

The Law and Its Application to Human Rights: A Case of Kenya

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Abstract: Everyone is entitled to their human rights regardless of who they are. This is only possible if proper mechanisms such as sensitization programs, recourses, education, elimination of backward cultural practices and the law are put in place to ensure this. This paper examines the law in Kenya and how it influences the realization of human rights. It found out that Kenyan laws highly influence the realization of human rights both positively and negatively though not fully. The law does this by making provisions for human rights, setting strategy for their fulfillment and offering remedies in case of violations and abuses.

Keywords: Application of the Kenyan Laws to Human Rights, Human Rights, Law.

1. INTRODUCTION

Human rights have a history and an origin from cultural beliefs and moral practices. They have however been enhanced through formal and civil education, technology and rule of law among other factors (Shelton, 2007; Horney, 1995). The International Human Rights Movement has since heightened attention to the rule of law. This is because it has been considered a source of hope in resolving the political normative and conceptual challenges to the realization of human rights. The law is a direct command to the implementation, promotion and protection of human rights. The rule of law is also important for good governance and democracy and for the facilitation of global peace and stability (Pereenboom, 2005; Hamson, 2008). This law promotes global peace, stability and human rights by focusing on issues such as countering terrorism that a threat to human rights and that's why this paper examined the application of Kenyan laws to human rights. This paper examined how Kenyan laws affect the realization of human rights through a combination of critical analysis of the sources of laws in Kenya and a literature review on scholarly opinion on the influence these laws have had on human rights. From the literature reviewed this paper concludes that the laws in Kenya have highly influenced the realization of human rights both negatively and positively though not fully. This paper consists of three main sections, that is: Human rights and its status in Kenya; The Law and its Sources in Kenya; the Law in Kenya and its application to human rights.

2. HUMAN RIGHTS AND ITS STATUS IN KENYA

Human rights are inherent entitlement that accrues to every person mainly for being human being. They are rights that individuals have solely for reason that they belong to the men specie. They consist of internationally agreed valued standards or rules regulating the conduct of states towards their own citizens and non-citizens (Cranston 1973; Lassion, 1976). These rights are universal and do not depend on geography, history, anthropology among others. They apply to someone because they are human beings. They are also defined as a particular social practice in which the realization of widely shared values ought to realize dignity of people (Amoaka, 2000).

Human rights can be traced back to ancient traditions and religions where they were recorded and practiced unconsciously as morals (Lee, 2010; Shiman, 1993; Youth for Human Rights, 2015). They however came into the global conscience

after the Second World War. The effects of this war was so devastating in that many lives and property were lost, necessitating the warring countries to forget their differences, come together and form a committee which drafted the Universal Declaration of Human Rights (UNDHR), an instrument that set standards for measuring human rights globally. It defined human rights and stated that they are independent and invisible and later extended itself into the international law. This is the law that legitimized concern for the international community to judge how a government treats its citizens and non-citizens (Lee, 2010; Levi and Snalder, 2010).

The current status of human rights in Kenya was not achieved by a mere blink. It went through several steps processes and stages to attain its current status. That is; the way human rights are perceived and handled by relevant players in Kenya. Kenya has a remarkable status of human rights though not to the satisfactory level. This is evident by the human rights achievements and programmes that are in existence in Kenya today. Some of the achievements include: freedom of expression; free primary school education; re-introduction of multiparty and the existence and operation of human rights bodies and civil society organizations that promote and protect human rights (Omollo, 1990; Oduor, 2014; Allison, 2016). The status of human rights in Kenya has not attained the fully acceptable universal standards, this is as a result of several challenges it has faced in the cause of their implementation. Among these challenges are: negligence in the institutions such as the police and the office of public prosecutor who are charged with the responsibility of promoting human rights. This occurs when these institutions fail to investigate and prosecute thoroughly human rights abuses and violations. Interference by government has been another challenge. The government has interfered by controlling/attempting to control individuals or institutions that are meant to independently defend human rights, for instance the civil society organization. The threat of insecurity from terrorism activities that have marred the country in the past few years have also been a challenge to the right to life and other rights (Amnesty International: *Status of the World Human Rights Report*, 2015/2016; Allison, 2016; Human Rights Watch: *World Report*, 2017). Other challenges include inadequate capacity and willingness by institutions to deliver effectively on their roles and corruption among government and private officials (KNHCR: *The Status of Human Rights in Kenya Report*, 2014). Other factors apart from challenges that have contributed to the current status of human rights in Kenya include: Actions from individuals and civil society organizations; pressure from international committee and government actions (Omollo, 1990; Radley, 2008). The Constitution of Kenya and other laws have also contributed to the current status of human rights in Kenya (Amnesty International: *Status of World Human Rights Report*, 2015/2016; Wendoh and Ogolla, 2012).

3. THE LAW AND ITS SOURCES IN KENYA

The law is a controlling, giving and determining part that concerns everyone's life (J.R Lewis, 1965). There is no universal meaning or definition of the word law, however this word is used and defined on a variety of senses depending on the approach it is given. This makes the law have a variety of definitions as various scholars and individuals who have attempted to define it do not aim at answering the same question. They derive their definitions basing on different considerations, others concentrate on what the law ought to be rather than what it is, while others focus on their cultural/religious beliefs and others on its functions and others view it as a tool of social change (Kiboyye, 2015; Bwonwonga, 1994).

Definition of law?

A law is a general rule of external human action enforced by sovereign political authority. (Holland, 2017; Strathmore University: *Introduction to Law Study Text*, 2009). It comprises a body of rules which are seen to operate as binding (Panton). The law is the body of principles recognized and applied by state in the administration of justice (Salmon, 2013). The law is a very wide subject and has no exhaustive or universal definition or meaning. It rather consists of a set of rules and regulations that are binding and govern particular societies ensure social stability more so peace and order are maintained. (Strathmore University: *Introduction to Law Study text*, 2009; Ashiq, 2003). The law is wide subject with numerous sources and branches that cannot be summarized by a mere definition. These sources and branches affect human rights; the reason the law is an international community concern (Randall, 2005).

Sources of law in Kenya:

The three main sources of law in Kenya comprise: The Constitution; Other Written laws and the common law (Hussein, 2003). Other sources of law include: Statutes of General application in force in England on 12th August 1987; African

customary law; Islamic law; Hindu law and judicial precedence (case law) (Strathmore University: *Introduction to Law Study Text*, 2009). These sources have laws that influence the realization of human rights; however, this paper only focuses on the laws from two main sources of law in Kenya, that is; The Constitution and Other Written laws.

4. KENYAN LAWS AND THEIR APPLICATION TO HUMAN RIGHTS

Every source of law has laws that originate from it. These laws affect the realization of human rights differently. This section focusses on the laws that originate from the constitution and other written sources as discussed below.

The constitution:

The constitution is the supreme law of the land and hence its content is very instrumental in the promotion of human rights. Considering the fact that the government is the main obligated duty bearer to protect, promote and fulfill human rights, the content of the constitution therefor affects how it governs towards the realization of human rights (*Constitution of Kenya*, 2010; UNDP, 1996).

The new African Constitutions according to Bosi and Dekho (2009) have shared power within organs and arms of government such as judiciary, legislature and civil society. This helps to enhance the efficiency of government which leads to the promotion and protection of human rights (UNDP, 1996; Larry, 2002; Bosi and Delskho, 2009). This is also included in the Constitution of Kenya, 2010 under the chapter that establishes the organs of government.

Kenya has had two main constitutions since its independence which have played a great role in influencing human rights both positively and negatively. The two main constitutions include; the 1963 *Independence Constitution* and the *Constitution of Kenya*, 2010. The 1963 Constitution encountered several changes that affected human rights before it was replaced with the new Constitution. At independence for example Kenya had a constitution with parliamentary system of governance which gave power to the citizens to press claims against the government to deliver their human rights. This constitution was amended in 1964 by some government players who changed the system of governance from parliamentary to presidential with the executive powers. The effect of this was that the common citizen was left with limited powers to press claims against the government to grant them freedom and services. This led to increased violation of human rights (*Series on the Politics of Kenya Journal*, 2016; Roschman and Wendoh, 2012; *The 1963 Constitution of Kenya*; Kamande 2004).

Other alterations of the independence constitution include the constitution amendment Act of 1974 and section 2A of the 1982 *Constitutions* which lowered the voting age from twenty one to eighteen and that converted Kenya into one party state respectively. The first had a positive influence to human rights in that; it increased the number of people who exercised their right to vote. Meanwhile the second alteration had a negative impact in that it denied people their democratic right to vote, by only allowing a single party. (*Constitution Amendment Act*, 1974; *The 1963 Constitution of Kenya*; *Constitution Amendment*, 1964).

The Kenyan constitution has had a great impact as far as influencing the realization of human rights is concern. This paper however, mainly focusses on the *Constitution of Kenya*, 2010 that has greatly helped to govern the country towards the realization of human rights. It has a whole chapter four entitled the Bills of Rights that talks about human rights and explain their importance. It:

- i) Declares the state and every person are responsible for the promotion and fulfillment of human rights.
- ii) Declares that human rights exist to promote social justice and facilitate the realization of potentials of all human beings.
- iii) List and explain all human rights and even recognize all other rights not included in the constitution.
- iv) Provide the limited circumstance under which someone can be deprived of their human rights.
- v) Defines institutions which are assigned the duty of enforcing human rights and provides remedies or compensation in case of violations and abuses.
- vi) List and explain all human rights and even recognize all other rights not included in the constitution.

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- vii) Provide for the limited circumstances under which somebody can be deprived of their human rights.
- viii) Defines the institutions which are assigned the duty of enforcing human rights and provides remedies of compensating human rights violations and abuses.

Chapter four of the *Constitution of Kenya 2010* offers and protects all fundamental rights and freedom to every one regardless of who they are. It guarantees rights indiscriminately to all sexes, race, religion, tribe, color, potential or opinion and hence helps to promote human rights (*Constitution of Kenya, 2010*).

This constitution of Kenya, 2010 has promoted human rights by improving Kenya's democracy. The Constitution has done this by offering freedom of association, conscience and expression (*Article 80, 78 and 79*) which involves creating and joining political parties (*Article 32 and 36*). It has allowed for the operations of organizations such as non-governmental organizations that promote democracy. In fact this constitution has been highly celebrated by human rights proponents and civil society that are players in human rights discourse. It has a crown of shaping democracy and legalizing human rights in Kenya. By shaping governance it has been viewed as a tool that has begun to return democracy to East Africa. This constitution has helped to return democracy through the spirit of liberty, laws and habit of order and in this way has helped to promote human rights (Wendoh and Ogolla, 2012; Larry, 2002).

The constitution has also promoted human rights by establishing institutions that promote human rights. Among these institutions include:

- i) National Integration and Cohesion Commission that supports peaceful coexistence in the country; an essential of human rights.
- ii) Kenya National Human Rights and Equity Commission; a human rights statutory body for promoting human rights in a country. (*Article 59*). It monitors, report and offer remedies concerning human rights matters (*article 59*).
- iii) Kenya Lands Commission *article 67*. It addresses land issues which promote the right to own property.
- iv) Ethics and Anti-Corruption Commission established by legislation defined in *article 79* to deal with corrupt individual who swindle public recourses meant to fulfill human rights.
- v) Independent Electoral and Boundary Commission that is established under *article 88* to help exercise the right to vote.
- vi) The Parliament, established to help make laws that implement human rights under *article 93*. It is also an oversight authority that oversees the media, judiciary and executive to ensure they work within the law including the Bill of rights.

In addition to the above provisions for promoting human rights, chapter ten of the constitution of Kenya 2010, establish the judiciary and give it power to enforce human rights. In this way it helps to positively ensure human rights are adhered to and promoted in Kenya (*Constitution of Kenya, 2010; KHRC: Two Steps Forward and One Step Backwards Report ,2014; Kenya Law Reforms, 2017; Strathmore University: Introduction to Law Study Text, 2009*).

The Constitution has also offered provisions for both general and specific human rights and their applications thereof in *Articles 19 to 52*. This has helped legalize human rights and make them statutory binding, of which when broken attracts a penalty. In this way it has helped offer protection for fundamental human rights and freedoms. Unlike other written laws the constitution helps in the fulfillment of all human rights contrary to other written laws such as Acts of Parliament and International Treaties that often address specific or group rights. The *Kenyan 2010 Constitution* according to Roschman and Wendoh (2012), is said to be among the more progressive constitutions in modern democracy as it contains all categories of human rights included in the human rights instruments. (Roschman and Wendoh, 2012). It also recognizes and provides rights for special groups such as women, children and people with disabilities. (Oduor, 2013; Merry, 2006).

The Constitution has also promoted human rights by enhancing efficiency of government services through devolution. The cardinal principle underpinning devolution is the need to decentralize financial and political power to the local level in order to enhance the efficiency and effectiveness of government. The constitution has done this by creating two levels of government. It has heightened the fulfillment of human rights by transferring power to subnational levels that has

increased public sector efficiency. This has promoted economic development that has yielded resources for fulfilling human rights. It has also brought governance close to the people and the decentralized officials who know the needs of the locals more. In this way they offer services that meet their needs of these people and in this manner fulfill their human rights (World Bank, 2013; Wendoh, 2012; *Constitution of Kenya, 2010 Chapter 11*).

The *Constitution of Kenya 2010* has also heightened the realization of human rights in that it has contributed to the high levels of understanding and awareness of human rights in the country. This resulted from the manner in which the constitution was passed. The spirited campaigns for the passing of this constitution by politicians sparked high expectations among Kenyans. The euphoria of a new constitution and the spirited campaign by politicians for this constitution to be passed raised high expectations to an extent that some Kenyans thought passing this constitution was an equivalent of putting food on their tables. This excitement made many people take keen interest in the content of the new constitution which include the human rights provisions. This promoted the high level of awareness among the citizens and led them to take necessary action to enjoy their rights. (KHRC: *Two Steps Forward, One Step Backward Main Report 2014*, pg 12).

This Constitution is a tool for reformation. The changes envisaged in the *2010 Constitution of Kenya* presents some challenges but the constitution gives a good structure of governance to handle them. These changes can transform our nation politically, economically and socially. The Constitution calls for the total resilience of Kenyans as this governance structure if deliberated fully has solutions to the challenges facing the country and this can bring about positive change to issues such as corruption that are a thorn in the flesh of this country. It has mainly laid emphasis on democracy accountability and governance which is a big challenge in Kenya.

The enactment of the new constitution however, faces several challenges that have derailed its full objective of realizing human rights. Some of these challenges include: slow implementation of the constitution and tribalism which have stood in its way (Wendon and Steve, 2012). This constitution if fully implemented has the power to transform crucial sectors such as the social, legal and economic sectors that influence the realization human rights (Wendon and Steve, 2012).

Other Written Laws:

In addition to the constitution, Kenya has other sources of law, these include: Policies, Regulation and Act of Parliament (Strathmore University: Introduction to law Study Text, 2009; Hussein, 2003). These laws also influence the realization of human rights. This section however only focuses on the influence International human rights Instruments and Acts of Parliament have on the realization of human rights in Kenya as discussed below.

5. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The human rights developments in the international community have impacted positively on the enhancement of human rights in Kenya. This has happened through global moves of nations to promote human rights. Virtually the rights contained in the constitutions of modern democratic nations reflect human rights standards set in the International Human Rights Instruments. These instruments include: the Universal Declaration of Human Rights (UDHR), the United Nations Covenant on Civil and Political Rights (CSPR) and Economic Cultural Rights (CESCR). They provide uniformity in measuring human right standards globally. These instruments make provisions for both specific and group rights, for instance the rights of children, marginalized communities and people with disabilities. (Roschman, Wendoh and Ogolla, 2012). The comprehensive Bill of Rights is the basic principles and foundation upon which Kenya as a country is based (Mbavu, 2013).

Some Human Rights Instruments have an extra advantage and an achievement of having treaty bodies. These bodies help ensure effective implementation of these Treaties there by enhancing the realization of human rights. The treaty bodies have helped to effectively implement human rights by creating treaty monitoring and reporting mechanism through which they carry out their periodic assessments and report on level of their implementations in a country. (Bayesky, 2001; Hayesky. 2012; Mbavu 2013).

These instruments form part of the international law and in this way it has yoked Kenya with the international community. This has helped in the realization of human rights as Kenya is now answerable to the international community on its actions concerning human rights. Besides this law makes it a legitimate concern for international community to monitor

and take action on the way a country treats its citizens and non-citizens in implementing human rights. This law has also improved human rights in Kenya as the international community has put in place several mechanisms including ratification of these instruments as a way of enhancing human rights.

International human rights law includes the legal provisions governing human rights as expounded in various human rights instruments. Therefor the International human rights instruments constitute the total bulk of laws that are agreed upon by states with the aim of respecting protecting and fulfilling all human rights and fundamental freedoms (UNDOC: CCPR/C/2/piev./add//2001; *Constitution of Kenya 2010, Article 211(4)*; Mbavu, 2013). Customary international law can be applied by looking at the entire constitution and deriving aspirations from its spirit and purpose. The international laws, that is: the treaties; conventions among other human rights instruments that Kenya has ratified form part of Kenyan laws. Kenya has emerged from what has been popularly called a domesticated regime to adopt and incorporate a regime where all international obligations are binding (*KHRC: Two Step Forward, One Step Backward Main Report, 2014; Constitution of Kenya 2010 Article 2 (5) and 2 (6)*; Oduor, 2014). Kenya got admission into the United Nations on 16th of December the year 1963. Since then has ratified the following international instruments that form part of international law and responsible for promoting various human rights.

1. United Nations Charter
2. Universal declaration of Human Rights which is considered the mother of all human rights instruments. It forms the standards for scaling all human rights Instruments.
3. International Covenant on Civil and Political Rights (ICCPR) which she accented to on 23rd March 1976 and is very necessary for promoting civil rights.
4. International Covenant on economic Social and cultural rights (ICESCR) which she assented to on 1st May 1972 and responsible for promoting economic rights.
5. Convention on Discrimination Against women (CEDAW) which she assented to on 9th March 1984 and is responsible for eliminating gender discriminations ensure equity and promote women rights.
6. African Charter on people and Human Rights (ACPHR) which is Regional Human rights Instruments and is responsible for promoting the rights of Africans.
7. International Convention on the elimination of all forms of Racial Discrimination which is responsible for eliminating racial discriminations.
8. Convention on the Rights of a Child (CRC) which she ratified on 30th July 1990 and has helped to promote the rights of a child.
9. Optional Protocol to the CRC on Prostitution and Pornography which she signed on the 8th September 2000.
10. Hague convention responsible for dealing with crimes against humanities.
11. African Charter on the Rights and Welfare of the Child which she ratified on 25th July 2000 that addresses the rights of an African child.
12. African Charter which she assented to on 25th July 2000.
13. Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and people rights which helps of redress for human rights violations in Africa.
14. ILO Convention 138 on employment Age (9/4/1979) which helps to adress unfair labor practices such as child labor
15. ILO convention No. 182 concerning the prohibition and immediate action for elimination of the worst forms of child labor which she ratified on 7th may 2001.
16. Protocol to Prevent Suppress and Punish trafficking in Persons, especially women and children (supplementary the United nations Convention against Transnational Organized crime) Palermo protocol assented on 5th/05/2005.

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17. Convention on the Status of Refugees (CSR) assented on 16th may 1966 and is responsible for promoting the right to be given refuge.
18. Optional Protocol to CSR assented on the status for refugee assented on 16th may 1966.
19. Convention on the Rights of Persons with Disabilities which was assented on 18th may 2008 which has addressed the group rights especially for the persons living with disabilities.
20. Optional Protocol to CSR on status of refugee accented 13 November 1981 again for promoting the right to be given refuge.
21. Convention on the Elimination of Racial Discrimination (CERO) which she accented to on 13th September 2001 which ensures human beings are granted their dignity regardless of their race.
22. Convention against Torture which she accented to on 21st February 1997 responsible for addressing issues of torture that undermine human dignity and the fulfillment of human rights.
23. Covenant in Economic Social and Cultural Rights responsible for promoting and addressing Economic and Social rights issues.
24. Covenant on Civil and Political Rights which was assented on 1st May 1972 and is responsible for promoting Political and Civil Rights.
25. Rome Statute of the International Criminal Court which was ratified on 5th march 2005 which addresses crimes against humanities there by ensure just practices towards the fulfillment of human rights.
26. The International Convention on the Protection of the Rights of all Migrant workers and members of their families, July 2003.
27. African charter on human and people Rights in the Rights of women in Africa. July 11 2003 signed by Kenyan on December 12 2003 whih promotes African rights.

(Kenya Law Reform Commission, 2017; KNCHR: *Report to the Human Rights Committee*, April 2012; Mbavu, 2013).

Kenya is also a signatory to a number of International environmental treaties which indirectly support human rights. These include treaties like African Convention on the Conservation of natural resources; Vienna Convention for protection of Ozone layer; convention on the prevention of marine pollution. In addition to this Kenya has ratified 49 ILO conventions.

However Kenya has also ignored to take action in some of the international human rights treaties/instruments. For instance she has taken no action on Optional Protocol to CEDAW. (lib.ohcr.org/hrbodies/KE/KSC.upr/kenso82010). The obstacle to the full implementation of International Human Rights Instruments in Kenya is as a result of non-ratification of all International review mechanism and lack of available mechanisms to enforce international standards of human right (Libohcr.org-anex3). These treaties have equally helped to enhance human rights in Kenya.

6. ACTS OF PARLIAMENT

Written laws in Kenya include all laws that are recorded in writing, Acts of Parliaments form part of the written law in Kenya. They are of lower hierarchy as compared to the Constitution. They decentralize the constitution hence intensify its implementation. For instance the *Basic Education Act 2013* which was enacted to implement *Article 53 (1)* of the *Constitution of Kenya 2010*. They influence the realization of human right by expounding on a constitution that upholds human rights. This constitution gives brief information of its human rights provisions and sets principles which are expounded on, on other written laws including the Acts of Parliaments. For example, the right to basic education is provided for in the Constitution without clear details of how to achieve it, how to fulfil it is expounded on in the *Basic Education Act 2013*. The *Basic Education Act* does this by employing the strategies such as providing free lunch and exercise books to pupils who cannot afford them in the public schools. These help facilitate smooth learning towards the enjoyment of the right to education. The Acts of Parliament have hence helped to ensure full realization of human rights as they expound a constitution that upholds human rights by adopting all human rights instruments in its Bill of Rights

and stating that any law contrary to it is null and void (*Constitution of Kenya*, 2010; *Basic Education Act*, 2013; Steve 2012).

These Acts of Parliament unlike the Constitution have directly addressed specific rights. For instance the Basic Education Act has directly addressed the right to basic education while the constitution addresses this right and other rights as well. The following are some of the Acts of parliament and how they have influenced human rights in Kenya.

Refugees Act (Cap 173):

This is an act of Parliament that defines who a refugee is and how they should be treated. It sets some favorable ways of which refugees should be handled. The right to be granted refuge is a human right, and by offering guidelines of how this should be handled, this law has really helped to promote the right to refuge in Kenya (*Refugees Act Cap 173; Constitution of Kenya*, 2010).

Election Campaign Financing Act 2013:

Elections help to fulfill a very important human right; that is the right to vote. This is often done by allowing the electorate to elect leaders of their choice. Through elections there is freedom of association by joining political parties of one's choice to participate in the election. These parties need finances to run and therefore it is in this pursuant that *Article 88 (4) (1)* of the *Kenyan Constitution* was made to compel the Independent Electoral and boundary commission to finance campaigns of these political parties in Kenya towards a democratic society. In this way it has helped to enhance the democratic right to vote (*Constitution of Kenya 2010 "Article 88 (4) (1) Kenya Election Campaign Financing Act*, 2013).

Independent Policing Oversight Authority Act 2011 (Cap 881):

It is an Act of Parliament that establishes independent civilian oversight for the work of the police thereby promoting transparency and accountability in the police as they are agent of enforcing human rights hence their actions to the public such as lobbying teargas and using live bullets on peaceful protestors, taking bribes among others, can either fulfill or violate human rights. Putting the police on check and holding them accountable for their actions for instance punishing defiant police officers and rewarding the diligent ones influences positively their actions towards promoting and protecting human rights. (*Independent Police Oversight Authority Act*, 2011). However, the implementation of this law has been compromised by actions of certain individual law enforcers who deliberately violate it instead of implementing it. The law enforcers do these for instance by taking law in their own hands and punish innocent people without following the due process, in which in most cases these actions always end up violating human rights. (KNHCR, 2008: *The Cry for Blood Report*; Human Rights Watch: *World Report, 2015 on Events of Kenya 2014*; *Daily Nation Newspaper*, February 23 2017).

Magistrate Courts Act, 2015:

The Kenyan judiciary consists of several courts which are ranked depending on their superiority (Republic of Kenya, the Judiciary 2017; *Constitution of Kenya 2010*). These ranks determine their mandate and jurisdiction of operation. These courts apply and interpret the Laws of Kenya including those of human rights. *The Magistrate's Courts Act* of 2015 was enacted to implement *Article 23 (2)* and *16 (1)* of the *2010 Constitution*. Through this Act of Parliament, the jurisdiction of the magistrates has been increased to handle matters of redressing human rights which were previously preserved for the high court. By this Act then, human rights have been enhanced as enforcers to it have been added since Human rights need many enforcers for it to become a reality. Human rights without enforcement are as good as a tooth less dog. This Act established the magistrate court and gave them powers to redress human rights issues and hence enhanced its enforcement in this way promote them. (*Constitution of Kenya*, 2010; *Magistrates Court Act No. 26 of 2011*; RMC: *Manual the Judiciary Structure of Courts*, 2015; Obuncho and Omollo, 2016).

Kadhi's Court Act (Cap 11):

Kadhi's Court Act is an Act of Parliament created to establish the office of the Kadhi and Kadhi's court in different areas in the country to make provisions for Muslim Law and its Judicature system to determine personal status, marriage, divorce or inheritance in proceedings in which all parties confess the Muslim religion. This law helps enhance human rights by promoting freedom of worship for Muslims by securing the legality for practicing what they believe and by solving their disputes religiously. (*Kadhi's Court Act*, Cap 11).

Kenyan Roads Act (Cap 400):

Kenyan Roads Act (Cap 400) is an Act of Parliament that establishes Kenyan Roads Authority, Kenya National Highway Authority and KERRA that are responsible for development management and rehabilitation of national roads (*Kenyan Roads Act (Cap 400)*). It states the function of these organizations and sets mechanisms of ensuring that the roads in Kenya are properly established and maintained to standard (*Kenya Gazette Supplement*, 11th April 2008 pg 297; Global Law, 2007). Through these authorities this Act of Parliament influences directly the right to movement by promoting it and indirectly influences other rights such as the right to food by offering a favorable environment of transporting food from the places where they are produced to areas where they are needed. By ensuring efficient transportation of commodities, this right promotes other rights that go with it. On the contrary when the roads are in bad condition individuals and commodities cannot be transported then the right to movement and other rights associated with it get violated. (Kenya Roads board: *Annual Public Roads Programme FY, 2012/2013 Report*; KERRA, 2017; *Kenya Gazette Supplement*, No. 77; *National Assembly Bills, 2015*; *Kenya Roads Act, 2007*).

Labour Relations Act 2007:

Labour Relations Act is an Act of Parliament that was enacted in 2007 and is concerned with laborers' rights and freedoms that enable them work in favorable labour environments or conditions (*Labour Relations Act, 2007*). This Act addresses the right to freedom of Association that involves joining trade unions and cooperative societies. It therefore directly facilitates the fulfillment of the laborers economic right to work and indirectly fulfill other rights. This is because these other rights require resources in order for them to be fulfilled. The right to education requires school fees and the right to food requires money which is often obtained through working.

Kenya National Commission on Human Rights Act 2011:

Kenya National Commission of Human Rights Act is an Act of Parliament that establishes Kenya National Commission on Human Rights (KNCHR) a constitutional body for effective fulfillment of human rights (*KNCHR Act, 2011*). It arises from the call of international community to do so in order to ensure human rights are adhered to globally. Kenya National Commission on Human Rights is one of these statutory bodies. KNCHR In its legal embodiment helps monitor Kenya's compliance with international norms and standards of human rights investigate violations and suggest or offer remedy for these violations, it offers training, sensitization, education/campaigns and advocacy programs for promoting human rights issues, and finally collaborates with other stakeholders in protecting and promoting human rights. And in this way Kenya National Commission on Human Rights Act through KNCHR has really helped to enhance human rights in Kenya (*KNCHR Act, 2011*; *KNCHR Act 2012*; *KNCHR Act No. 14 of 2014*; *KNCHR: Brief on the Enforcement of Human Rights of the people: Report to the UN 4th April, 2011*).

Kenya Information and communication Act 1998 (Cap 411A):

This Act of parliament establishes the Communication Commission of Kenya that facilitates the development of the information and communication sector including supporting the establishment of communication houses and institutions such as media houses. Kenya Information and communication Act of 1998 enhances and fulfills the freedom of expression and the right to information. Information enhances the fulfillment of all human rights as without information human rights do not make sense. For instance if somebody has a right and he is unaware he wouldn't benefit from that right. Some body needs to know his rights in order to take the necessary actions to enjoy the rights. This Act of Parliament therefore affects the realization of all human rights; as it creates awareness of them something that make beneficiaries take the necessary action to enjoy them. In addition, this law also commits to protect journalists who are very instrumental in gathering and disseminating information and in this way they help to enhance human rights. However this Act has been faced with several challenges such as manipulations, which have hindered its law from realizing its full purpose of promoting freedom of information. A good example is the introduction of the draconian law of the *Media Act 2013* and *Security laws Amendment Act of 2014* which compromised the implementation of this law by allowing security organs to infringe into the citizens' rights to privacy and restrict the freedom of journalist. (*Kenya Information and Communication Act, 1998*; *Security Laws Amendment Act, 2013*; *Media Act 2013*; Human right Watch, 2013 *The Information and Communications Amendment Bill of 2013*; *Daily Nation News Paper November 1, 2013*).

Marriage Act 2014 (No. 4 of 2014):

This is an Act of parliament that amends and consolidates various laws towards an effective and fulfilling marriage by setting standards that eliminate bad marriage practices and cultures such as forceful marriage, junior marriage among others (*Marriage Act, 2014*). Marriage Act 2014 protects those who are prone to gender abuses and defines marriage terms. This Act was established after a culmination of several years of reforms. For the first time for instance this law makes provisions for registration of marriages that it governs. That is the religious, customary and civil marriage and divorces. This law addresses challenges that have hindered the fulfillment of effective marriage by providing equal rights for all parties. This law has protected group and individual rights for both men and women, thereby promoting human rights. Basically this law promotes human rights by setting a conducive environment for effective marriages bearing in mind that marriage is a basic unit that leads to procreation that brings forth life, of which without there would be no human rights (*Marriage Act, 2014; Gottomitanibal, 2014*).

Some discriminative laws have however reduced the impact of this law in promoting human rights. One of such laws that legalized polygamy marriage without limit in favour of men by an Act of Parliament (*Marriage Bill, 2014; Daily Nation Newspaper, 29 April 2014*) has been viewed by some human rights proponents as a discrimination against women (Karimi and Leposo 2014). The *Kenyan Penal Code* also prohibits the carnal knowledge against nature, where it prohibits same sex marriages (*Penal Code of Kenya, (Cap 63) of 2008*). This has also been viewed by some human rights proponents as a discrimination, inequality and infringement of the rights to privacy of the people of these orientations.

7. CONCLUSION

Precisely, this paper concludes that Kenyan laws have had a great influence to the realization of human rights. The constitution has greatly helped to fulfil all human rights: It has highly contributed to the promotion of these rights by increasing their awareness, acknowledgement and provisions. The Constitution has however been faced by several challenges such as tribalism and slow implementation which has derailed it from realizing its full potential as far as human rights promotion is concerned. On the other hand, the other written sources of laws have also influenced the realization of human rights in Kenya. They have mainly promoted specific and group rights as opposed to the constitution which have promoted all the rights. For instance, the Basic Education Act and the Convention on the Rights of a Child has promoted the right to education and children's rights respectively. These other written laws have also been faced with challenges such bad political will and neglecting to fully implement them by the state which has also hindered their full objective to promote human rights.

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