fundamental Rights and Freedoms in Kenya* (OUP: Nairobi, 1990)

corporations.⁹

1.6.2 Human Rights and Development

The literature on human rights and development revolves around convergence or divergence of the two concepts and how the two concepts affect each other in practice, that is, how human rights lead to development or how development leads to the actualization of human rights. However, there is wide acceptance and acknowledgment through research that human rights and development enjoy mutual reinforcement of each other. This literature review will provide for the various scholarly writings on the integration of the two concepts.

Since the 20th century, integrating human rights and development bore out of international conventions and human rights declarations and instruments such as the Charter of the United Nations which acknowledges the need for promotion of better living standards and social progress, Universal Declaration on Human Rights, the International Convention on Economic, Social and Civil Rights among others. Notable in this context is the declaration on the Right to Development by the United Nations General Assembly via Resolution 41/128, establishing the right to development, which includes: natural resources sovereignty, participation, equity, and the enjoyment of civil, political, economic, social, and cultural rights.¹⁰

According to McInerney – Lankford, Three reasons human rights has a possibility of being

⁹ John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, UN Doc. A/HRC/17/31 (2011).

¹⁰ United Nations, *Declaration on the Right to Development*, (1986). Available at: <https://undocs.org/en/A/RES/41/128>

infused into development policy are; the protection of human dignity in development, enhancement of development processes by ensuring sustainability, equality and equity, participation, and other principles that entails a right-based approach finally, that human rights as internationally legally binding instruments should be respected in all contexts.¹¹ Lankford further posits that there is convergence or divergence links of human rights and development in three levels: the factual or substantive level whereby they converge in the expansion of the function, ventures, and laws of development by for example undertaking development that covers social and human development; at the principles level whereby both concepts acknowledge the principles of participation, inclusion, good governance, accountability among others and the obligatory level whereby development contributes or creates a conducive environment for the realization of the human rights.¹² These contextualize the relationship between the two concepts by majorly seeking to appraise the integrative nature of human rights into developmental laws and practice.

Gunduz traces the evolution of development from the 1950s and 1960s, where the focus was on economic growth, to the 1990s and the present where development focus is on general human development.¹³ In this case, the scholar seeks to differentiate between development based on economic growth from development that aims at human development and growth. Human development in this context entails social, economic, and political development. He further

¹¹ McInerney-Lankford, S. 'Human Rights and Development: a Comment on the Challenges and Opportunities from a Legal Perspective.' *Journal of Human Rights Practice*, Vol. 1, No. 1, (Oxford University Press, 2009), pp. 51-82.

¹² Ibid.

¹³ Gunduz, C. 'Human Rights and Development: The World Bank's Needs for a Consistent Approach.' *Working Study*, Series No. 04-49, (London: London School of Economics and Political Science, 2004).

differentiates the traditional state-centered approaches focusing on state economic growth from human-centered approaches to development, which are grounded on human rights. Gunduz argues that the integration of human rights into development will enhance it by introducing the entitlement dimension. In conclusion, he posits the existence of a hierarchy between human rights and development by asserting that human rights take priority over development since human development is normatively based on human rights standards. Here, a debate is ensued on what comes first? Whether human rights provisions dictate what development policy is undertaken or the capacity of development to shape human rights.

Sano¹⁴ provides the reasons for the increased links between human rights and development in the 1990s. He argues that the demands of developing countries for internationally supported social provisions as in the United Nations Social Summit Meeting in Copenhagen in 1995 thus development been perceived as a right, and the increased attention given to good governance and democratization in the development discourse. This points to the tendency of international politics and the formation of principles and norms around development that entailed human rights frameworks.

According to Sano, human rights and development have differences in the themes the two concepts are concerned with. Human rights are concerned with norms, rules, duties, and institutional frameworks, while development is concerned with the change process, resource

¹⁴ Sano, H-O, 'Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development.' *Human Rights Quarterly* 22, (John Hopkins University Press, 2000), pp. 734-752.

control, and allocation.¹⁵ This argument lays the basic themes of the two concepts, theoretically. Sano goes further to describe the empirical integration of human rights and development, whereby some development activities are made entitlements, and that human right activities must create empowerment. In this case, development goods or ends become entitlements to the people, while human rights seek to empower people; this contradicts the usual purpose whereby human rights are described as entitlements and development as empowering people.¹⁶

Piron and O'Neil note that human rights remain a key aspect of development policies since the post cold war era. The scholars root their argument on the Vienna World conference of 1993 on human rights, the Millennium Summit of 2000, as well as the World summit of 2005, which all emphasized the importance of human rights in development and development on human rights. Human rights and development hence are interdependent and mutually enforceable. The development has become part of human rights to the point that lack of development is seen as injustice and a violation of human rights. Development hence cannot be achieved without human rights. Equally, human rights are not complete without development. Therefore, there is a clear relationship between development cooperation and the achievement of human rights.¹⁷

Lankford notes that the recent changes in human rights and development reflect a continuous evolution in the two fields. Further, he notes that there exist various challenges and opportunities in the relationship between development and respect for human rights. Human rights, according

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Piron L and O,Neil T., Integrating Human rights ito development: A sythesis of donor approaches and experiences, (2005)

to Lankford, is subject of binding international obligations; hence it has importance to development both at the local and international level. The article goes on to look at the legal duties of human rights in development. To this end, in whatever view, human rights and development are integrated as they overlap substantially in various local and international frameworks.¹⁸

1.6.3 Right to development

Onyeyi notes that the United Nations has been trying to eradicate barriers that hinder the right to development to be fully realized. These obstacles are; the first is inadequate foreign aid, which is very crucial in the achievement of the right. The second obstacle is corruption. Corruption is many times witnessed when investors hesitate in initiating development projects or not initiating the plans at all but instead squander the money meant for development projects for personal gains. In Nigeria, corruption is a significant problem that has hindered development in a wide range of sectors, starting from the education sector to health sectors; therefore, the citizens rarely enjoy the right to development. Another obstacle is the negative consequences of globalization, which has widened the gap of living standards between the wealthy and poor. Lack of quality education has affected Nigeria negatively on development. They tend to do more of theory than practical, and Nigeria universal education is yet to be achieved. Constant internal conflicts in Nigeria, which are ethnic bases, ideological differences have led to the destruction of properties, lost lives, among others. Poverty hinders the right to develop it has derives people of primary

¹⁸Lankford M., Human Rights and Development: A Comment on Challenges and Opportunities from a Legal Perspective, (Journal of Human Rights Practice Vol 1 | Number 1 | March 2009)

needs such as a house, education, food, and propels criminal activities such as kidnapping, smuggling. Lastly, the lack of institutions to accommodate individuals as all qualified citizens are unable to get slopes in higher education institutions to sharpen their skills.¹⁹

United Nations (UN) declaration on the right to development recognized citizens and their states. They then placed the human being at the center of the right to development. It further argues that individuals should actively participate in the development, should acquire benefits from the right. The state also has the authority to form policies for development, which places individuals in communities as beneficiaries. The development process should be inclusive of all groups of people, and participation should be granted to all, liberty, to elect their representative. International communities should cooperate to promote the right, and different states should formulate policies that do not collide with other countries. Good governance should be a priority. The article state that a string of dictatorship in a leadership position, ethnicity, over-reliance on natural resources have led to failure in policies in Nigeria. With its inadequate income and resources, the state is unable to put in place better policies. Spending above the revenue can also hinder economic development. This happens when leaders put their interest first instead of his people, then buy influence with the money got from taxation meant for development. Leaders should be visionary, transparent, and accountable. Equality of opportunity should be prioritized to promote growth as human beings are central to it. There should be no race, religion, or ethnic discrimination. Equal opportunities, for example, Nigeria National Health Insurance Scheme, tries to solve the expenses in the health sector. Vulnerable groups and marginalized should also

¹⁹ Oyenyi A., Realizing the right to development in Nigeria an example of legal barriers and challenges (Olaitan olusegun , 2010)

be included.²⁰

Ibe takes note of Banjul charter's right to development in article 22, and it demonstrated that Africa is committed to equalizing the right to development. It included political, economic, social development, among others, intending to improve the living standard of everyone. In Kenya, it is not openly provided in the constitution, but particular rights in the bill of rights in the Kenyan constitution have the element of the right to development. For example, article 56 has the rights of marginalized people and minorities, which further says that the state should allow the marginalized and minorities to take part in governance, providing them a unique position in the employment sector. In article 42 has a provision of the right to clean and healthy surroundings.²¹

Devolution has directly impacted the right to development. This seen in democracy and accountability in good governance hence leading to the realization of civic procedure rules, and when they are protected, individuals enjoy socio-economic rights and extend to freedom of development. Devolution was created to tackle the issue of marginalization since the colonial regime and to promote national segregation by recognizing diversity. Fair distribution of resources creates opportunities for all individuals to take part in socio-economic, cultural, and political growth. Devolution encourages development both social and economic and easy accessibility of services in the counties. In Kenya, there was a case of the Endorois community,

²⁰ Human rights office of high commission (UN publication 1993)

²¹ Ibe S. „Beyond justiciability: Realizing the promise of socio–economic rights in Nigeria“ (African Human Rights Journal 226, 2007)

which was a perfect example of the right to development. They took the government to court for evicting and abandoning them with nothing to sustain their livelihood. When the court of appeal and high court rule in favor of the government, they didn't tire but went ahead to Africa commission court around 2003 requesting compensation and resettlement. ACmHPP rule in their favor.²²

Then demanded the government resettle the community. The commission went ahead and pointed out that rights must be equal, non-discriminative, and should have accountability and transparency. The ruling further established a development plan that will empower the community. By all these, they affirm that the Endorois community's right to development must be realized. The legal ground of evolving right to development is written in the International covenant on civil and political rights ICCRR. It says that each and every person has the right to self-determination. They have the free will to choose their political development. It further states that every person has the freedom to disposing of natural wealth and sources they own.²³

A discussion by academicians and assembly of the United Nations held in 1986 approved the United Nations declaration on the right development is detailed and ensures group and personal achievement. It also provides equality and equal privileges in development for individuals and nations. It says that a person's personality is responsible for their own growth, and he/she should not act passively in development but actively for the betterment of their state, and their roles

²² Majiwa, J.M. Challenges towards the realization of the right to development in Kenya (University of Pretoria, 2014)

²³ Eno W. „The African Commission on Human and People’s Rights as an instrument for the protection of human rights in Africa (1998) LLM Thesis University of South Africa.

should be in line with the international state community. Some scholars see it as a composite right because of its complexity. It blends with freedom rights and socio-economic policies. Some of the developed economic blocks have asked for clarification and have a positive contribution to the field. But despite all the efforts, it's still debated by scholars and politicians whether it's totally a right.²⁴

Mutungu discusses Kenya long term development plan vision 2030, whose main aim is to transform Kenya into a modern industrialized country by creating worldwide competition, high living standards, and general prosperity among its citizens, also creates a picture of the right to development. Its first pillar targeted economic development within the state from tourism, IT manufacturing industries, agriculture, among others. The second pillar had the aim of improving the living standard of Kenyans, social and human affairs, improve the education sector, and technical training. The third and last was based on governance, promoting democracy, and unifying the country. It targeted the rule of law, peace building, transparency, security, accountability, and conflict management.²⁵

Mbondenyi and Ambani note that in Kenya, the right of development is being achieved by constituency development fund CDF, which was enacted by parliament in the year 2003, and the law directed the government not to allocate less than 2.5 percent of its revenue and share it equally among the constituencies the rest shared in areas with high poverty index. It was to

²⁴ United Nations Department of Public Information, Human Rights, Questions and answers (1987) 4 United Nations, New York.

²⁵ Mutungu O.K. "Constitutionalisation of Basic Rights" available at http://www.commonlii.org/cgi_bin/dip.pl/ke/other/keckrc/200/4.htm

devolve development to the grassroots level for individuals to have the ability to push through their own growth.²⁶

According to Alston, the right to development was adopted by the UN general assembly in 1986. In its resolution, 41/128. It is also being acknowledged in the Arab and Africa charter on human rights. The declaration states that governments have roles in establishing a local and international conducive environment for the realization of the right. The state should act in collaboration with others, and they should also adopt and implement policies that affect individuals who necessarily do not reside within their jurisdiction. United Nations AHS established working groups to help them push for the realization of the right to development. The working groups check and review progress by states in promoting and implementing the right. They then analyze then compile a recommendation then relay them to the United Nations general assembly. The Working group continued and drafting declaration on the right. In 1985 at 45 sessions held by a commission of Human Rights, they presented a report and recommended that the right of development should be viewed in both individual and group dimensions. The further proposed expansion and broadening of the legal framework for people to participate in the development project and how the population can fully exercise the right.²⁷

1.6.4 Integrating human right in the development

A number of international organizations and UN specialized agencies, such as the UN

²⁶ Mbondenyi M.K. and Ambani J.O The Constitution of Kenya: Principles, Government and Human Rights (2013) Law Africa Publishing, 2013)

²⁷ Alston P. "Putting Economic, Social and Cultural Rights Back on the Agenda of the United States (CHRG Working Paper No. 27, 2009)

Development Program, World Health Organization, the Food and Agriculture Organization, the Human Rights Council, and the World Bank have been concerned with initiating various development programs that are aimed at addressing the issues of poverty in developing countries. Other organizations like the New Partnership for Africa's Development ('NEPAD') and have taken a holistic development approach that factors in the issues of Human rights in development. A good example is the African Peer Review Mechanism by NEPAD, which has focused on accountability and political governance as the path to development. Development remains a key global goal. As such, various international and regional agreements on trade and development have been established. The aim is to ensure equitable development for all individuals and states alike. At the individual level, development has been given emphasis as a necessity.²⁸

Robinson argues that development practitioners whose goals are promoting and integrating human rights systematically into development can and should use the international law framework. He notes that the framework provides a way to do this as it provides a binding and legitimate entrance for establishing the connections, it also contains a governing body, principles, indicators, and procedures to aid in the fusing of human rights in development. There exist several factors, actors, like human rights being voluntary and subject to legally binding commitments; the fact that they may have additional values and fundamentally alter how development is pursued. This entails the development agenda being pursued and how it can be achieved. There is also the realization that the pursuit of human rights may differ from the

²⁸ Bilchitz D. *Poverty and Fundamental Rights; The justification and enforcement of socioeconomic rights* (2008). Oxford University Press

pursuit of the development agenda. This is because human rights are a legal obligation, whereas development is not. However, human rights can be valuable in protecting and ensuring that development for all is achieved. Human rights, in this sense, can play a key role in fostering sustainable development. This can be done by undertaking various development projects that are meant to better the lives of all citizens. In the process, it will guarantee the realization of human rights and development for everyone. The article concludes that, therefore, the failure to understand the legal dimensions of human rights and development may lead to failure to achieve both human rights for development.²⁹

Gaps in the Literature review

From the above literature, the study has identified that the relations between human rights, and development, the right to development as well as the legal aspect of human rights and development. Therefore, the above literature indicates scholarly works on the connectedness of human rights to development and human rights. However, there exist gaps in the legal perspective of human rights and development, especially in Kenya. Despite the existence of the right to development and other international treaties that emphasize development as a human right, little has been done on the legal aspect of human rights and development. In particular, there exist gaps in the challenges and opportunities of the legal aspect of human rights and development. There limited studies that have been done on the relationship between human rights and development in Kenya. This study will, therefore, address these areas and fill the

²⁹ Robinson M, “What Rights can Add to Good Development Practice” in Phillip Alston and Mary Robinson, Human Rights and Development (OUP: Oxford, 2005).

gaps.

1.7 Research Hypotheses

H₁: Human rights cannot be achieved without Sustainable development.

H₁: Human rights play a key role and contribute to the development of Kenya.

H₀: There is a lack of a legal framework governing respect for human rights and its relations to development in Kenya.

1.8 Theoretical framework

This study will use two theories the Maslow's hierarchy of needs and social contract theory. The hierarchy of need theory was put forth by Abraham Maslow in 1943. Maslow's hierarchy of needs comprises a five-tier model of human needs or desires that are usually illustrated as hierarchical levels within a pyramid. Maslow integrated two distinct groupings, deficiency needs that comprise the first four levels and growth desires or needs. Deprivation at every level should be fulfilled before an individual proceed to the ensuing level, leading to the upper desires solely being thought about once the lower or additional basic desires are realized. Once these lower needs are satisfied, an individual can then achieve creativity, fulfillment, and realization of their potential. However, if lower-level needs aren't any longer being met, the person can temporally refocus on such lower needs and not progress to the other levels. Physiological motives are involved with human survival—breathing, physiological condition, water, sleep, food, and excretion. Once these physiological needs are fulfilled, safety motives come into play.

Development is the first tier where food, water, health, and well-being form part of basic needs.³⁰

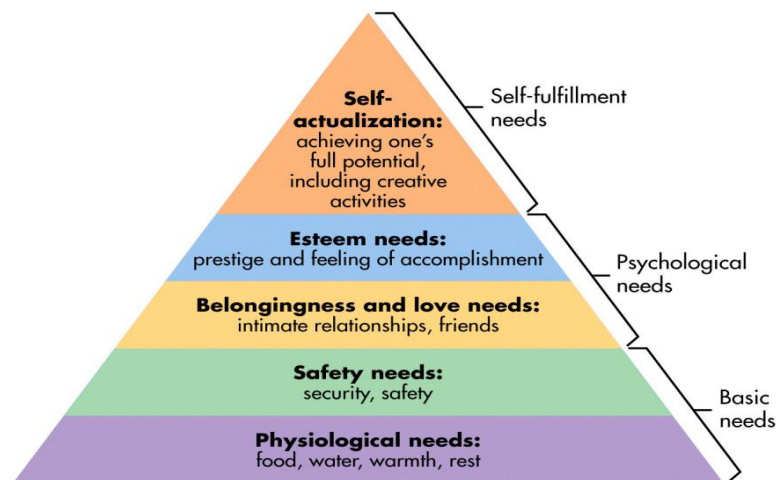


Figure 1 Maslow's Pyramid of Needs

As demonstrated by Maslow's hierarchy of human needs, development is the primary need for an individual. Development hence forms part of basic need and hence has an element of human rights to it. The right to food is linked to the right to development.

This study will also be based on social contract theory by Jean Jacques Rousseau. The social

³⁰ Gambrel, P. & Cianci, R., Maslow's Hierarchy of Needs: Does it apply in a collectivist culture. (Journal of Applied Management and Entrepreneurship, 2003)

contract theory argues that the right to life, property, and liberty belongs to an individual and not the society. Human rights, according to social contract theory, existed before the individual entered into civil society. Upon entering into the social contract, individuals surrendered part of their rights to the state. In turn, the state is to protect and ensure the security of the citizens. The signing of a social contract involves giving up of rights by the individual.³¹ The right to development forms part of the human rights that individuals surrendered to the state. In turn, the state is supposed to ensure that development benefits all citizens. Being a social contact, the state has the legal obligation to ensure development is achieved. The legal perspective of development is that right to development is one of the human rights that the individual surrendered to a state.

1.9 Research methodology

The methodology of the study is important in understanding how data and information will be obtained.

1.9.1 Research design

A research design entails the plan, structure, and strategy to be utilized in investigating a research problem and obtaining answers to the research question.³² The study will adopt a mixed research design of qualitative and quantitative methods. The study will employ a descriptive research design. The choice of this approach is to collect data without the manipulation of the

³¹ Rousseau, J-J. *The Basic Political Writings*. (Trans. Donald A. Cress) Hackett Publishing Company (1987).

³² Kombo, K. K and Tromp, D., *Proposal and thesis Writing; an introduction*, (Don Bosco printing press, 2006)

respondents or research variables on human rights and its relation to development.³³

1.9.2 Target Population

A population can be defined as a complete group of entities or elements sharing some common characteristics.³⁴ This study will target human rights experts, policymakers in the field of development, and the general public like lecturers, students and ordinary citizens whose feels their right to development may have been infringed (See Table 1.1)

Ser	Target Group	Kenya	Sampling procedure
1.	Human Rights Experts	40	Purposive
2.	Policymakers in the field of development	40	Purposive
3.	The General public	67	Simple random
	Total	147	

1.9.3 Data collection procedure

The study will rely on secondary sources and primary sources of data. The secondary source of

³³ Ibid

³⁴ Kothari, C. R., Research Methodology: Methods and Techniques. (New Age International (P) Ltd Publishers., 2004)

data will be extracted from scholarly literature (both published and unpublished) from online sources, books, journals, and articles from libraries.

The primary data will be collected from interviews with the general public, experts on rights, and policymakers in the development sectors. Interviews with the questionnaire guide covering all study variables will be used to get information from the general public.

1.9.4 Sampling and sampling procedure

The study will use both simple random and purposive sampling. Purposive sampling is where the researcher selects a sample that is judged to be informative to the study. This will be used to sample experts in rights and Policymakers in development areas. In general, the study will use simple random sampling methods. Simple random sampling is where each individual in the target population gets the equal opportunity of being sampled.

1.9.5 Data Analysis and presentation

The analysis of both the primary and secondary sources of data will be done by using both qualitative and quantitative approaches of data analysis, where both content analysis and narrative analysis will be utilized. Content analysis will be used to tabulate and summarize behavioral data. The narrative analysis will be used to analyze the primary qualitative data.

Ethical Considerations

In any given research work, ethics should be given much priority. The same will be applied here, where the researcher will first create a good rapport with the respondent and then inform them what this study aims to achieve. The confidentiality of the information provided by the

respondent will be observed. The information by the respondents will purely be for the purpose of academics. The respondents will also not be forced to give their names.

1.10 Scope and Limitations of the Study

The study will mainly be carried out in Nairobi. The study focused on investigating human rights and their relation to development and human security. It will determine the nexus between human rights, development, and human security and how they relate.

This study might be limited in primary data collection, given the current international happening with the Covid-19 Pandemic. However, it is the hope of this study that the world would have recovered from the COVID 19 pandemic during the data collection period. The researcher is also considering the possibility of using Google forms for data collection.

Chapter Outline

This section outline

The chapters covered in the study: Chapter one, which is the research proposal, has given the introduction to the study, the research problem, objectives of the study, literature review, theoretical framework, hypothesis, and research methodology.

Chapter two will look at the link between human rights and development. This will be done by looking at the theoretical literature on development, and human rights, how interdependent they are, and how they are linked.

Chapter three will investigate the existing legal frameworks that incorporate development and

Human rights in Kenya. Human rights is a key component of human interaction as so is development; hence it will be interesting to assess is the existence of a framework addressing human rights and development.

Chapter four analyzes the challenges and opportunities for Human Rights and Development in Kenya.

Chapter five concludes the study. This chapter includes; conclusions, summaries, and recommendations of the study.

CHAPTER TWO

RELATIONSHIP BETWEEN HUMAN RIGHTS AND DEVELOPMENT

2.1 Introduction

Human rights and development remain an integral part of human interaction. To this end, development has become a human right. The right to development in this sense is defined as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be realized. Every human being is entitled to enjoy a life of the highest standard possible. Hence every person has the right to improved living conditions and the right to be part and parcel of the development process.

The notion of the right to development therefore represents integration between human rights and economic, social, and cultural development. This, therefore, means that human rights in the current dispensation are interdependent and interrelated to development. This means that one cannot enjoy development at the expense of the others as development is a right for all.

2.2 The Concept of development

This study will borrow Browning's definition of development which notes that development entails the state putting in place political, social, legal, and economic frameworks to ensure the attainment of economic growth as well as the highest standards of living for all citizens. According to Browning, the government has the duty and obligation to ensure that development

is enjoyed by each and every individual.³⁵

In pursuit of development, the framework in place should respect human rights. Development cannot be achieved at the expense of human rights. Development means growth and prosperity by achieving higher living standards, human rights aspect of development means that each and every individual enjoys development as provided by the state. All individuals in this sense have the right to participate in development. Development can either be at the individual level, community development, or national development.

Cornwall differentiates the three main levels that a person can pursue development. The first he notes is the individual level. Here, development means increasing the skills and as well as the capacity of an individual to enjoy the freedom and his own well-being. At the community level, development means that members of a community are entitled to enjoy the benefits of development equally and equitably. Finally, Cornwall sees development at the national level as a collective wellbeing of all citizens where each and every individual enjoys the national cake and the state ensures their Well-being.³⁶

2.3 Development as Human Right

There is no doubt that development remains an important aspect of human life as it ensures human well-being. Development as a concept has had a number of controversies and debates. In

³⁵ Browning, R. The right to development in Africa: an emerging jurisprudence? Examining the Endorois recommendation by the African Commission for Human and People's Rights(University of Cape Town, 2011).

³⁶ Cornwall, A. and Nyamu-Musembi, C. "Putting the 'Rights-Based Approach' to Development into Perspective", Third world Quarterly, Vol 25, No 8 (2004)

the same manner, development as a right continues to be contested. This contestation is clear within the discourse of human rights where there is an ongoing debate if development is truly a right. However, the defenders of development as a human right base their arguments on the actual put in place international frameworks like the Universal Declaration of Human Rights which sees development as a right that each and every individual must not only enjoy but actively participate in.³⁷

The defenders of development as a right state that the right to development is the heart right and that the rest of other rights flank from it. Development as a right on the other hand has been a precondition of liberty, progress, justice, and creativity as “the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights.” The ‘right to development (RTD)’ therefore has is key in defining the world in the current discourse of both development and human rights. This has shaped the approach to development either individually as pursued by a state.

Therefore it becomes necessary for development to be analyzed and discussed as an aspect of human rights. In that lack of development should be viewed as a violation of human rights. Development as a component of human rights is aimed at ensuring the well-being of all citizens. Therefore well-being should be at the center of the development process. In this sense, respect for all human rights and greater social justice extends to the ability of all individuals to enjoy development. The Declaration of the Right to Development advocates that states should put in

³⁷ Rapley, J., *Understanding Development: Theory and Practice in the Third World*, 3rd Edition, (LYNNE RIENNER Publishers, 2007)

place measures to eliminate any obstacles that hinder an individual from enjoying development.³⁸

2.4 The Right to Development: History and Present

The idea of development as a human right emerged from the post-colonial debate. However the modern context, the RTD was acknowledged in the U.N Development rights Declaration (UNDR), which was endorsed in 1986 by the United Nations General Assembly. The UNDR's preliminary statement states that: "development is a complete economic, social, cultural and political process, that focuses on the wellbeing of the all the individuals globally based on their important, free and active involvement in the process of development and right distribution of the profits that come as a result."³⁹

In the 1970s and 1980, development was put as one of the many rights affiliated with the "third-generation" of human rights. Concerning this perspective, the first generation of rights consisted of civil and political rights (CPRs) which were formulated as freedom from abuse from the State.

The second generation comprised of economic, social, and cultural rights (SERs); protests against exploiters and oppressors. The third generation comprised of solidarity rights associated with people and dealing with universal concerns such as development, environmental problems, humanitarian assistance, world peace, communication, and universal heritage but had not included the practical realm of development planning and implementation.

³⁸ Ved N, *Development and Human Rights: The Role of International Law and Organizations*, Human Rights and Third World Development 301(G.W. Shepherd, Jr. & Y.P.Nanda eds., 1985).

³⁹ Sen, Amartya, "Development as Freedom", Oxford University Press, New Delhi, 1999.

The formulation of the RTD in the form of texts using the human rights terms is an occurrence of the late twentieth century, having started in the early 1970s. The United Nations General Assembly included development rights as part and parcel of human rights in its 1986 Development Rights Declaration (UNDR) and in 1993, the Declaration made in Vienna and Programme of Action called the RTD “a global and inalienable right and an important part of crucial human rights.”⁴⁰,

This was followed by giving the RTD prominence in the mandate of the High Commissioner where the General Assembly asked the High Commissioner to develop “a branch whose main purpose would be the promotion and protection of the right of development.” It is worth noting that the right RDT was also recognized by the drafters of the global Declaration of Human Rights (UDHR) in 1948 and according to Sengupta, the head of the U.S delegation during the drafting of the UDHR Eleanor Roosevelt was the first to identify and advocate for the RTD when she uttered; “We are writing a bill of rights for the whole world and one of the most important rights is the opportunity for development.”⁴¹,

In April 1998, the human right commission of the U.N included a uniform pledge on the RTD suggesting the establishment of a follow-up comprising of an open-ended working group (OEWG) and an unconventional Expert to the Economic and Social Council. The suggested

⁴⁰ Bedjaoui,M., *The Right to Development in International Law: Achievement and Prospects* 1177, 1182, (Mohammed Bedjaoui, ed., 1991)

⁴¹ Kofi Annan, *In larger freedom: Towards Development, Security and Human Rights for all* (Report of the Secretary General of the United Nations for Decisions by Heads of State and Government in September 2005, UN DOC. A/59/2005 United Nations 2005)

group aimed to observe and review the ongoing work of the independent expert and report their findings to the **2.5 The Declaration of the Right to Development**

The first article of the United Nations Declaration on development rights dictates that development is “non-negotiable” this is a notion that is usually used in conventional human rights and states that "The right to development is a non-transferable human right under which every human being is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." Therefore it is vivid that development rights include economic and social rights along with civil and political rights however, it is wider than these two sets of rights. Some academics have defined development as the connecting factor between human beings and their rights; the right of development has been referred to as "the right of all rights." by others. Some have stated that the development rights declaration has merged the conflict between political and civil rights and the economic, social, and cultural rights, which was formed by unifying the two sets of rights. The basis of the development right is drawn from the human rights declaration which in turn draws its basis from the natural rights it is, therefore, possible to link the development rights to natural rights.⁴²

The development as a rights Declaration not only acknowledges the right to development as a human right, and similarly crucial, but also the “process of development” as a human right

⁴² Malhotra, R., ‘Towards Operational Criteria and Monitoring Framework’ in Office of the High Commissioner for human Rights, The Declaration on the Right to Development in the Context of United Nations standard -setting: Essays in Commemoration of 25 years of the U.N Declaration on the Right to Development (HR/PUB/12/4 United Nations 2013)

expressly stating that it is a process "in which all human rights and fundamental freedoms can be achieved." as development is not immediate and its goal is the gradual improvement of the well-being of the human being, it is therefore very crucial that both development and the process of development are acknowledged as human rights. Hence the development process must be inclusive of all attributes of human rights. That means acknowledging the virtue of equity and participation, refraining from defying human rights, vividly stated obligations and responsibilities, creating accountability which includes a mechanism for monitoring and rectifying failures.⁴³

2.6 Legal frameworks on Human rights and Development.

Development as an aspect of human rights gained importance in the 20th century. This led to the development of a number of laws, treaties, and conventions that guide the realization of the human right to development. These legal frameworks are both international and regional.

2.6.1 International legal framework on Human rights and development

It is important to briefly discuss these two international human rights treaties in the light of the RTD. The International Agreement on Civil and Political Rights (ICCPR)²⁸ and the International agreement of Economic Social and Cultural Rights (ICESCR)²⁹ do not explicitly mention the RTD but it is arguable both covenants put in place a foundation for the recognition of the RTD by their particular reference to certain rights at are in nature group or solidarity rights. For instance, Article 1 of the ICCPR declares that every human being has a right to self-

⁴³ Carty A, From the Right to Economic Self-Determination to the Right to Development: A Crisis in Legal Theory Third World Legal Studies (1984)

evaluation, and reference to that right they are in a position to voluntarily make their own decision on where they stand politically and work towards their economic, social and cultural development. The article also states that all individuals are at liberty to do away with their natural health and resources.⁴⁴

This mirrors the preliminary statements of the UNDR which recognizes the importance of the agile, voluntary and meaningful involvement of each individual in the process of development and the equal distribution of the gains resulting from it, as a key component to realizing the RTD. It is therefore unlikely that the RTD can be realized if the people have been denied the right to self-determination and pursuit of their economic, social, and cultural development.

Indeed the RTD birthed its logical genesis and lawful assertions jointly from Article 28, 55, and 56 of the United Nations Charter (U.N Charter). It is therefore clear that the legal foundation is the building blocks of the UNDR on the RTD are laid down under international law. In light of the foregoing, it is arguable that the RTD is improving towards being accepted as a positive and crucial principle of international law part and parcel of the international bill of rights despite reservations expressed by some academics and in political circles regarding the enforceability and actualization of the development right.⁴⁵

Around the late years of 1970, there was an emerging global trend towards international human rights. Several human rights activists were pushing for a structural approach when formulating

⁴⁴ Brownlie I, "The Human Right to Development " Human Rights Unit Occasional Paper, Commonwealth Secretariat, (1989)

⁴⁵ Philip Alston, Development and the Rule of Law: Prevention Versus Cure as a Human Rights Strategy, in Development, Human Rights And The Rule Of Law, 31 International Commission of Jurists eds. (1981)

international rights. The approach had a basic argument that despite the importance of addressing individual human right violation, lawmakers should also address the reasons for such an act. They based the new trend on international values like development, human dignity, liberating the people from those oppressors, freedom, empowering of the people, discrimination, and apartheid, among others. Examples of the vocal voices that advocated for development to be included as a human right in a structural approach were; Keba Mbaye from Senegal an international judge, Karel Vasak a professor from Czech just to name but a few. Their argument during the period they were advocating for the human right to development to be realized was that the right was both individual and people's rights. One of the famous argument was by the retired ICJ (International Court Justice) president, Mohammed Bedjaoui who argued that this right was like a precondition of liberty, growth, equality, and creativity, he termed it as the alpha and omega of the rights, the first and the very last, he further lamented the right to be the genesis and the revelation of right and finally the means and the end goal. Although his statements were seen as exaggeration by others on the right to development, Mohammed was speaking the language of many developing countries on this emerging right (the right to development).⁴⁶

The World war made the international community advocate for the adaptation of the United Nations Charter that will make sure that the atrocities of war will not repeat itself ever again and it was also to guarantee a good living standard to human beings. The 1948 Declaration solidifies the terms by prohibiting discrimination and provided a space for better living standard by terms like; Every person is entitled to adequate health care and wellbeing of the family, by the

⁴⁶ Vandenbogaerde A. Right to Development in International Human Rights Law; A Call for its Dissolution (2013) 31/2 Netherlands Quarterly of Human Rights 188

availability of basic needs such as shelter, clothing, and so on. After the developing countries gained their freedom and joined other state organizations, they come to the realization that the global order did not favor them in terms of development. The obstacles were several such as the trade barriers, they didn't have enough financial resources, huge debt, and finally, they didn't have full control of their natural resources. As a result, they assembled via Group77 later incorporated china and made a request for the formation of a New International Economic Order for them to have the ability to successfully realize their development dream. The member state of the NIEO formed the United Nations Conference on Trade and Development which was an important step in the creation of a just economic global order. The G77 pushed the international community to create a just atmosphere to enable the improvement of third-world countries living standards and make sure the world policies on trade favors them. Later in Algiers (1960), G77 held its Ministerial Summit where they emphasize socio-economic development. At the conference, the word 'Right to Development' was for the very first time mentioned by the Senegalese foreign minister. He stated that their objective is to eradicate the colonial impacts and be replaced by a new right, the way the first world countries advocate the individual right to education, healthcare and work and good working condition, they should also be vocal and push for the developing nation to have the right to development (RTD). After the call in 1974, the international community responded by the adoption of the Declaration the formation of economic order and the Charter on the economic rights and duties of states which aimed at pressing for world order and equality of all the states. They wanted a world with equal sovereignty of their territories, natural resources, global cooperation, and equality during any

global participation in international affairs, and lastly self-determination.⁴⁷

2.6.2 Regional legal framework on human rights and development

There is no provision that is in place for a person to demand the global world to make sure their right to development is protected. Hence it's the duty of the state or the interstate systems to ensure that their citizens' right to development is protected at the international level. The Vienna Declaration states that for the international community to realize the right to development, it needs the effort of the states to put in place effective policies such as equitable and friendly economic policies and relations and lastly conducive environment for economic growth. The third world countries ensure that RTD at the international community is not seen as a state's right. On the contrary opinion, the state must take claim to receive a fair share of what belongs to everyone and those who benefit should be the individual person(s) who are entitled to the RTD. In Vienna, Bedjaoui tries to bring the point's home by explaining that the absence of merit of an individual as rights holder, the right is very risky because unscrupulous nations can just make a justification that any development in place is exercising the right to development. But as stated in the Vienna Declaration the policies state that the state should only take the role of ensuring the right to development is attained by acting as an agent furthermore, they are secondary bearers, not the primary right holders.⁴⁸

The African Union (AU) which formerly known as the Organization of African Unity which was

⁴⁷ Vandenberg A. Right to Development in International Human Rights Law; A Call for its Dissolution (2013) 31/2 Netherlands Quarterly of Human Rights 188

⁴⁸ Mbondenyi M.K International Human Rights and their Enforcement in Africa, (2011)

disbanded due to its ineffectiveness by failing to protect and promote the rights of human beings of the already African independent state. The organization's policy of non - interference largely contributed to its collapse because its main objective of promotion and protection of human rights could not be easily achieved. After the collapse African Union was formed. It's Constitutive Act of 2000 legislated policies and the crucial one was the non - indifference to the breaching of human rights and the state right of non-interference of the other states' internal wrangles. Other popular policies were the full recognition of all human rights, Embrace social, economic growth Human-oriented growth, and finally gender equality. The African Union the rights as part and parcel of its program, activities, and entities but a big worry is on the capability to make the change due to the absence of political Will among his states and to fully realize and put in place human rights standard in their national law. Another concern is the inadequate resources and finances to implement correct human rights mechanisms. The lack of enough resources has led to fewer oversight measures among others. Signatories of the African Charter on Human and The People s Right 'the Charter' have taken a step higher than the United Nation General Assembly concerning the Right to Development and they have formulated and signed agreements that are meant protect, also helps in promoting and finally fulfilling the right to development. This is specifically under Article 22 of the charter. This charter is very crucial and beneficial in line with human rights mostly because it recognizes numerous third-generation human rights which are controversial. Examples of the rights are the Right to a clean environment, the right to development, the right to self-determination which falls under group rights, and finally, it recognizes responsibilities like the roles in promoting and achieving African unity. And the most interesting part is the charter is the very first and only and global human

right instrument that is recognizing the right as discrete justice right as confirmed in the case of Endorois when recommendations were made. Another interesting argument by some scholars says that the Right to development is being promoted via other human rights in the African Charter. These rights are the Right to self-determination, Right to own property, Right to life, Right to natural resources, and other social and economic rights. This was confirmed in the case of the Ogoni community in Nigeria which was dealing with environmental, social, and economic rights. The interconnection of human rights principles says that social and economic rights like the right to basic needs like food are inherent to protecting the right to life, the right to good health, and the right to cultural, social, and finally economic development.⁴⁹

2.7 The Consolidation Of The Right To Development

In 1986, a big achievement was witnessed in ensuring development becomes a right. A step was taken with the adoption of the United National Declaration of Human Rights. This declaration is recognized as both human beings and people in general right hence it addresses the collective and individual dimensions. Article 1 defines it as an undeniable right by virtue that each individual and everybody has a right to take part in it by contributing and enjoying the socio-economic, the cultural, and the political growth, and all the right and basic freedom have the potential of full realization. The declaration emphasizes equality and participatory right and takes into account all the rights from political, socio-economical, cultural, and civic as crucial in development. It sees development as a socio-economic, political, and cultural base process with a

⁴⁹ Hansungule,M Towards a more effective African system of human rights: “Entebbe Proposals” available at http://www.biicl.org/files/2309_hansungule_towards_more_effective.pdf (accessed on 3/10/2020).

goal of steady growth and the general good of the people with the basis of active, free air and impactful participation in the growth sector. The declaration also supports equality.⁵⁰

During the day of voting on the declaration on the right to development on the floor of the United Nations General Assembly (UNGA), 146 nations supported the motion and the United States of America under the presidency of Reagan opposed the motion while 8 states were absent. At the ending of the 1989 cold war, a favourable environment was created for the recognition of the right to development. The United States under the presidency of Clinton later came to a consensus with other parties to include the right to the final declaration of the world conference on human rights which took place in Vienna.⁵¹

2.7.1 Universality of Right to Development

Given that human rights are universal, the right to development becomes universal. This right has some special elements that differentiate it from other primary rights and freedom. The special element works as the main drive to the right to development (RTD) and the presence of the elements shows its quality. The elements here are the utmost respect in all the procedures and the results of all the development programs. This is very crucial for the realization of the Right to development. If the right to development is not achieved then the other rights will not be fully realized. The right to development like most rights is guided by the principle of transparency, equal opportunities, accountability, equal chances in participation, and finally non -

⁵⁰ Bunn I.D The Right to Development: Implications for International Economic Law, 15 American University International Law Review (2000)

⁵¹ Jack Donnelly, In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development, 15 Cal. W. Int'l L.J. 473 (1985)

discrimination. Equity is related to equality that states that every person is equal in dignity. There must be equity in the benefits and resources of the community. All human beings should be given equal opportunities and equal participation chances in development processes. The right to development does not necessarily mean that the developmental projects should be centered on the idea of equality but it says that all the social, economic, cultural, and political projects offered by the state and non-governmental institutional should be in an equitable manner. This will create a just and equal society. Non-discrimination is a major element of all rights. It guides that all the development programs must not discriminate the same to the policies put in place. Everyone must have the rights to take part or contribute to any development program without discrimination based on their sex, race, religion color, and so on. Accountability and transparency are mostly inclined towards the duty of the state to ensure accountability towards the right to development. They should put in place policies that deter violation of rights and remedy such violations of rights.⁵²

2.8 Application of human rights in the process of development

The relationship between human rights and development is clearly evident in its application. As noted above, there exist a number of treaties and conventions on the right to development. However, its application is left to individual states. A number of scholars rightly argue that the incorporation of human rights in development comes during the developmental process. The nature of such a developmental process revolves around the idea of equitable sharing and justice to the subject or players. But mostly the right to development targets the individual who has a

⁵² Sengupta, Arjun. *The Human Right to Development in Oxford Development Studies*, (Carfax publishing, 2004)

poor living standard or the poverty-stricken and the deprived with aim of raising their standard and strengthening their positions which will generally improve the entire well-being of the population. The right to development demands that equity and justice must be present in the entire structure of development. This means that the poverty index must be declined and the strategies to empower those with poor living standards in the society are put in place.

The application of the right to development means that the marginalized areas should also be uplifted by promoting development projects. Also, the production structures should be flexible for the realization of such strategies through proper development policies. The policy's primary aims should be fairness and just with little interference on other objectives such as growth output. Any trade-offs must be welcomed for the satisfaction of equity. These development process should involve everyone and the decisions made should also be in support of every beneficiary because any occurrence of delay should be minimalized In previous times the strategies for development achievements was simply putting an effort to maximize per capita of a gross national product as this was going to give a better chance of fulfilling all the social objective and achieve human development. This was best-argued Alston who noted that growing of output per person provide human being a better control of the environment hence increases their freedom.⁵³

The right to development sees development not only as economic growth but the general well-being of all individuals. Equity in this sense cannot be neglected when it comes to developing

⁵³ Philip Alston, Making Space for New Human Rights: The Case for the Right to Development 1HARV. HUM. RTS Y.B3, -20 (1988).

policies for development. The right to development therefore means that development cannot be achieved at the expense of human rights and human rights cannot be pursued at the expense of development. The two, right to development, are crucial to the well-being of all.⁵⁴

2.9 Summary of the Chapter's Findings

This chapter of the study has discussed the relationship between human rights and development. The chapter has given literature as well as theoretical discussion of the concept of development and the concept of the right to development. The chapter went further to give history on right to development, its declaration, the legal frameworks, its consolidation, and finally its applicability.

The chapter established that development as a concept has changed in the recent past. Development now has become crucial to humanity; the development ensures that human beings are able to enjoy human rights hence human rights should protect development. The importance of development has been acknowledged across the world. To this end, a number of international Treaties and regional legal frameworks have been put in place to incorporate human rights in development. As a concept, both development and the right to development have progressed over the years. Development now is much more than the traditional industrial and economic growth. Development is now seen in a wider scope which encompasses health, economic growth, education, and most importantly human rights. Many models now exist in the pursuance of development. It is the responsibility of the state to ensure the achievement of the right to development. This means developing frameworks to eliminate any obstacle to the achievement of the right to development.

⁵⁴ The right to development at glance – the united nations, office of the high commission 2009.

CHAPTER THREE

EXISTING LEGAL FRAMEWORKS INCORPORATING THE DEVELOPMENT AND HUMAN RIGHTS IN KENYA

3.0 Introduction

The existence of a lawful framework in human rights ensures the employment and effectiveness of the set out human rights. These laws are accorded to us on the mere virtue of being human and should not be considered as a privilege as they are a right; they ensure the human dignity is maintained at all cost. The Kenyan constitutional recognizes these laws and ensures they are upheld and protected in the community. No one is above these laws in place. The legal qualities of the human right to development can be drawn from the Charter of the United Nations (CUN) and the International Bill of Human Rights (IBHR) the integration of the right to development with other human rights has become a debate theme around the world. In Paris 1978 it was concluded that the right to development doesn't differ from other human rights but its inclusion would lead to the increase of effectiveness of the economic rights, social rights, and freedoms. The elements that are in the right to development are included in the treaties that are already in place. It is speculated that the right to development originated from the need for power redistribution in the world and sharing of the available yet scarce resources

3.1 Incorporation of Human Rights and Development under the existing legal framework

The right to development as a human right is non-transferable and it should be granted to every human being without discrimination. Each person has the right to enjoy and contribute towards economic, social, cultural, and political development whether personal or communal, by the

mere fact of them being human. That said, the right of development is a human right on a par with all other human rights. It is neither an all-encompassing “super right” nor a highly restricted “mini right.” It is also the only human right that embodies the principles of equality, non-discrimination, participation, transparency, and accountability. In Kenya, this right applies to all individuals without discrimination in regards to any factors be it race or even gender. The Kenyan government has taken up the state duty to ensure that all people are included and fully consulted in any development that affects them. The following are ways in which human rights and the right to development have been incorporated.⁵⁵

The United Nations decided to test the implementation of the right to development by using the Kenya-Germany partnership in order to evaluate whether they were following the required obligations. In Kenya, the 2010 constitution does not have a complete commitment to the right of development and the same applies to the German “Grundgesetz” (GG). However, they both have the bill of rights and their focus is civil and political rights. These two constitutions state that there should be no discrimination when it comes to Human Rights. The German constitutional provides complete protection against discrimination while the Kenyan one does not do the same as it has gaps in it. These gaps are in relation to the female gender when it comes to the issues of inheritance and family, and also when it comes to ethnicity. Both countries practice discrimination towards aliens although in Germany it only occurs in some areas. The human rights-based approach on the right to development was to ensure the people are empowered,

⁵⁵ Kivutha Kibwana, *Fundamental Rights and Freedoms in Kenya* (OUP: Nairobi, 1990)

allowed to participate in activities that aided in the improvement of their living standards, they were to be given equal opportunities and there was to be accountability in all this.⁵⁶

3.2 Documentation of the Right to Development

There has been documentation of a number of international and regional laws on human rights and development. These laws have been the guiding principles of the right to development.

3.2.1 International law

In resolution 41/128 of the United Nations' General Assembly, the declaration on the Right to Development was approved and incorporated in 1986. The Declaration on the right to development is not a legally binding treaty hence states are not under the obligation to implement it. This document was incorporated into documents that were legally binding as on its own it did not have any legality attached to it. These documents include; the Charter of the United Nations, the International Covenants on civil and political Rights (ICCPR). It was also adopted into principles such as the non-discriminatory and sovereignty of a nation. So as to achieve the efficient employment and protection of development as a right committee on Economic, social and Cultural Rights had to closely watch the International Covenant on

⁵⁶ John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, UN Doc. A/HRC/17/31 (2011).

Economic, Social and Cultural Rights (ICESCR). This ensured that they nations obliged to the requirements stated. The chairs of the Human Rights treaty board declared that they would make the effort to establish and promote human rights treaties that were dependent and were in line with the right to development. This decision was so that they can emphasize the significance of the right to development in understanding and implementing the human rights provisions in the treaties. This would as well ensure that nations were closely monitored in order to ascertain that they were implementing these rights to every person without discrimination. Due to its universal nature, it is upheld as a major source of the human rights laws, as does not derive the laws.⁵⁷ The joint statement number 18 of the United Nation made it clear that the organizations of the United Nations had vowed to commit themselves to the establishment and the employment of this right. The declaration provided a human-centered approach to the right of development since 1986.

The international human rights law (IHRL) has laws that nations have to oblige to. These laws apply to everyone globally as they are not discriminatory unlike those which are unique to certain people and geographical areas. These laws draw its basis from the Universal Declaration of Human Rights (UDHR) The Charter of the United Nations in 1945 and the Declaration of Human Rights in 1948 was the initial documents that catered for the human rights laws. The United Nations High Commission for Human Rights (OHCHR) came up with treaties that ensure human rights in all states are followed and protected. If a country freely chose to enter into any treaty, it was legally bound to oblige with the requirements of that specific treaty. In order to

⁵⁷ Gunduz, C. 'Human Rights and Development: The World Bank's Needs for a Consistent Approach.' *Working Study*, Series No. 04-49, (London: London School of Economics and Political Science, 2004).

monitor countries that entered into this legal treaty, bodies were formed. The formed bodies were given the mandate to visit nations and ensure they are obliged to the treaties.

The Universal Declaration of Human rights is a document that comprises human rights. The United Nations incorporated it in 1948 on the 10th of December after it was approved by its General Assembly as resolution number 217. This was done during its third session in Paris, France. This document was supported by most of the member countries and it has the most impact on the implementation of the right of development. The document has 30 chapters that explain the different human rights and freedoms which are universal and nondiscriminatory. This treaty obliges the countries that sign up for it to protect and implement the stated human rights to every person without discrimination. Due to its universal nature, it is upheld as a major source of the human rights laws, as does not derive the laws

In San Francisco 1945 the right to development was adopted into the Charter of the United Nations during the United Nations Conference on International Organization. This is evidence of the correlation between Human Rights and the right to development. The Universal Declaration of Human Rights adopted the right to development. In chapters 22 and 28, the elements of the right to development are highlighted and how they integrate with the other Human Rights. Article 1 (1) of the above declaration states that every human being should be accorded this right by the mere fact that they are human in nature. Every human being is to enjoy and contribute to the wholesome elements of development. Article 1 (2) emphasized that the right to development gives way to the full implementation of the right to self-determination.

The 2010 Kenyan Constitution states that the country derives its laws from international laws. It also stipulated that any treaty or contract signed by the state was to be incorporated in the

constitution and hence it would be treated as a law in the country. The constitution obliged the country to effectively implement all the requirements of the treaties on Human Rights and Freedoms. On the 1st May 1972, Kenya signed and joined the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenants on civil and political rights (ICCPR)

3.2.2 Regional law

In 1981 the African Charter on Human and Peoples' Rights (ACHPR) was formed under the African Union (AU). This treaty applies to 53 African states and it is legally binding. It states that: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" and "States shall have the duty, individually or collectively, to ensure the exercise of the right to development" (art. 22). In article 10 the above obligations apply to certain groups in the African Youth Charter and in article 19 for the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Since Kenya is an African country and it has signed this treaty, it is legally obliged to uphold, protect, and implement its requirements to the letter. This regional law is incorporated in the Kenyan constitution hence it is treated as a law. This treaty states that every human being has the right to participate, enjoy, and receive the right to development hence ensuring better living standards for themselves. Due to the African nature of the treaty, it does not include an international foundation.

3.3 Legal Framework

The supreme legal framework in Kenya is the constitution of Kenya 2010. The constitution covers almost all aspects of life including development and human rights. The right of all citizens is therefore enshrined in the constitution of Kenya 2010.

3.3.1 The Kenya Constitution

The 2010 Kenyan constitution is the main law of the land and it is legally binding hence it has to be executed to the letter by every Kenyan citizen or any person within the borders of the country. It is inclusive of all human rights, however; it does not include certain elements of the right to development. Since Kenya is a signatory of the treaties such as the Universal Declaration of Human Rights (UDHR) that have adopted the right to development among human rights, it is obliged to ensure it is upheld, implemented, and protected.⁵⁸

Indeed, in Kenya, there is a legal structure that guarantees the right to growth, but it sits on shaky ground. In fact, it is difficult to say whether the 2010 Constitution categorizes the right to development with other human rights. You won't find a specific section that addresses the right to development in the current Constitution. Instead, the components are scattered in different sections. This is alarming, considering that this right is very crucial to the conservation of human well-being. The country has also been aspiring to grow and develop since it attained independence.⁵⁹

⁵⁸ Government of Kenya (2010), Constitution of Kenya, Government Printer, Nairobi

⁵⁹ Ibid

The 2010 Kenyan Constitution has provisions of values and principles in Article 10 that govern the nation and have been extracted from a similar clause in the Universal Declaration of Human Rights (UDHR). The principles that advance the process of development as part of human rights include; equality principles, inclusion, participation, accountability, transparency, non-discrimination, and the rule of law. There are no specific provisions in the Constitution, just as Sustainable Development is claimed to be among the national ideals and values of governance. Values such as good governance, democracy, and people's engagement, openness, accountability, and human rights are equivalent. There is, nevertheless, a very minimal representation, considering that it has so much size. The only mention is seen in the clauses on the climate and natural resources.⁶⁰

Article 69(2) of the Kenyan Constitution mandates all to 'work with state organizations and other interested parties to take care of the environment and to ensure ecological development for the safe and proper use of the natural resource.' This Article is put under the heading 'Environmental obligations' in the Natural Resources and Environmental Recourses portion.

With that placement, the applicability of the creation article is limited. Therefore, the right to growth is inadequately guaranteed. As seen in that presentation, it can be inferred that in the Constitution of Kenya 2010, the right to growth was not adequately emphasized. If we use the

⁶⁰ Government of Kenya (2010), Constitution of Kenya, Government Printer, Nairobi

Rio Declaration principles to define the right to sustainable development, it should include social equity and economic prosperity, and not just environmental protection.⁶¹

This indicates that a more detailed explanation of sustainable development will help to expand the way in which policymakers and the courts interpret the right to development. The Kenyan Constitution is weaker in comparison to other Constitutions that protect this right in Africa. A nice example will be the Constitution of Malawi (1994). "Everyone has the right to growth and, thus, the luxury of cultural, economic, and social development," it explicitly states.

The Bill of Rights also covers certain elements of the right of creation in the Kenyan Constitution. Therefore, the Bill of Rights is seen as 'the structure of cultural, economic, and social policies.' "According to Article 19(2) of the Constitution on 100," the main purpose of recognizing and safeguarding human rights and key freedoms is to preserve the integrity of individuals and societies, as well as to promote social justice and the future realization of all of them.⁶²

"This can also be seen as abiding with" It should be seen as the primary objective of creation to consider the abilities of humans in synch with the culture. Moreover, it may mean that policies, especially economic ones, should take human rights and key freedoms into consideration. In the presentation, the formation and actualization of development policies did not emphasize human rights.

⁶¹ Ibid

⁶² Ibid

3.4 Domesticated International Law that Supports principles of the Right to Development

Other than the Constitution, Kenya's human rights treaties have also guaranteed the right to development, which is part of, and also part of, the soft law practiced by the international community.

3.4.1 Universal Declaration on Human Rights Kenya automatically subscribes to the Universal Declaration of Human Rights (UDHR) as a member of the International Community. Equality is a central issue of the Universal Declaration, affirming that "all people are born equal and free of freedom and dignity." UDHR aims to eliminate obstacles to growth since it contributes to failed attempts to respect human rights. If you look at the Universal Declaration Article 25, it is indicated that all persons have a right to a sufficient standard of living, wellbeing, and health including medical care, food, housing, necessary social services, and clothing, without adding that it should be equitable. The Kenyan Constitution uses International law as a basis for the state's laws. It states that the "overall rules of international law shall be used to make the law of Kenya" This constitution also states that "Any pact or rule approved by Kenya shall be included in the law of Kenya under the current Constitution." If you read further, the Constitution also directs the state to "oversee and enforce legislation to achieve its international duties regarding human rights and key freedoms."¹⁰⁴

Kenya has ratified the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the International Covenant on Civil and Political Rights ('ICCPR'), which Kenya adopted on 1 May 1972. Therefore, Kenya has accepted the Convention on the Rights of the Child (CRC), adopted on 30 July 1990, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed on 24 August 1984. These international pacts

are closely tied together with the right to development. The first reason is that the right to development gets its basis on the interconnection of all rights. The second reason is the fact that development is required to realize economic rights, civil and political rights, as well as social, and cultural rights. Humans can enjoy cultural rights, civil, political, economic, and social rights because of development.⁶³

3.4.2 The African Charter on Human and Peoples Rights (ACHPR) In Africa, Kenya signed and adopted the African Charter on Human Rights and the Protocols it stated in the charter. That is due to the African Court on Human and Peoples ' Rights being opened in the year 2005. Therefore, it has allowed the African Court for Human Rights to have jurisdiction, but not generally on personal complaints. The Maputo Protocol to the African Charter on Human Rights and the African Charter on the Rights and children protection and the Rights of the People on the Rights of Women in Africa has also been accepted by Kenya. The first obligation of the State under the African Charter on Human and Peoples' Rights (ACHPR) is to acknowledge the rights lay down in the Charter and to apply those rights (as instated in the first Article of the African Charter). It implies that Kenya is expected to offer its support and be able to offer protection, promote, and uphold the rights of the Charter, the right to the development being inclusive, like all other states that are part of the African Charter. In the African Charter, the right to development is a civil right and is the same as other human rights linked to "citizens," which

⁶³ Piron L and O,Neil T., Integrating Human rights ito development: A sythesis of donor approaches and experiences, (2005)

makes it a unified right. According to the 22nd Article of the African Charter 'All human beings, in due honor of their fundamental freedom and identity and in equal fulfillment of the common heritage of mankind, shall have the right to their cultural, economic and social development.' The African Charter holds States accountable, personally or communally, for the implementation of their rights.⁶⁴

3.5 The National Development Policies Growth as a whole is responsible for the National Development policies. Such policies have the political moral force and cannot limit a right; however, they form the techniques that makeup processes of growth. The policies are separated into different times, the one before independence is mentioned casually, the one after independence, the regime between 1987 and 2002, the one between 2003 and 2008, and since 2008 to date.

3.5.1 The 2008 Vision 2030 Vision 2030 is the newest long-term strategy for development in Kenya. It was founded in 2008 as a Medium-Term Plan and a goal to change Kenya into a middle-income and newly industrialized country. By 2030, this will be accomplished by generating worldwide competitiveness, high quality of life, and development. The strategy has 3 pillars. The economic pillar is the first, aimed at bringing the state to and sustaining a Gross Domestic Product of 10 % per annum by the year 2012. In addition, as seen above, economic

⁶⁴ Kenya ratified the ACHPR on the 23rd of January 1992 see <http://www.achpr.org/instruments/achpr/ratification/> accessed on 18/03/2016.

development in Kenya does not always translate into improving the lives of most of the population and is not a guarantee of achieving the 2030 vision.⁶⁵

This pillar is geared towards conventional economic growth in the areas of tourism, agriculture, wholesale/retail trade, manufacturing, IT-enabled services, and financial services. The second pillar is the social pillar, the main goal of which is "to enhance the quality of life of Kenyan lives" and focuses on social and human welfare initiatives, in particular: education and training, housing and urbanization, health, climate, youth and sport, and children and social development. The third and last pillar is political governance that aims at unifying the country with a democratic system that is "results-oriented, people-centered, issue-based, and is accountable to the public" pillar aims at "The Constitution of Kenya and the rule of law, political and electoral processes, transparency and accountability, democracy and public service delivery, security, conflict management, and peace building" Although there is no mention of the right to development in Vision 2030, there are elements that indirectly address the right to development. Similar to the previous policies implementation from a human rights perspective has proven to be hard. Also, the fact that development strategy is not well tied to a human rights-based target poses a big challenge. One of the main criticisms against Vision 2030 is that even though Kenya is a state that is high on inequality, the vision does not cover solid reasons for inequality such as regional, sex, and ethnic discrimination, the policy of favoring high productivity areas, as well as, the urban-rural divide. If all that is not addressed, the inequalities will only get worse.

⁶⁵ Orago N.W. „Poverty, inequality and socio-economic rights: A theoretical framework for the realisation of socio-economic rights in the 2010 Kenyan Constitution“ (2013) LL.D Thesis University of Western Cape.

Furthermore, the 2030 vision acknowledges that gender inequality is a critical development issue, but it does not formulate ways of coping with gender equality on the economic pillar. These steps were left in the social pillar, but such initiatives could protect all three pillars. The strategy needs to be seriously observed and assessed because, despite the impressive plans, Kenya continues to be heavily affected by gender and regional inequalities, even after the introduction of Vision 2030 over the past 5 years (2007 to 2013).⁶⁶

3.6 Summary of the Chapter's Findings In this chapter, the study has tried to show in this write-up how the Kenyan Constitution does not clearly express the right to growth. It has basic aspects of the right to development, such as openness, equity, non-discrimination and accountability, as well as inclusivity and participation, and some political and socio-economic rights, which are identical to other human rights in the Constitution. In the constitution, there is a provision on environmentally sustainable growth and the Bill of Rights. However, the constitution does acknowledge development as a right and does not expressly protect it. Also, what is in international law in regards to the right to development can be used as a legal basis for claiming some elements that are similar to human rights because Kenya is a part of it. They are parts of the laws of Kenya because the constitution has formed the Kenyan law with it as the basis. In conclusion, there is insufficient legal protection of the right to development in the constitution. However, the African Commission has established the right to development in the *Edorois people of Kenya's case concerning the African Charter*. The policies are also not put in a way that supports the right to development entirely, although it supports some aspects. One can,

⁶⁶ Ibid

therefore, conclude that both the policy and law in Kenya have not sufficiently worked towards the realization of the right to development.

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CHAPTER FOUR

CHALLENGES AND OPPORTUNITIES OF HUMAN RIGHTS AND DEVELOPMENT IN KENYA.

4.0 Introduction

Development is thoroughly sought out in Kenya. Development is sought out at the National, Community, and individual levels. Development in Kenya is more often a political agenda expressed through political party manifestos. This has made it difficult to establish a direct link between the legal frameworks and development. As discussed in the previous chapter there are a number of national and domesticated international laws that touch on development. However, largely development in Kenya has been a political tool that is used by political parties to lure voters to vote for them. This has often made the full realization of the right to development to be elusive. There exist a number of challenges towards the realization of the right to development. At the same time, there are some opportunities that can if well address can lead to the full realization of the right to development.

4.1 Obstacle to the realizations of Human right and Development

The right to development in Kenya has faced a number of challenges. In Kenya, the right to development remains elusive. A number of citizens feel left out of development plans and projects. The majority of Kenya's live in poverty. These are due to;

4.1.1 Corruption

Corruption acts as a hindrance to the enjoyment and realization of the right to development and it can also be considered as a violation of the right in certain circumstances. Corruption is experienced in both the public and private sectors. When the funds allocated to the development of the country are embezzled this leads to the undermining of this right. There are various ways corruption affects the right of development and they are all negative effects as it hinders the implementation of equality and fairness in institutions and the country at large. This makes the citizens lose faith in the government and the affected sectors. It makes it hard for the government to adhere to the human rights obligations as it causes the violation of human rights in general. It also weakens the government projects as there is a lack of accountability hence the country's economy regresses.⁶⁷

Corruption has a negative impact on the various disadvantaged and vulnerable groups. The groups include; women, children, the elderly, persons living with disabilities, foreigners, and the less fortunate in the community. These people suffer the effects of corruption the most as they are dependent on public services and goods as they are not in a position to seek alternative sources of these services and goods. This group of people is therefore disadvantaged in many ways since they are denied the means of enjoying and participating in development whether personal or communal. Their living standards tend to be poor and as they lack the means to lead better lives hence, they are denied the right of development in conjunction with other human

⁶⁷ Todd Landman and Carl Jan Willem Schudel, *Corruption and Human Rights: Empirical Relationships and Policy Advice*, International Council on Human Rights Policy, 2007

rights. The government has the responsibility of taking care of all its citizens but due to the high rate of corruption, the most vulnerable people in the society are neglected while the well of benefit from it all yet they do not need it as much as these vulnerable groups. This is the highest form of inequality and unfairness.

When it comes to the land sector, corruption is also experienced. The people are denied the right to development as their land is exploited for the benefit of the few in society. Land grabbing leads to the exploitation of the natural resources that the people are dependent upon and this deprives them of the benefits they were enjoying. It also leads to the distortion of their culture and means of survival. Land grabbing also inhibits the right to development as the rightful owners of the land are denied the opportunity to enjoy their development. It causes the vulnerable groups to become homeless as their home is wrongly taken by the powerful in the society hence, they are denied the right to fair treatment as they are discriminated against since they are not in a position to defend themselves. The exploitation of land can cause the degradation of the environment hence making it safe for the people to live there. This creates a hazardous environment for the natives hence they are denied their right to development as their living standards are made unbearable. When the natural resources are exploited most of the time the natives do not enjoy the benefits as they are enjoyed by the few hence there is discrimination that goes against everything human rights stand for. This also hinders the people from contributing to the development of their region as they should. This puts them in the back seat when it comes to decisions that affect them as people.

The influence of corruption is highly felt by the female gender in the country as they are not treated equally with their male counterparts. In that, the male gender is given preference and

priority when it comes to various activities and positions in the country. They are given an opportunity to expand their reach in the country hence increasing their access while the female gender is highly discriminated hence; they are denied the opportunity to exercise their right to development. This has been an issue in the country for the longest time to the point it had to be made a rule in that women had to be involved in government positions although this has not been fully implemented as even in the current government, it does not meet the two-thirds rule. The female gender has been sexualized more times than we would like to admit and this is in line with the unfair treatment they are accorded in various sectors and events. They are not given the same opportunities as the male gender hence they do not have the same competing grounds as their counterparts are at an advantage. This is a hindrance to the enjoyment and contribution towards development. This form of inequality goes against the obligations stated by the various treaties the country has subscribed to.

Corruption limits the access of crucial resources hence the people are not in a position to better their living standards this leads to an increase in poverty cases in the country. The gap between the rich and the poor becomes even wider as the less fortunate in society are denied the opportunity to turn their lives around. The right to development should be accorded to every person regardless of their position in society, race, gender, and age. Discrimination and inequality undermine this right and the repercussions are greatly felt by those who do not get the opportunity to exercise it.

Corruption has a wide range of influence and there are many forms of it. Although some may not feel its effects the vulnerable members of the community are the most affected. They are fully dependent on the government so when they are wrongfully denied these services, goods, and

facilities they do not have another alternative and they end up missing out completely and this is against human rights as all the people should be accorded the same treatment. When it comes to the receiving of certain services, they are required to pay bribes and since they cannot afford it, they have no option but to forego that particular service. This is just a glimpse of how corruption undermines the vulnerable members' rights to fair treatment and to contribute to development.⁶⁸

4.1.2 Poor Governance and Poor Leadership

Governance is the exercising of political and administrative authority in a country and it applies to all levels. Governance has the obligation of ensuring all the sectors in the country are running smoothly and it ensures the creation of a good environment for its citizens. If a country has poor governance there are very many things that will go wrong and will inhibit the exercising of the right to development. This is because the government is responsible for all the activities that take place within a country.

When there is poor governance in that the elected leaders are incompetent, the economy of the country is most likely to regress and this will lower the living standards of the people as the cost of living will be above their capabilities. A poor economy will lead to an increase in the poverty levels of the country hence the people will not get the chance to exercise or contribute to their right to development whether personally or communally. Poor leadership will make the people miss out on certain services as the government is not providing them and those who solely

⁶⁸ Todd Landman and Carl Jan Willem Schudel, *Corruption and Human Rights: Empirical Relationships and Policy Advice*, International Council on Human Rights Policy, 2007

depend on the public sector, they will suffer the consequences the most as they do not have the means to acquire those services.⁶⁹

Poor governance will affect the food security of the country as there is poor planning when it comes to agriculture. As the government will not have appropriate measures when it comes to food, the country will end up going hungry as the people will not be producing enough to feed ⁷⁰themselves and the government will not be in a position to help out. This will lead to the hindrance of implementing the right of development as the people will not be in a position to exercise and contribute towards development. This will increase poverty cases in the country as the living standards will have decreased as the people will be living below their means and the right to development will not be realized in such a situation.⁷¹

In a country where the leadership is failing, there will be no measures put in place to ensure the is equality in all situations. Poor governance will fuel corruption and discrimination as there are no consequences for these actions. For those who are not in a position to stand up for themselves, they will be oppressed and discriminated against in all areas be it work opportunities, investments, and even the division of resources. There will be those who get the lions' share while the rest are left scrambling for the remains. In such a situation the right to development

⁶⁹ Acemoglu D, Johnson S, Robinson JA (2001) The colonial origins of comparative development: an empirical investigation. *Am Econ Rev* 91(5):1369–1401

⁷¹Bah AB (2010) Democracy and civil war: citizenship and peacemaking in Côte d'Ivoire. *Afr Aff* 109(437):597–615CrossRef.

will not be realized as there is no fair treatment among the citizens hence, they are not able to enjoy and contribute towards their development or even that of the community.⁷²

Poor governance will encourage the unfair distribution of resources as there are those who will have an upper hand at things. For example, there will be an increase in the embezzlement of funds, these funds were probably meant for the development of the community by building public facilities that will better the lives of the people but in such a case the people will be deprived of this chance. The right of development will have been denied to the people as they will be deprived of certain resources that they are entitled to as citizens of the country. There will be unfair treatment as there are those who will be benefiting from all these as the rest suffer.⁷³

When there is poor leadership in a country, there will be no laws that protect vulnerable groups such as women, children, the elderly, and those living with disabilities. This will pave way for gender discrimination as there are no laws against it or even consequences and this will encourage discrimination in the various sectors. This will hinder the realization of the right to development as it states that there all people should be treated equally regardless of their gender, race, and social class. It also states that all the groups including the youth should be included in

⁷² Barghan P (2013) *Awakening giants, feet of clay: assessing the economic rise of China and India*. Princeton University Press, Princeton/Woodstock.

⁷³ Blau F, Kahn L (2003) Understanding international differences in the gender pay gap. *J Labor Econ* 21(1):106–144CrossRefGoogle Scholar

governance and given the chance to exercise and enjoy the right to self-determination and development in general.⁷⁴

When there is poor leadership there is a high chance that there is no accountability in the government hence there are people who will not get the chance to enjoy certain opportunities in the country. For those who fully depend on the public sector, they will be denied certain opportunities as due to lack of accountability they will not be offered to them. For example, funds meant to finance free health care and education will not be properly utilized as they are supposed to hence those who depend on these public services will end up foregoing them as they are not financially capable to seek them from the private sector. They will have been denied these services because some people used the funds for their own benefit, hence the unequal distribution of resources.⁷⁵

4.1.3 Resource allocation and unequal distribution of resources

The right of development states that all the people should be treated equally and they should all be given the opportunity to enjoy and contribute towards the right of development. When it comes to the allocation of resources, there are those who are favored and have a better chance of receiving certain resources and services this may be on the basis of gender, race, or even

⁷⁴ Adam C.S., Collier P. and Ndungu S. N., Kenya: Policies for Prosperity, Oxford University Press, 2010.

⁷⁵ Denis Goulet, Development: Creator and Destroyer of Values in Human Rights In The TwentyFirst Century: A Global Challenge 689–90 (K.E. Mahoney & Paul Mahoney eds., 1993).

familiarity. This is discrimination and it causes some people to miss out and they lack access to resources hence they will not be in a position to enjoy the right of development or even contribute towards it in the community. The allocation of resources should be equal among all the people so as to fully realize the right to development.⁷⁶

Unequal distribution of resources will fuel the level of poverty in the country. It limits the access of crucial resources hence the people are not in a position to better their living standards this leads to an increase in the poverty cases in the country when there are people who receive more than others the gap between the rich and the poor widens and the poor are deprived of certain opportunities. They are not in a position to better their lives as they are not accorded with the tools to do so. This will hinder them from realizing their right to development as they are at a disadvantage.

When the resources are equally distributed it gives everyone a chance to work towards self-determination and development hence improving their living standards and this will in turn cause the economy of the country to grow as every person is doing what they can to enjoy and contribute towards development. Unequal distribution of resources the gap between the rich and the poor becomes even wider as they are less fortunate in the society are denied the opportunity to turn their lives around. The right to development should be accorded to every person regardless of their position in society, race, gender, and age. Discrimination and inequality undermine this right and the repercussions are greatly felt by those who do not get the

⁷⁶ Sengupta, Arjun. On the Theory and Practice of the Right to Development Human Rights

opportunity to exercise it. This is a hindrance to the enjoyment and contribution towards development. This form of inequality goes against the obligations stated by the various treaties the country has subscribed to.⁷⁷

4.2 Opportunities towards the realization of Right to development

Despite the above-mentioned challenges, there is a silver lining in form of the opportunities towards the realization of the right to development. These are avenues and frameworks that exist and can be used to help in the realization of the right to development.

4.2.1 Redefining development model

For the full realization of the right to development, there is a need to redefine the development model that Kenya has adopted. The 21st century has come with numerous challenges, some of which have affected the right to development. This, therefore, calls for change in the model of development. The current development model should be given prominence to development as a human right. This means that every individual should enjoy the right to development.⁷⁸

Failure to adhere to the right of development has caused some countries revenue by being the source of poverty. However, Kenya's national poverty line has declined from 46.8% to 36.1% of the population. This was as a result of the increasing importance and venturing into non-

⁷⁷ Chitere, P. O. and Monya, J. "Decentralization for Good Governance and Development: the Case of Kenya District Focus approach" in African Administration Studies No. 32, 1989.

⁷⁸ Udombana, N. J. The Third World and the Right to Development: Agenda for the development, 2011)

agricultural income (particularly commerce) to supplement agricultural income for rural households. To further reduce rural poverty, it is crucial to improve agricultural productivity as well. The government has set out several programs to help boost agriculture as well. These rural-based programs provide women and the youth with seeds and training so as to equip them with the necessities required to venture into agriculture. The agriculture department, through smaller departments then buys the produce from them and either exports it or processes it for local use.⁷⁹

Economic prosperity for all should be a priority for the government. The current development model has often focused on economic prosperity despite the good; this has not led to good quality of life for all. There is a need for a good development model that focuses on people. This will ensure that each and every individual has the right to develop. A development model that is focused on human means that development is undertaken in such a way that improving the living standards of the people is given priority over economic growth. This required development for all without discrimination.

4.2.3 Creating Right awareness to the Right to development

The history of human rights has been characterized by awareness campaigns. Creating the right to development is an important step towards the realization of the right to development. This is important given that in Kenya, the right to development is more of an academic discourse rather than a policy framework. Development should be aimed at ensuring the good of every citizen

⁷⁹ Kibua N. T and Mwabu, G (Eds), Decentralization and Devolution in Kenya: New Approaches,

University of Nairobi Press, 2008 reprinted 2013.

irrespective of their race, tribe, religion, region, or political affiliation. This is reflected in the constitution of Kenya 2010 where the constitution affirms that every individual ought to enjoy development. The constitution talks of an equal, equitable, participatory, and non-discriminative.⁸⁰

Yet, in Kenya, there remain a number of individuals who are not aware of their right to development the population hence needs to be sensitized on their right to development. It is only when the population is aware of their right to development will they truly enjoy this right. This section of the population must wake up and claim their right to development. The 2010 constitution offer hopes in form of devolution. Devolution was brought about to ensure that development reaches all citizens including those in the rural and interior. This was aimed at improving the living standards of all especially those in the rural. However, devolution is yet to fully meet its objective of raising the living standards all. The funds meant for development through devolution is often lost through corruption rather than being taken into development. When individuals are not aware of the right to development, they often suffer a double loss. This is because these individuals cannot claim their rights but at the same time cannot hold the corrupt officials accountable. This there calls for the need of all citizens to be sensitized on their right to development.

⁸⁰ Leys C., *Under development in Kenya: The Political Economy of Neo-colonialism* (James Currey and University of California Press, 1975).

4.2.4 Poverty reduction and the right to development

Poverty is considered a hindrance to enjoy and live a life of dignity which is a non-transferable human right that every person should have access to. The right to development declaration states the kind of standards every person should be at liberty to enjoy. It also declares that the right to development is an inalienable right in that every person should have access to by the fact that they are human in nature. In the same article, it is stated that the right to self-determination should be accorded to every person and there should be no discrimination and the people should be allowed to have a say when it comes to their wealth and resources. The implementation of the right to development has enabled the empowerment of the people and it has motivated people to participate in various projects that will enhance their living conditions.⁸¹

4.2.5 Empowerment of the Population

Kenya has made progress in terms of policy and legal frameworks enacted to eradicate gender equality in regard to human rights and the right to development. This section lies in the overlap between 'right to equality' and 'freedom from discrimination'. An example of this is the Kenyan law which guarantees equality and freedom from discrimination. It states that '...every person is equal before the law and has the right to equal protection and equal benefit of the law...'. Additional policies have been placed such as the Community Health Policy and the Sessional Paper No. 2 of 2017 on the Kenya Health Policy 2014-2030. These policies guarantee free maternity services and free pre and post-natal care. This has in turn resulted in more safe

⁸¹ Ghai YP Devolution: Restructuring the Kenyan State, Journal of Eastern African Studies 2011.

deliveries with 61% of births being performed by skilled health providers and has ensured proper care for both mother and child.

In Kenya, the women empowerment program has been extended to *inclusive* leadership. Women have increasingly engaged themselves in leadership by actively taking up roles and important posts. The constitution authorizes the state to engage members of both genders in the legislative positions. These positions are both elective and appointive. Additionally, 47 seats are reserved for women in the National Assembly and 16 seats for women in the Senate. The trajectory in women's empowerment has been upward with other sectors showing more promise than others. Women account for 57% of all practicing lawyers, 49% of magistrates, 41% of High Court judges, and 36% of county commissioners, to mention some important sectors.

As the right of development applies to all people despite age, sex, religion, the government has provided more job opportunities to the youth as they are considered the 'most energetic' yet still among the 'vulnerable' of the society. The government has provided funds to talented and innovative youths in Kenya to enable them to come up with new inventions and technologies. This will in turn create more employment in the newly made industries and also reduces the number of imports to be made. This is as has been exhibited by the young students who invented the mechanical ventilator in the face of the Covid-19 crisis. Allowing the youth to participate and contribute to such developments not only helps to eradicate crime and dropouts but also contributes to the positive growth of the country; socially, economically, and culturally.⁸²

⁸² Henry J. Steiner & Philip Alston, *International Human Rights in Context* 1116 (1996).

Conclusively, the merging of the right of development with other human rights has advanced benefits in any democratic country. Women leaders who were born, but yet to be made are able to grasp these opportunities and thrive in them. People originating from minority communities and/or religions are able to confidently give their growth-invoking views. Children from poor backgrounds are confident that they can contribute to the progress in their communities. Youths no longer have to drop out from colleges and/or universities due to lack of funds as they have been offered many job opportunities. This is a necessary route to follow to not only build the state but also provide a conducive environment for it.⁸³

4.2.6 Equal distribution of resources

The country has made notable strides in regards to upholding the freedom from discrimination to all human persons as required by the right of development and human rights as a whole. Everyone has the right to contribute to, enjoy, and participate in any form of development where all human rights can be achieved fully. The Kenyan government has achieved this by having funds set aside for the development of women, those living with disabilities, and also for the development of the youths of the country. The Uwezo fund is one of the programs set aside to offer money to these groups for the purpose of starting up a business, the youth enterprise development is another program but this one is specifically for the youths only who which to

⁸³ Mills, G., *Why Africa is poor and What Africans Can Do About It*, Penguin Books, 2012.

pursue entrepreneurship, and the women enterprise fund provides funds and credits to women in the community.⁸⁴

The government of Kenya reserves 30 % of the tenders and they are to be issued out to the vulnerable groups in the country. It also has an Affirmative Action funds program that aims to empower the vulnerable and minority groups as well. Others worthy of mention include the Protect against Domestic Violence Act, 2015 which led to 4,299 newly prosecuted cases of sexual and gender-based violence and 871 convictions between 2015 and 2016. This shows the determination of the Kenyan government in the eradication of gender-based violence.⁸⁵

A violation of the right of development in regards to non-discrimination, inclusion, and participation was exhibited in the 'Endorois case'. The Kenyan government failed to ensure the Endorois community's participation in community development practices. This was in regard to their ancestral land where they should have guaranteed them a share in the profits gained from the land after the Government forcefully evicted them. However, The African Charter on Human and Peoples Rights (ACHPR) supported its research on the violation of the right to development in this case.⁸⁶

⁸⁴ irchmeir, F., "The Right to Development-where do we stand?" Occasional Papers, FriedrichEbert-Stiftung, 2006

⁸⁵ Adar, K. G., "Human Rights and Academic Freedom in Kenya's Public Universities: The Case of The Universities' Academic Staff Union". Human Rights Quarterly, 21(1) (February 1999): 187.

⁸⁶ Shiva Kumar, A. K. "MDGs and the Right to Development: Issues, Constraints and Challenges"

4.2.7 Accountability by the State

Corruption remains one of the biggest stumbling blocks to the realization of the right to development. This is because in most cases, the money meant for development is looted and goes into private pockets. Therefore accountability of all state officers, as well as accountability from the government, will ensure that the states deliver on their mandate of development. Accountability hence leads to good governance through integrity and transparency. This will go a long way to ensure that development programs are equal to all. In Kenya, accountability is often lacking. This is the source of unequal development accountability is remains important towards the realization of the right to development.⁸⁷

Accountability also applies to the human rights perspective. This means that the state should be responsible for delivering development that is inclusive and that ensures that each and every citizen enjoys their right to development. This entails the empowering of all citizens especially the disadvantaged ones in order to ensure that they overcome obstacles to the realization of their socio-economic rights. Development projects and development models should be formulated from a rights perspective

4.3 Summary of the Chapter's Findings

Corruption, poor governance, and unequal distribution of resources undermine the full realization of the right to development as they hinder the people from enjoying and contributing towards their development whether personal or communal. These factors promote or pave way

⁸⁷ Marks P. Stephen, *The Politics of the Possible: The Way Ahead for the Right to Development*,

for inequality and discrimination which goes against everything the right of development stands for and advocates. Every person should be advocated the same treatment regardless of race, gender, and nationality. They are accorded this right by the fact that they are human beings and nothing should limit these rights. Each country is expected to implement this right and ensure it is upheld at all times.

CHAPTER FIVE

SUMMARY OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

5.1 Introduction

The final chapter presents the study findings, conclusion, and recommendations based on the three specific study objectives, which were to examine the relationship between development, and human rights, to investigate the existing legal frameworks that incorporate development and Human rights in Kenya, to examine the challenges and opportunities of Human Rights and Development in Kenya.

5.2 Summary of the findings

Based on the first objective, the study established that the chapter established that development as a concept has changed in the recent past. Development now has become crucial to humanity; the development ensures that human beings are able to enjoy human rights hence human rights should protect development. The importance of development has been acknowledged across the world. To this end, a number of international Treaties and regional legal frameworks have been put in place to incorporate human rights in development. As a concept, both development and the right to development have progressed over the years. Development now is much more than the traditional industrial and economic growth. Development is now seen in a wider scope which encompasses health, economic growth, education, and most importantly human rights. Many models now exist in the pursuance of development. It is the responsibility of the state to ensure the achievement of the right to development. This means developing frameworks to eliminate any obstacle to the achievement of the right to development.

Based on the second objective, the study's findings were that the Kenyan Constitution does not clearly express the right to growth. It has basic aspects of the right to development, such as openness, equity, non-discrimination and accountability, as well as inclusivity and participation, and some political and socio-economic rights, which are identical to other human rights in the Constitution. In the constitution, there is a provision on environmentally sustainable growth and the Bill of Rights. However, the constitution does acknowledge development as a right and does not expressly protect it. Also, what is in international law in regards to the right to development can be used as a legal basis for claiming some elements that are similar to human rights because Kenya is a part of it. They are parts of the laws of Kenya because the constitution has formed the Kenyan law with it as the basis. In conclusion, there is insufficient legal protection of the right to development in the constitution. However, the African Commission has established the right to development in the Edois people of Kenya's case concerning the African Charter. The policies are also not put in a way that supports the right to development entirely, although it supports some aspects. One can, therefore, conclude that both the policy and law in Kenya have not sufficiently worked towards the realization of the right to development.

In accordance with the last chapter, the study found out that Corruption, poor governance, and unequal distribution of resources undermine the full realization of the right to development as they hinder the people from enjoying and contributing towards their development whether personal or communal. These factors promote or pave way for inequality and discrimination which goes against everything the right of development stands for and advocates. Every person should be advocated the same treatment regardless of race, gender, and nationality. They are accorded this right by the fact that they are human beings and nothing should limit these rights.

Each country is expected to implement this right and ensure it is upheld at all times.

5.3 Conclusion

The available literature on development and human rights shows that development as a human right is well supported in a number of international, regional, and national legislations. International conventions like the CEDAW, ICCPR, the regional laws like the African Charter on human and people's rights as well as the national laws that the constitutions that advocate for development as a right for all citizens. To this end, there is a legal basis for human rights and development in Kenya. However, despite the availability of these laws, the rights are not being realized. Development in Kenya does not benefit all.

Development remains very important to human survival. Development also allows individuals to enjoy others enjoy human rights. Development is recognized worldwide. This is why a number of state relations are conducted on the basis of development. Development as a concept has progressed in recent years; development in modern-day is more than just industrialization or economic growth. Development now entails issues like better living standards, health education, human rights, and economic growth. Development is now looked at from the context of how it is achieved. This has brought in the notion of development as a human right. Development as human rights has been contested for a long time. The definition of the right to development also remains contested.

The key role that development plays in human life has led to the recognition of development as a human right. This has been driven by developed countries that are pushing developing countries to recognize human rights as developing countries. Major international treaties continue to

support the right to development. In 1986, the United Nations recognized development as a right. This led to the Declaration of Development as human rights. United Nations recognizes development as an inalienable human right. This is supported by various International conferences. Right to Development sees development as an inherent human right that every individual is entitled to. Development from this end entails social, political-economic, and cultural development.

Kenya's claim for equal development is enshrined in the constitution. However, its implementation and realization remain weak. There is no clear constitutional provision that guarantees the right to development within the country. The constitution only touches on natural resources and sustainable development. The constitution at large focuses on good governance, sustainable development, equality as well as non-discrimination. These can be interpreted to mean an aspect of the right to development. Kenya has also domesticated and ratified a number of international doctrines that emphasize the right to development. However, the application of these rights is only limited to political, economic, or social rights.

The development policies adopted by Kenya have an emphasis on economic growth at the expense of human development. The thought behind this is was that economic development would lead to better living standards and a good quality of life. However, this has not been the case. The Kenyan Vision 2030 offers hope for Kenya. Vision 2030 offers a holistic development that will lead to the right development. The inadequacies in the legal framework and development policies have led to various obstacles towards the realization of human rights and development.

The implementation of human rights as a development has remained a challenge. This has been attributed to a number of factors like lack of legal and policy frameworks, poor leadership, and corruption. There is a lack of policies and institutions framework capable of pushing for the realization of the right to development. Corruption also remains the biggest obstacle to the right to development.

5.4 Recommendations

The right to development remains important to Kenya. To this end, the country needs to change its development model. The new development model should give considerations to the human rights agenda. The new development model should incorporate economic growth with human development. This will ensure economic growth as well as right based development. Development should also be inclusive and non-discrimination. This will need collaboration between various stakeholders in order to strengthen the implement the new development models. This will also need a political will since the political will is a big driver in the process of development in Kenya.

There is also a need to increase an individual's participation in development. This will be a good step towards the realization of the right to development. People's participation should be seen in the monitoring and evaluation of development programs. Kenya must also work towards eliminating the obstacles towards the realization of the right to development. This should start with eliminating the biggest hindrance to development like corruption. Elimination of hindrance to the right to development will ensure equal social and economic enjoyment for all.

Kenya should also formulate the legal and policy framework that directly touches on the right to

development. The current laws are vague. There is a need to have a clear law that will ensure that the right to development is enshrined in a sound legal framework.

There is also a need for proper research to establish ways in which the entire population of Kenya can actively and meaningfully participate in the process of development. Meaningful and active participation will ensure the whole population realizes their right to development.

The constitution of Kenya should be amended to incorporate the right to development. A constitutional framework will give a big boost in the eradication of extreme poverty which is the biggest threat towards the realization of the right to development. The amended constitutional clause should not only guarantee the right to develop it should also make it an obligation for the country to eliminate extreme poverty and ensure that all Kenyans enjoy the right to development. It is only when the right to development is enshrined in the constitution that the right to development will be part and parcel of the government programs and projects.

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APPENDIX I: QUESTIONNAIRE

The purpose of this questionnaire is to obtain information that is relevant to my study on the “The legal perspective of human rights and development in Kenya.”

This is part of a research paper to be submitted by the researcher in partial fulfillment for the award of Masters at the University Of Nairobi- Nairobi Kenya.

You are assured that the answers that you provide will be treated with utmost confidentiality and will not be used in any way against you or in ways other than those envisaged in the study.

Read the items carefully and indicate by ticking () against your most preferred choice. Also state your views and opinions in the spaces provided.

Thank you.

SECTION ONE: PERSONAL DATA

1. Gender

Male []. Female []

2. Age

18 – 24 [] 46 – 55 []

25 – 35 [] 56 – 65 []

36 – 45 [] Over 66 []

3. Education Level

No Formal education []

Below KCPE []

Below KCSE []

Form 4 Certificate []

Diploma []

Degree []

Other (Please Specify)

SECTION TWO: RELATIONSHIP BETWEEN DEVELOPMENT AND HUMAN RIGHTS

4. What do you understand about the relationship between human rights and development?

.....
.....

5. According to your views, what is the current status of human rights and development in the country?

.....
.....
6. What are some of the human rights conditions that promote development in Kenya?

.....
.....
7. Who are the key actors in the human rights and development space in Kenya?

.....
.....
SECTION THREE: THE LEGAL FRAMEWORKS FOR HUMAN RIGHTS AND DEVELOPMENT

8. In your opinion, what role should legal frameworks ideally play in rooting for human rights and development in Kenya?

.....
.....
9. What role is the Kenyan legal framework fulfilling now?

10. How do the newer, alternative legal framework forms fit into the present human rights environment?

.....

.....

.....

12. To what extent has the legal framework influenced human rights and development in Kenya?

.....

.....

.....

SECTION FOUR: CHALLENGES AND OPPORTUNITIES OF HUMAN RIGHTS AND DEVELOPMENT IN KENYA

13. Are there any negative implications that human rights has had in the development of Kenya?

.....

.....

14. How can these negative implications be addressed?

.....
.....
15. Do you feel there are enough laws and regulations in place to prevent the negative impacts that might arise from poor adherence to human rights law?

.....
.....
16. What is the respect to human rights potential in contributing to a developed Kenya?

.....
.....