AN ASSESSMENT OF THE IMPLEMENTATION OF THE ECONOMIC AND SOCIAL RIGHTS OF THE MAKONDE PEOPLE IN KENYA

BY

BRIAN KOMBO

UNITED STATES INTERNATIONAL UNIVERSITY-AFRICA

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BRIAN KOMBO

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SPRING 2018
DECLARATION

I, undersigned, declare that this is my original work and has not been submitted to any other college, or university other than the United States International University- Africa for academic credit.

Signed: ___________________________ Date: _____________________

BRIAN KOMBO (651272)

Student.

This thesis has been presented for examination with my approval as the appointed supervisor

Signed: ___________________________ Date: _____________________

Mr. Dan N. Odaba

Supervisor.

Signed: ___________________________ Date: _____________________

Prof. Angelina Kioko

Dean, School of Humanities and Social Sciences.

Signed: ___________________________ Date: _____________________

Ambassador Prof. Ruthie C. Rono, HSC

Deputy Vice Chancellor Academic and Student Affairs.
DEDICATION

I would like to dedicate this study to my family for their unwavering support especially my mum, Lydia Anyangu Olusakha.
ACKNOWLEDGEMENT

I would like to express my sincere gratitude to all those who in one way or another contributed to the success of this study. I am indebted to my supervisor Dan N. Odaba for his expert guidance and invaluable support all through the supervision period.

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Special thanks also goes to Mzee Thomas Nguli, the Makonde community leader who warmly welcomed us and ensured all interviews and FGDs went on without any hitch in the interview locations. This study would not have been possible without the Makonde who were not only cooperative but were forthcoming in every other way.
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<td>AU</td>
<td>African Union</td>
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<td>ACHPR</td>
<td>African Charter on Human and People’s Rights</td>
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<td>KDF</td>
<td>Kenya Defence Forces</td>
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<td>KISCOL</td>
<td>Kwale International Sugar Company Limited</td>
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<td>NACOSTI</td>
<td>National Commission for Science and Technology</td>
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<td>NHIF</td>
<td>National Hospital Insurance Fund</td>
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<td>National Police Service</td>
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<td>NSSF</td>
<td>National Social Security Fund</td>
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<td>United Nations High Commission for Refugees</td>
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<td>UNCHR</td>
<td>United Nations Commission for Human Rights</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>USIU-A</td>
<td>United States International University- Africa</td>
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<td>VSLA</td>
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On 16th October 2016, President Uhuru Kenyatta of Kenya decreed that the Makonde community should be included as Kenya’s 43rd tribe. The Makonde who had initially come to Kenya from Mozambique as from 1936 to work on sisal farms in coastal Kenya had been stateless ever since. Their inclusion as Kenya’s tribe meant they had crossed the rubicon; being the pioneer stateless community to be registered ever since the promulgation of the Constitution of Kenya in August 2010 showed progressive steps to eradicating statelessness in Kenya. Noting that the Makonde are enjoying their civil and political rights, the elephant in the room is whether or not the Makonde enjoy their economic and social rights. The economic and social rights, unlike the civil and political rights require budgetary commitments hence the need for progressive realization over time. While there are three levels of indicators used to measure and assess human rights, this study focuses on the outcome indicators which specifically measure rights in progress; which are rights as enjoyed by the rights holders. The six indicators this study focuses on relate to the right to work, right to land and adequate housing, right to health, right to adequate food, right to social security and right to education. One of the key highlights of this study is that the right to land and adequate housing is almost nonexistent with 80% of the Makonde respondents living as squatters. From the findings of this study the right to work has been advanced but far from being achieved by the majority. In a seemingly different case, the right to healthcare and education are progressive and the Makonde are enjoying these two rights without any discrimination, just like any other Kenyans. Being the pioneer stateless community to be registered as Kenyans after the promulgation of CoK in 2010 means they are a pace setter for other stateless communities in Kenya and their civil, political as well as economic, social and cultural rights should be respected, protected and fulfilled to the letter. The progressive realization of the economic and social rights of the Makonde people is in the spirit of *pacta sunt servanda* since Kenya is a signatory to the Universal
Declaration of Human Rights of 1948 which articulates in Chapter 1 that all human beings are born free and equal in dignity and rights.
CHAPTER ONE

1.0 INTRODUCTION

The UN refugee agency estimates that there are at least 10 million stateless persons in the world and that it has a Global Action Plan to end stateless by the year 2024 (UNHCR, 2015). Statelessness is in contravention of the right to nationality as stipulated in Article 15 of the Universal Declaration of Human Rights (UDHR) (UN, 1948). In extension, statelessness goes against the fundamental human rights that promote social progress and better standards of life in larger freedom enshrined in the UDHR.

In the community of nations, various states such as Kenya are taking necessary steps in eradicating statelessness. For the first time after the promulgation of the Constitution of Kenya (CoK) 2010, a stateless community has been registered to be Kenyans. The Makonde stateless community who have been residing in Kenya from as early as 1936 became citizens in 2016. The Makonde have now been documented and registered making them receive the requisite documentation from the government of Kenya.

Picture 1: The above plaque appears distinctively in Makongeni grounds at the Makonde meeting grounds.
The rallying call for the Makonde in the struggle for their right to nationality in Kenya had always been “Ugeni huu, mwisho lini?” Swahili for “Until when will we be excluded?” This played into the need to belong, their need to be Kenyans, their need to fully enjoy their rights; which they were not enjoying as stateless persons. Noting that civil and political rights as well as economic, social and cultural rights are different strands of the same continuum and are to be enjoyed in full. This study assesses the implementation of the economic and social rights given that the civil and political rights have experienced tremendous progress. This is done against the backdrop that the government is an enabler of rights and the Kenyan government through Article 43 of the constitution has assured its citizens of full implementation of their economic and social rights.

1.1 Background to the Study

The social contract marked a watershed moment in the development of the modern state. A new era of equality of rights and the notion of justice was ushered in (Gourevitch, 1997). The period preceding the social contract was marked by continual fear and danger. Thomas Hobbes predicates that life in the state of nature was “solitary, poor, nasty, brutish and short” (Burchill, et al.,2005 p. 32). After the crafting of the social contract, man ceded part of his sovereignty to the leviathan-the government (Elahi, 2005).

The government would in turn enforce the social contract and protect man from the uncertainties of the world. The importance of compromise on one hand and on the other, honoring agreements are put forth as the essential conditions of social cooperation advocated for in the social contract (Lewis, 1939). The government is one of the constituent features of a state. The state is considered to be one of the most important actors in the international system; in fact the realists view it as the principal actor at the international level (Dougherty & Pfaltzgraff, 2001). One of the key roles of the state has been in fact to
protect the rights and dignity of its citizens. The protection of these rights and dignity of individuals is anchored in human rights instruments.

The fundamental principle when looking at the human rights of individuals is the inherent dignity and equal worth of every human being and therefore there are minimum conditions set out for a dignified life in the form of rights or entitlements that imply duties for individuals and governments (Chapman & Carbonetti, 2011). Donnelly (1998) opines that human rights typically involves how a state treats its own citizens in its own territory. International human rights covenants and legal instruments are by and large drafted by an international organization such as the United Nations or in an international conference and opened for signature and ratification.

When states sign treaties and international legal instruments such as those prescribed in international law and specifically international human rights law, the onus is usually on states to meet the legal obligations in good faith otherwise referred to as *pacta sunt servanda*. The UN remains unparalled as the organizational focal point for developing legal human rights norms and striving towards the maintenance and effectiveness of the human rights regime at the international and regional level.

The Universal Declaration of Human Rights (UDHR) which was unanimously adopted by the UN General Assembly on December 10th, 1948 provides the most comprehensive, progressive and most authoritative statement of international human rights standards and norms. A glance at some of the internationally recognized human rights include: Equality of rights without discrimination; Access to legal remedies for rights violations; protection of privacy; family and home; right to own property; social security; work under favorable conditions; food clothing and housing; heath care and social services; Education; protection of minority culture and right of nationality.
Nationality is a legal status between an individual and a state and is in itself a gateway to gaining other rights that a citizen can freely enjoy (UN, 2003). Nationality is a fundamental and inalienable human rights issue since it assures of the dignity of the individual. It has also been termed as a right to have other rights. However, in the international system, there has been a systemic occurrence where nationality has been denied rendering individuals stateless. The politics of recognition has still dominated the interactions in international relations of states with the aspirations of minority groups being brought to the fore as they demand for recognition (Englund & Nyamnjoh, 2004).

According to Buitrago (2011, p.7), statelessness is a condition of not being a national from any state. Stateless persons as well as national minorities are two categories of persons who are in need of special protection. Stateless persons lack many services among them: schooling, security, healthcare system, retirement schemes, work, international travel and justice system.

UNHCR states that there are at least 10 million stateless persons in the world (UNHCR, 2015). This figure could be even more since the figure is according to reported data. The existence of 10 million persons without citizenship in the world is in violation of human rights. As of 2014, there were almost 19 countries reporting on the status of the statelessness population of over 10,000 persons: These countries include: Brunei Darussalam, Estonia, Germany, Iraq, Kenya, Kuwait, Kyrgyzstan, Latvia, Malaysia, Myanmar, Poland, Russia, Saudi Arabia, Syria, Thailand, United Arab Emirates and Vietnam. Such is the case of Rohingya refugees of the Rakhine state in Myanmar. The Rohingya are persons originally of Burmese nationality but their nationality is contested. The Rohingya refugees have not had naturalization in the neighboring states such as Bangladesh or Thailand.
According to UNHCR, there are three most applicable solutions for persons of concern (refugees and stateless persons): voluntary repatriation, local integration and resettlement. Voluntary repatriation is usually the best option for persons of concern as long as it is done voluntarily and in safety and dignity. This option however is out of question for stateless persons which leaves local integration as the second best option for the persons of concern. According to Carciotto & Christiano (2017), local integration process involves three interrelated dimensions: First dimension involves a greater range of socio-economic rights and entitlement to the host-state. The second dimension, local integration can be regarded as an economic process which involves livelihoods so as to attain a growing degree of self-reliance. A third dimension is that local integration initiates a social process which in essence enables persons of concern to live in a pacific environment together with the host population, without fear of systematic discrimination, intimidation or exploitation by the authorities of the host country. The other option is third country resettlement that involves tripartite agreements between governments and other bodies such as UN Agencies.

Having noted that local integration is an economic process which involves livelihoods so as to attain a growing degree of self-reliance, economic and social rights of stateless persons is mostly at risk. Economic and social rights are put in place in order that people can live, work and develop to their fullest potential as human beings (Coomans, 2005 p.3). Governments all over have strived to provide a conducive environment so that their citizens achieve economic development. Article 11 of the International Covenant of the Economic and Social Rights alludes to the fact that State parties shall recognize the right of everyone to an adequate standard of living for the individual and his family, which encompasses other rights such as right to adequate food, clothing and housing and to the continuous improvement of living conditions (UN, 1966).
This in essence, describes what the Makonde people, while struggling to be listed as Kenyan citizens envisaged to enjoy. The first step was achieved when they were listed as Kenyan citizens in November 2016. Before 2016, Makonde community did not enjoy fully their economic and social rights as evidenced in an assessment report of the Makonde community done by the UN Refugee Agency, Haki Centre, Kenya Human Rights Commission, Open Society Initiative for Eastern Africa and Haki Africa (UNHCR, 2015). The assessment report for instance notes that 46% of the respondents had no formal education while 47% had primary education. The mandate of UNHCR covers persons of concern who are stateless but since Makonde are now nationals, they do not directly fall under the mandate of the UNHCR.

The Constitution of Kenya 2010 reiterates that it will provide the necessary environment for its citizens to achieve the economic and social progress. The Makonde have always had a rallying call dubbed “Ugeni huu, mwisho lini”, but after they got their IDs there has not been any substantive inquiry on whether the Makonde are now enjoying their economic and social rights.

1.2 Statement of the Problem

Human rights are indivisible, interrelated and interdependent. The enjoyment and implementation of one set of rights is inextricably linked to the fulfillment of the other rights (Donelly, 1999). The UDHR further enlists the following as indispensable rights: the right to work, right to education, to a standard living, to adequate health are indispensable for the dignity of an individual. The International Covenant of Economic, Social rights and Cultural rights(ICESCR) states in its preamble that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby
everyone may enjoy the economic and social rights (UN, 1966). The CoK (2010) asserts that the economic and social rights should be enjoyed by every Kenyan.

The rallying call of the Makonde “Ugeni huu mwisho lini” describes a deep desire to belong, the desire to integrate, the desire to be Kenyan, the desire to enjoy their civil and political rights as well as their economic, social and cultural rights. These economic and social rights which the Makonde for over seven decades have not been enjoying are interdependent and inalienable. The civil and political rights on one end and the economic, social, cultural rights are different strands of the same continuum and are meant to be enjoyed in whole by the Makonde. The Makonde have successfully been documented and now have documentation; this can be attributed to the implementation of the civil and political rights but what has happened to their economic and social rights?

The purpose of the study is to assess and analyze the extent to which the economic and social rights of the Makonde people in Kenya have been implemented subsequent to being the pioneer stateless community to be naturalized after the promulgation of the 2010 Constitution of Kenya.

1.3 Purpose of the Study

The purpose of the study is to assess and analyze the extent to which the economic and social rights of the Makonde people in Kenya has been implemented.

1.4 Objectives of the Study

The study will be guided by the following objectives

i. To examine the extent to which the economic rights of the Makonde people in Kenya have been implemented.

ii. To provide an overview of the implementation of social rights of the Makonde people in Kenya.
1.5 Research Questions

The study will seek to answer the following research questions

i. To what extent have the economic rights of the Makonde people in Kenya been implemented?

ii. Have the social rights of the Makonde people in Kenya been protected, fulfilled and respected? How?

1.6 Significance of the Study

The enjoyment and guarantee of economic and social rights and the level of compliance by government of its obligations must be periodically monitored to assess progress in the realization of the rights (Rintari, 2011 p.39). The research findings on the assessment of the economic and social rights of the Makonde people in Kenya will be significant as it regards the measurement of human rights of a minority group in Kenya. The Makonde people were previously one of the eight groups of documented stateless people in Kenya. Their naturalization serves as a key success story for local integration and in the quest to end stateless by 2024 hence an assessment of full realization of their rights could bring out the issues with regards to the implementation of the economic and social rights of minorities and stateless persons in Kenya and Africa as a whole.

The Makonde people have been at the centre of inequality, injustice and structural violence. By assessing the implementation of their rights, the voices from the field would form a basis to highlight their quest for justice, equality and sustainable development. All human beings are equal and need to enjoy their rights regardless of their ethnic background.

This study will also provide a contextual description and documentation of the economic and social rights of the Makonde. This will be of help in the academia and policy area.
1.7 Scope and Delimitation of the Study

Out of the stateless communities who have been living in Kenya since independence; these include Makonde, Nubians, Galjeel, Pemba, Waaba, Coastal Arabs and Somali Kenyans, this current study seeks to focus on Makonde community since they were the pacesetters and pioneer stateless community in Kenya to be registered in the new constitutional dispensation in Kenya.

Just as UNHRC (2011) submits, indicators as measurement variables are very important when monitoring economic, social and cultural rights more so when looking at the progressive realization of human rights. This current study seeks to zero in on economic and social rights indicators as provided for in Article 43 of the CoK 2010 which pertains to economic and social rights: right to healthcare; right to accessible and adequate housing and to reasonable standards of sanitation; freedom from hunger and have adequate food of acceptable quality; right to clean and safe water in adequate quantities; right to social security and right to education.

1.8 Definition of Terms

**Economic Rights:** This refers to the rights of individuals to work, to enter into contracts and to possess, use and inherit property while not violating the rights of others (The Bush Institute)

**Human rights:** Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity (UNHRC, 2012).

**Integration:** the process of fostering societies that are stable, safe and just and that are based on the promotion and protection of all human rights, as well as on non-discrimination, tolerance, respect for diversity, equality of opportunity, solidarity, security and
participation of all people, including disadvantaged and vulnerable groups and persons (UN, 1995).

**Migrant:** Any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. (IOM, n.d.)

**Minority:** A non-dominant group of citizens of a state that are usually numerically less and have different ethnic, religious or linguistic characteristics than the majority of the population, that are aware of having a different identity and are willing to prevail it (Papoutsi, 2014 p.306).

**Nation:** A nation is a historically evolved, stable community of language, territory, economic life and psychological make-up manifested in a community of culture (Yuval-Davis, 2011).

**Peoples:** Any groups or communities of people that have an identifiable interest in common, whether this is from sharing of an ethnic, linguistic or other factor and therefore not equated solely with nations or states (ACHPR p.7).

**Refugee:** According to UNHCR, a refugee is a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

**Stateless person:** Someone who is not considered as a national by any state under operation of its law (UNHCR 1954 p.8).
1.9 Chapter Summary and Summary of all chapters

The first chapter of this study draws an introduction of the study which includes the background, formulation of the statement of the problem, the general and specific objectives. In addition this chapter also includes the research questions, the significance of the study, scope and delimitation as well as the definition of key terms used in this study.

Chapter two is a review of the existing literature. The literature review is divided into distinct areas that look at the economic rights and social rights as well as the theoretical framework that underpins this study.

Chapter three is methodology which highlights the research design used, the population and sampling design, data collection techniques, data analysis and ethical issues that will be highly considered since the research involves people.

Chapter four is a section for the results and findings. This section looks at general demographic information, findings based on each research objective and research question.

Chapter five has discussions, conclusion and recommendations. The discussions are drawn from the data presented in chapter four.
CHAPTER TWO

2.0 LITERATURE REVIEW

This section preceding the methodology chapter sets a critical foundation to the study since it presents the already existent literature with a view to enhance more understanding on minority rights, background of statelessness as well as economic and social rights. This chapter also presents the theoretical framework for this study.

2.1 Introduction

The existent documented literature of the Makonde in Kenya serves to paint a critical picture for this study. This is also true for the literature regarding implementation of economic and social rights of minorities. It is worthwhile to note that while human rights have become an accepted legal and normative standard through which to judge the quality of human dignity, there remains a large and variable gap between the expectations for human dignity outlined through human rights standards and the reality of the precariousness of those rights as they are variously enjoyed throughout the world (Landman & Carvalho, Measuring Human Rights, 2010). This means that in most cases there is discrepancy between intention and action in such a way that whatever has been prescribed in the international legal instruments are not usually implemented to the letter.

Human rights have been codified in international human rights instruments, UDHR of 1948 being one of them. Article 3 to 21 of the UDHR looks at the civil and political rights and second cluster of articles 22 to 27 set forth the economic, social and cultural rights to which all human beings are entitled to while a third cluster of articles 28 to 30 which provide a larger protective framework in which all human rights are to be universally enjoyed (Papoutsi, 2014, p.316).
The UDHR being a critical pivot that guarantees enjoyment of human rights, it states in its preamble that:

“The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

The point that the UDHR succinctly brings into play is that member states, of which Kenya is included, should not only respect and protect rights of its citizens but for all persons within its jurisdiction and area of governance. Even though Edie (2001 p.116) observes that the development and advancement of human rights in different countries had a close link to the expansion of the concept and content of citizenship, the minorities such as stateless persons should not only have their rights respected but also protected and fulfilled in all measures possible.

**Economic and Social rights**

Economic and social rights enshrined in ICESCR as well as other international human rights instruments put a caveat for positive obligations on governments to ensure progressive realization (Coomans, 2005). Eide (2001) observes that fewer efforts are made to secure economic and social rights to the rural than to the urban population in many parts of the world. There is more awareness and emphasis on the implementation of economic and social rights among the urban population while there is evidently less attention for those in the rural areas. Coomans (2005 p.182) asserts that the needs and opportunities for the enjoyment of a social and economic right vary to a great extent according to income,
(un)employment, availability of land and property. While ruling on the Khosa and others v. the minister of Social Development and others case 12 of 2003 on a human rights case in South Africa, the Constitutional Court ruled that everyone has the right to have access to social security. In addition the court was of the view that the importance of providing social assistance to all who live permanently in South Africa and the impact denial has upon life and dignity far outweigh the reasons given by the state to deny a claim to social security (Coomans, 205 p.179)

Minority Rights

To better understand the struggle for minority rights, it would be prudent to look at the attempted definition of minorities. The definition of minorities was attempted by Francesco Capotorti, a Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities as

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”

Papoutsi (2014, p.306) also puts forth another definition to that of the United Nations Commission on Prevention of Discrimination and Protection of Minorities which is:

“Minorities include those non-dominant groups in a population who not only posses but also wish to preserve stable ethnic, religious or linguistic tradition markedly different from those of the rest of the population and that such minorities should include a number of persons sufficient by themselves to preserve such traditions or characteristics.”

In addition, such minorities must be loyal to the state of which they are nationals. While the nationality criterion has often been challenged since this puts in limbo stateless persons and others persons of concern in a nation-state, the requirement to be a non-dominant
position remains important (UNHRC, 2010 p.8). The nationality tag in most definitions create a lacuna since stateless persons are not considered nationals but could be a non-dominant group in a population.

There is usually some bit of confusion between minorities and indigenous people but to qualify the difference, UNHRC (2010,p.10) gives some clarity that minorities do not have the long ancestral, traditional and spiritual attachment and connections to their lands and territories that are usually associated with self-identification as indigenous people. UNHRC (2010) further notes that most of the world’s stateless persons belong to ethnic, religious or linguistic minorities. In relation to minorities’ protection, Papoutsi, (2014, p.305) opines that as years go by, minorities’ protection issues have succeeded in gaining constant attention and progress—at least at the theoretical level.

Article 4 (5) of the Declaration in the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities provides that states should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (UN, 1992). The paramount importance of the question of the protection of minorities is today beyond dispute and solutions lie on the one hand, and on the other the respect of the principles of non-discrimination as well as positive action such as proclamation of these rights. Issues of paramount importance for minority groups include but not limited to: survival and existence, identity of minorities which should be promoted and protected, equality and non-discrimination as well as effective and meaningful participation in society (UNHRC, 2010 p.13).

The general view across board is that human rights have undoubtedly been more widespread, however much has still to be done moreso regarding the economic and social
rights. That notwithstanding, some countries still put less emphasis on economic and social rights since they do not consider such rights are proper human rights (Eide, 2001).

**Statelessness**

Regarding statelessness, UNHRC (2010, p.11) notes that persons who are stateless and have been residing for a long time on the territory have stronger rights than those who have recently arrived which fundamentally considers the duration of stay in a particular territory as key for consideration while screening and registering stateless persons to get citizenship. Stateless individuals may intentionally avoid registration and statistical coverage (UNHCR, 2011 p.4). In Kenya, groups with historical or ethnic ties to other countries face higher burdens of proof in the registration process and security concerns have also created obstacles (IOS, 2017). Such discriminatory policies are partly what have led to statelessness in Kenya.

**The Makonde in Kenya, From Stateless to Citizen**

The Makonde people are originally from Northern Mozambique and they came to Kenya as early as 1936 to work in British farms in Kenya (UNHCR, 2015 p.3; Opiyo, 2017, p.19). They currently live in scattered locations in Kilifi, Mombasa and Kwale counties in Kenya. Majority of the Makonde, up to 90% live in Kwale County (UNHCR, 2015p.5). There are presently four generations recorded to have lived in Kenya since they came into Kenya. The Makonde in Kenya have had three attempts to register as Kenyans but were not successful hence all along their stay in Kenya from 1936 up to 2016, they were stateless. When they started the process that led to their enlisting as Kenyans in 2016, some Makonde did not participate hence the reason why some Makonde still do not have registration documents as Kenyans.
Before the presidential decree in 2016, Makonde always considered either the Kenyan ID card or the Mozambican consular card as valid registration documents (UNHCR, 2015p.15). Opiyo (2017,p.47) notes that although most of the Makonde community members have attempted to apply for documents through formal process, some of the community members have applied via informal means.

The parliament of Kenya passed the Citizenship and Immigration Act of 2011 which provides that within 5 years, all stateless persons must be registered as Kenyan citizens (Opiyo, 2017). Opiyo (2017, p.60) concludes that minority right protection for stateless persons still faces some limitations.

The 1992 Declaration of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities also mentions in a detailed view that the minority rights are far from being realized. Among other efforts, the promotion and protection of the rights of minorities require addressing disparities in social indicators such as employment, health and housing since they often fall victim of multiple discrimination and may lack access to, among other things adequate housing, land and property and even a nationality (UNHRC, 2010 p.7).

Measuring human rights

Landman and Carvalho (2017, p.4) point out that the human rights measure serve a variety of important and interrelated functions which include: contextual description and documentation; classification; monitoring, mapping and pattern recognition; secondary analysis and policy prescription and lastly advocacy and policy description. Contextual description refers to raw information as well as developing and deriving standardized measures of human rights. Classification allows for the differentiation of rights across their different categories. Monitoring looks at the degree to which states respect, protect and fulfill the various rights. Mapping and pattern recognition looks at the time series and
spatial information on broad patterns of violations which is related to secondary analysis that considers inferences which can feed to policy.

Progressive realization of economic and social rights which is central in the positive rights can be measured in qualitative terms in the sense that one could opt to assess or monitor, how much the standards of living people have improved or deteriorated over time (Rintari, 2011). The specific indicators used to measure human rights operationalize constitutive elements into specific measures (Landman & Carvalho, 2010 p.17). Landman and Carvalho (2010, p.17) further expound that the concept can be delineated into three key concepts: rights in principle, rights in practice and rights as policy. While rights in principle looks at commitments made by states. This takes into consideration that when a state signs or accedes to an international treaty, it formally accepts a legally binding obligation to implement the provisions of the treaty. Rights as policy assesses the impact of government policies on the enjoyment of rights. Rights in practise looks at how the rights are being enjoyed by the rights holders.

The table below illustrates the three dimensions of economic, social and cultural human rights.

<table>
<thead>
<tr>
<th>Economic, social and cultural rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Respect:</strong> No interference in the exercise of the right</td>
</tr>
<tr>
<td><strong>Ethnic, racial, gender or linguistic discrimination in health, education, and welfare</strong></td>
</tr>
</tbody>
</table>
Figure 1: Categories and Dimensions of Economic, Social and Cultural Human Rights

Adapted from Source: Landman & Carvalho (2010 p.26).

There is the view that economic and social indicators are important to measure human rights; without doubt they are important but so are structural indicators and process indicators. While structural indicators measure the commitment to and acceptance of international human rights obligations and legislation, process indicators look at efforts made by the State to meet its obligations and outcome indicators looks at outcomes as experienced by the rights holders (UNHRC, 2011). For further elaboration of this notion it should be stated categorically that outcome indicators assess the status of a populations’s enjoyment of right; they show the “facts” and measure the results achieved (Chapman A. R., 2007). These indicators can be based on the international human rights instruments and also from national policy standards and documents such as constitutions. The Constitution of Kenya is one such example that provides for the different human rights indicators not only for its citizens but also all those residing within its borders.


Article 15 (2) of CoK (2010) states that a person who has been lawfully resident in Kenya for a continuous period of at least seven years, and satisfies the conditions prescribed by an act of parliament, may apply to be registered as a citizen. Chapter 4 outlines the provisions of the bill of rights. Article 19(1) states that the Bill of rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies. The Constitution of Kenya is a progressive document and shows not only the ideal but an
achievable standard that it sets. This is true, especially because it recognizes fundamental freedoms and rights. It is stated in the CoK(2010) that the purpose of recognising and protecting human rights and fundamental freedoms just as outlined in Article 19(2) is not only to preserve the dignity of individuals and members of communities but also to promote social justice, equality of rights and the realization of the full potential of all human beings.

Article 21(1) relating to the implementation of rights and fundamental freedoms posits that it is a fundamental duty of the state and every state organ to observe, respect, protect and fulfill the rights and fundamental freedoms in the bill of rights.

Article 27(1) of the CoK(2010) brings into perspective the notion of equality and freedom from discrimination. It further states that every person is equal before the law and has the right to equal protection and equal benefit of the law. Article 27(2) mentions that equality includes the full and equal enjoyment of all rights and fundamental freedoms while Article 28 states unequivocally that Every person has inherent dignity and the right to have that dignity respected and protected. This in essence sets a good standard which can and should be achieved for all persons in Kenya.

Article 43 (1) which is an elaborate section relating to economic and social rights states that every person has the right

a) to the highest attainable standard of health care services, which includes reproductive health care
b) to accessible and adequate housing and to reasonable standards of sanitation
c) to be free from hunger, and to have adequate food of acceptable quality
d) to clean and safe water in adequate quantities
e) to social security; and
f) to education
The above mentioned economic and social rights are the ones which will be used in addition to right to work for this study.

When the 2010 CoK was promulgated in 2010 economic and social rights were guaranteed, however a joint civil society alternative report on the implementation of the ICESCR notes that there are very few measures that have been put in place to effectively fulfill these rights and are mostly framed as directive principles of State policy (ICJ Kenya; SCI; EGPAF; KELIN, 2016). The joint civil society alternative report further notes the unfortunate trend is that the state delays, ignores and sometimes refuses to implement court orders issued against the state in relation to economic, social and cultural rights.

2.2 Economic Rights

The prospects for human rights in Africa remain firmly latched to the wobbly ox-cart of development (Zeleza, 2007 p.475). This perspective by Zeleza proves that not unless an elaborate discussion on development has been made, then a comprehensive understanding of human rights in Africa will be in vain. Over the years, there has been an increasing recognition of the relevance of economic and social rights to development (ODI, 2008 p.1).

Human development and human rights are closely related but are not synonymous to each other and the best way to secure human rights may be to consider rights in terms of capabilities (UNDP, 2016, p.100). According to Todaro and Smith(2012, p.15), development as a concept can be described as the improvement of quality of all human lives and capabilities by raising people’s levels of living, self-esteem and freedom. In order to understand whether there has been progress in the economic development of a community we need to ask ourselves three important questions. What has been happening to poverty? What has been happening to unemployment? What has been happening to inequality?(Todaro & Smith, 2012). Human development is in progressive terms of
expanding and enlarging freedoms so that all human beings can pursue choices that they deem fit.

2016 Human Development Report puts forth that progress in human development has been impressive over the past 25 years. That people now live longer, more children are in school and more people have access to basic social services (UNDP, 2016 p.15). The Human Development Report further reports that various groups of people still suffer from basic deprivations and face substantial barriers to overcoming them. Economic growth is an important means to human development. Therefore while assessing the protection of basic social services for minorities one has to look at how poverty affects minorities and how persons belonging to minority groups are disproportionately affected by poverty and why (UNHRC, 2010 p.36)

The human development approach and the 2030 Agenda on sustainable development goals have common analytical links which include eradicating extreme poverty, ending hunger, reducing inequality and also ensuring gender equality (UNDP, 2016 p.18). The SDGs have been accepted and domesticated by various states so as to ensure that their citizens’ lives are improved.

Landman and Carvalho (2010, p.15) assert that states are legally obliged to ensure that they respect, protect and fulfill human rights of individuals hence individuals and human rights organizations can hold states to account for their acts of commission or omission. States have an obligation to fulfill rights and working actively to ensure through the creation of systems of governance, the provision of resources and infrastructure to allow all individuals to enjoy the rights guaranteed to them under international law. (Landman & Carvalho, 2010 p.24). The Human Development Report (2016, p.25) shows that several measures can enhance the financial prospects of poor people. The measures to be put in place include
amplifying banking services to groups that are disadvantaged and marginalized, relying on simple procedures and promotion of financial inclusion through harnessing modern technology. The 2016 report also points out that in Sub-saharan Africa 12% of adults have mobile bank accounts, compared with 2% globally.

Discussions on the economic front for minorities communities involves putting key measures specifically for the aged and infirm. Economic deprivation and marginalisation of peoples, communities and groups results in increased social conflict and instability (AU, 2010). These specific measures could include establishing a combination of public and private provisioning of elder care, strengthening social protection for older people through non contributory social pensions (UNDP, 2016 p.27). The right to work is one of the indicators which could be analyzed to understand whether economic rights are being protected, respected or fulfilled.

Article 13 of the protocol to the African Charter of Human and Peoples rights, popularly known as the Maputo protocol relating to the economic and social welfare rights opines that parties need to create conditions to promote and support the occupation and economic activities of women in particular within the informal sector (ACHPR, 2003).

**Right to work**

What exactly does right to work include? The right to work includes economic activity and population not economically active; income, consumption and wealth. Article 23 of the UDHR states that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment (UN, 1948). Article 6 of the ICESCR points out that state parties will take appropriate steps to safeguard the right to work and shall take measures which include technical and vocational guidance and
training programs, policies and techniques so as to safeguard this economic right (United Nations, 1976; Article 6).

Article 15 of the ACHPR states that every individual shall have the right to work under equitable and satisfactory conditions and receive equal pay for equal work. The state has the obligation to facilitate employment through the creation of an environment conducive to the full employment of individuals within society under conditions that ensure the realization of the dignity of the individual (AU, 2010). The right to work functions as a basis of independence provided the work is freely chosen by the person concerned, that sufficient income is obtained from it and provided the workers can protect their interests through free trade unions (Eide, 2001 p.120). Eide further notes that the right to work has at least two significant social functions: it is a source of livelihood and income, and a source of dignity and self-realization.

The UN Human Rights Commission provides illustrative indicators upon which the right to work could be assessed.

<table>
<thead>
<tr>
<th>Illustrative indicators on the right to work (UDHR, article 23)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of voluntary part-time workers to total part-time employed population</td>
</tr>
<tr>
<td>• Share of women in wage employment</td>
</tr>
<tr>
<td>Proportion of identified positions (e.g., senior officials, managerial positions) held by</td>
</tr>
<tr>
<td>Proportion of workers employed after skill upgrading and other training programmes, including publicly financed jobs</td>
</tr>
<tr>
<td>• Reported cases of violation of the right to work, including forced labour, discrimination and unlawful termination of employment and proportion of victims</td>
</tr>
<tr>
<td>in the non-agricultural sector*</td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>• Proportion of workers in precarious employment (e.g., short-, fixed-term, casual, seasonal workers)</td>
</tr>
</tbody>
</table>

Figure 2: Illustrative indicators on the right to work (UDHR, article 23)

Adapted from Source: (UNHRC, 2012)

While considering a gendered perspective in a broader view of right to work, it is important to note that research over time has indicated that women are particularly discriminated against with respect to opportunities and end up with disadvantaged outcomes (UNDP, 2016 p.19). UNDP further opines that creating opportunities for women requires ensuring women’s empowerment in the economic, political and cultural spheres. UNHRC (2010 p.38) considers whether or not minorities have equal access to productive resources, which includes access to credit, technology, training opportunities such as vocational and skills training, access to information and land. In February 2015, a study into the nationality status of the Makonde community in Kenya carried out by UNHCR representation in Kenya in partnership with Haki Centre, Kenya Human Rights Commission (KHRC), Haki Africa and Open Society Initiative for Eastern Africa reported that 2% of Makonde respondents...
stated that they are engaged in formal employment. This was primarily through jobs in sugar production and teaching while 83% of the respondents considered themselves as informally employed or self-employed. The sectors which the Makonde reported to be taking part in included: Farming, fishing, wood carving, casual labor and small-scale business while 14% of respondents reported that they are not employed (UNHCR, 2015 p.9).

**Right to Land and Adequate Housing**

The right to Land and property relates to accessible and adequate housing and to reasonable standards of sanitation. Salomon (2005, p.35) points out that nowhere does the principle that states and other entities must respect people’s own economic and social resources ring more than in relation to housing and land. To show the close connection, the rights to land and housing are inextricably linked since there can be no access to housing without access to land (Salomon 2005, p.35).

Access to land is essential for large groups of population since securing access to land encourages people to invest and improve housing and land itself. In practice, the right to housing means that there is an obligation on the state at the very basic level that also includes its agents to respect people’s own housing and land resources for instance by not carrying out or condoning forced or arbitrary evictions. In addition there needs to be promotion of housing and land rights through appropriate legislation and policies as well as protection against human rights violations by other non-state actors for example landlords, property, developers and multinationals (Salomon, 2005 p.36).

The right to adequate housing is enshrined in several international human rights instruments and it is not considered as a new development to the human rights regime since for a long
time it has been an integral part of human dignity and general wellbeing of the person (Rintari, 2011). Rirati (2011 p.31) is quick to mention that legal security of tenure which is the legal framework or legislation within which individuals or groups are protected in respect of their use of the land or residential property and generally to the extent that those with security of tenure are protected against forced eviction or expropriation of property. Safe drinking water is also part and parcel of the right to adequate housing and land. Forced evictions have been experienced in Kenya from time to time and are carried out by government agencies, local authorities and private developers yet it constitutes a prima facie violation of the right to adequate housing (Rintari, 2011 p.59). UNHRC in its list of outcome indicators that can be assessed while measuring right to land suggest the following.

<table>
<thead>
<tr>
<th>Outcome Indicators related to right to adequate housing and right to land</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Proportion of population with sufficient living space or average number of persons per room among target household.</td>
</tr>
<tr>
<td>*Proportion of households living in or near hazardous conditions</td>
</tr>
</tbody>
</table>
2.3 Social Rights

The UN Human Rights Commission puts forth that in many instances, particularly in developing countries, economic and social rights can be realized only progressively because of resource constraints and therefore it is logical to monitor this progress (UNHRC, 2012, p.34). This is not the case for civil and political rights as provided for by the International Covenant on Civil and Political Rights (ICCPR) where once ratified and guaranteed by the state can in principle be immediately enjoyed. Even though certain fundamental rights may be recognized on paper, they may not be implemented or available in practice (UNDP, 2016, p.100). Human Development Report (2016, p.121) also points out that most disadvantaged and marginalized groups lack universal primary education, universal health care, improved sanitation and decent housing.

Article 56 of the CoK (2010) posits that:

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups—

a) participate and are represented in governance and other spheres of life
b) are provided special opportunities in educational and economic fields

c) are provided special opportunities for access to employment

d) develop their cultural values, languages and practices and

e) have reasonable access to water, health services and infrastructure.

Article 17 of the UDHR states that everyone has the right to own property alone as well as in association with others (UN, 1948).

**Right to Education**

The reference to the “right to education” has primarily been provided for through various international human rights instruments. The formulation of the right to education is as used in article 26 of the Universal Declaration of Human Rights, article 13 of the ICESCR and its elaboration in general comment No. 13 (1999) of the Committee on Economic, Social and Cultural Rights. The other core international human rights treaties that provide for the right to education includes articles 23, 28 and 29 of the Convention on the Rights of the Child. Article 26 of the UDHR provides that everyone has the right to education and that education shall be free, at least in the elementary and fundamental stages. Elementary education which the basic and also bare minimum standard should be compulsory. Since basic education is compulsory, that does not mean post-secondary education should not be catered for, in fact technical and professional education should be made available as well as higher education so that it is equally accessible to all persons in that jurisdiction.

UDHR also provides for education which shall be directed to the full development of the human personality and to that end strengthen the respect for fundamental human rights and freedoms. In the case of education as an outcome indicator, the educational attainment could be considered for instance adult literacy rates by targeted population group (UNHRC, 2012,p.38).
The right to education refers to primary education, but in the contemporary world, compulsory education extends into secondary levels, and primary education does not accord an individual with the minimum level of capacity and knowledge necessary to participate meaningfully in contemporary society (Fukuda-Parr, Lawson-Remer, & Randolph, 2009). The Basic Education Act no 14 of 2013 provides for the promotion and regulation of free and compulsory basic education (ICJ Kenya; SCI; EGPAF; KELIN, 2016).

Even though the right to education is to be achieved progressively, the court ruling in the Michael Mutinda Mutemi v. Permanent Secretary, Ministry of Education and two others held that the state failed to show concrete policy measures, guidelines and progress it had made towards the realization of the right to education (ICJ Kenya; SCI; EGPAF; KELIN, 2016).

The table below shows the illustrative outcome indicators of measuring the right to education.

<table>
<thead>
<tr>
<th>Illustrative outcome indicators on the right to education (UDHR, Article 26)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of school-age children not attending primary school</td>
</tr>
</tbody>
</table>
education programmes at secondary and post-secondary level

Figure 4: Illustrative outcome indicators on the right to education (UDHR, Article 26)

Adapted from Source: (UNHRC, 2012)

To bring in a gendered perspective, it is noted that in Africa almost 20 percent of women who live in rural areas and have no more than primary education experience three major deprivations, compared with 1 percent of women who live in urban areas and have higher education (UNDP, 2016, p.106).

An assessment report by UNHCR and partners in 2015 shows that 46% of respondents had not received any formal education, 47% had partially or fully completed primary education, 5% fully or partially completed secondary education and 2% had got to tertiary level (UNHCR, 2015, p.8). It is also important to note that where education rights are respected, protected and fulfilled, the possibilities for self realization for example rights to health, work and freedom of expression will be significantly increased (Salomon, 2005, p.61). The differences in educational attainment prevent people from poor or marginalized communities from becoming part of the high productivity growth process (UNDP, 2016, p.124).

**Right to Health**

The right to health is key to the existence of an individual and encompasses both health care and the underlying determinants of health (AU, 2010). State parties are entreated through Article 12(1) of the ICESCR to recognize the right of everyone so that they may
be able to enjoy the highest attainable standard of physical and mental health. Paragraph 2 mentions the necessary steps which the state parties shall take in order to achieve the full realization of the right to health. The mentioned steps relate to the provision for the reduction of the still birth and infant mortality rate; improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness (UN, 1966; Article 12). The right to health has two major dimensions: first it is a right to access health services, second it is a right to social order which includes obligations of the state to take specific measures for the purposes of safeguarding public health. (Eide, 2001 p. 152).

A gendered consideration vis-à-vis right to health, state parties to the ACHPR have an obligation to include gender perspective in national plans and policies in order to promote better health for both men and women. Obligations to state parties regarding vulnerable groups, equality and non-discrimination as outlined paragraph z of the instructive guide on principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and People’s rights further include:

“Taking measures to prevent violence against women and mitigate its impact on the physical and mental health survivors. These measures include criminalization of rape, domestic violence and sexual assault, adequate punishment of offenders; community mobilization and education; counseling and education of men; training of health and law enforcement personnel to ensure humane and sympathetic treatment of victims; counseling and rehabilitation of survivors of violence and provision of alternative safe housing programmes for women fleeing situations of domestic violence.”

The 2010 Constitution of Kenya in the same breath states in Article 43(1) that every person has a right to the highest attainable standard of health care services, which includes reproductive health care.
Generally health is improving worldwide and people are living longer. This is well pointed in the sense that life expectancy at birth globally was four years longer in 2015 than in 2000 (UNDP, 2016, p.82). State that are signatories to the ACHPR are obligated to adopt and implement policies that ensure that members who farm part of the vulnerable and disadvantaged groups have equal access to medicines (AU, 2010).

**Right to Social Security**

The right to social security is vitally important more so to individuals who do not have the necessary land or property or for one reason or another is not sufficiently able to secure an adequate standard of living through meaningful work engagements, owing to reasons such as unemployment, old age or disability (Eide, 2001 p.120).

One of the is to establish a system of social protection and insurance for workers in both the formal and informal sector, including those performing home-based work as well as for members of vulnerable and disadvantaged groups (AU, 2010). Outcome indicators help in assessing the results of state efforts in furthering the enjoyment of human rights, for instance looking at the proportion of labour force participating in social security schemes. The table below show some of the illustrative outcome indicators that be considered while measuring the right to social security.

<table>
<thead>
<tr>
<th>Illustrative outcome indicators on the right to social security (UDHR, Article 22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Proportion of labour force participating in social security scheme(s)</td>
</tr>
</tbody>
</table>

33
<table>
<thead>
<tr>
<th>• Proportion of workers covered under social security who requested and received social security benefits in the reporting period</th>
<th>insurance (public or private)</th>
<th>children and dependent adults receiving public support</th>
<th>assistance for food, housing, health care, education, emergency or relief services</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Proportion of population that renounced health-care services during the past 12 months for economic reasons, by service (e.g., dental care, medical consultation, drugs, surgery)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 5: Illustrative outcome indicators on the right to social security (UDHR, Article 22)

Adapted from Source: UNHRC (2012)

Regarding social security for Kenyans, it has been noted in Article 43(3) of the Constitution of Kenya (2010) that the state shall provide appropriate social security to persons who are unable to support themselves and their dependants.

Human Development Report (2016, p.79) highlights that by 2020 the number of people aged 60 years and older will be greater than the number of children under age 5. This group
of persons will not have access to adequate health systems, social protection and work and retirement schemes in place. In normal circumstances, older people are deprived of opportunities to maintain and expand their capabilities. Older people owing to their previous deprivations in health, income and social life need dedicated attention from policy makers.

**Right to have adequate Food**

The minimum standard of nutrition and other basic necessities’ must include, inter alia, adequate food. The government is required to indicate the measures it considers necessary to guarantee access to adequate According Human Development Report (2016, p.19), one person in nine in the world is hungry and one in three is malnourished. Article 11 of the ICESCR states that the state parties recognize right to an adequate standard of living for himself and his family including adequate food(U.N, 1966). Eide (2001 p.131) confides that state parties to ICESCR are required to provide information about the current situation giving nutritional surveys and other monitoring arrangements. This involves the fundamental right of everyone to be free from hunger. In the same way, Article 25(1) of UDHR encompasses ‘freedom from want’ by recognizing the right to adequate food as a component of an adequate standard of living (U.N, 1948). Salomon (2005, p.14) notes that landless persons and other impoverished segments of the population may require special programmes so as to assure their right to adequate food.

Salomon (2005, p.26) still notes that there should be special attention given to individuals and groups who have traditionally faced difficulties in exercising their right to water, including women, children, minority groups and indigenous people. Food security is the ideal, which is achievable when it comes to right to adequate food. ACHPR’s instructive guide on the implementation of economic, social and cultural rights in the ACHPR(part
1(k)) states that food security exists when all people have a combination of physical, social and economic access to food which is sufficient, safe and nutritious and also meets their dietary needs and food preferences at any given time for them to have an active and healthy life.

**2.4 Theoretical framework**

The enterprise of theoretical investigation is at its minimum one directed towards identifying, formulating, refining and questioning general assumptions on which we should acknowledge and investigate rather than ignore or leave unchallenged (Burchill, et al., Theories of International Relations, 2005). This current study seeks to assess the extent to which the economic and social rights of the Makonde people in Kenya has been implemented. This is done through the lens of liberal theory of International Relations. In furtherance of theoretical investigation, it is important to note that at the maximum, the enterprise is concerned with theoretical construction: with establishing that there could be assumptions which are true while others could be false, certain arguments valid while others are invalid, and so proceeding to erect a firm structure of knowledge. In the quest to establishing main assumptions of Liberalism in light of acquisition of fundamental human rights as a citizen, this chapter would point out the key assumptions that relate to the current study.

Liberalism as a theory has advocated for political freedom, democracy and constitutionally guaranteed rights, and privileged the liberty of the individual and equality before the law (Burchill, et al., Theories of International Relations, 2005). The general belief is that individuals should be free from persecution and superstition. The notion of progress and the perfectibility of the human condition is central to Liberalism. One of the key proponents of Liberalism is John Rawls whose works “A theory of Justice” seeks to defend to
principles: we should all have equal freedoms and material inequalities are justified only if they benefit the worst-off members of society (Rawls, 1971).

The subject of ending statelessness and guaranteeing rights of stateless minorities calls for cooperation between states of which Kenya is one. Institutionalization of norms and practices is espoused by liberals explaining further that this should be organized and institutionalized in institutions in the sense that countries come up with sets of rules that govern conduct in the international system. Specific policy areas such as statelessness and its reduction, protection of minority rights, economic and social rights and human rights in general have been institutionalized especially by the United Nations and its member states.

In furtherance of the discussion on Liberalism, it is of great importance to note that human beings are said to be endowed - just by reason of their humanity - with certain fundamental rights, benefits and protections. The inherent and inalienable rights apply to all and sundry regardless of nationality, status, gender or race. It is through attaining these rights which then give a legal emancipation, justice and human freedom. Burchill, et al., (2005) eschew that the creation of important legal codes, instruments and institutions is a measure of achievement in Liberalism.

Liberal theory provides that every citizen is entitled to the basic principles of freedom, justice and political rights (Lija, 2011). Lija further asserts that the Liberal political theory is a rights-based one; it takes the rights of individual as the fundamental basis for the society. Citizenship rights are considered to be institutional rights which mean that they are certain rights entitled to the members of a certain society.

The good tradition of liberalism and pluralism, differences and debate on the modern universal conception of human rights are not only admitted but vigorously pursued as
further illustration of its liberal, democratic and universal character (Englund & Nyamnjoh, 2004).

Critics have it that the liberal understanding of the citizenship puts a lot of emphasis solely on the legal dimension especially the welfare-liberal point of view, yet the conceptualization of good can vary. A related problem is the Eurocentric view whereby there is persistent failure of liberal scholarship to envisage African predicaments through anything other than analogies drawn from Euro-American experiences (Englund & Nyamnjoh, 2004).

The most important issues for liberals over time has been the fact all are equal before the law and that individuals are able to choose their own way of living. Everyone is equally entitled to this freedom and therefore it is the task of the state and the law to ensure that happens.

**Conflict theory of structural violence**

In addition to the liberal theory of international relation, which is the primary theory for this study, another add-on theory is the conflict theory of structural violence. One of the key proponents of conflict theory of structural violence is Johan Galtung, the Norwegian peace scholar who is literally referred to as the father of conflict and peace studies. Majority of conflict theories focus on what could be named ‘manifest violence’ which is also called overt violence where there is a visible and clear act of physical hurt(Demmers, 2012). Underlying the physical hurt or before the violence becomes manifest there is underlying forms of violence either structural (systemic) and cultural (symbolic).

According to Demmers(2012 p.9), structural conflict has exploitation as a centre piece.

The conflict theory of structural violence is a structure-based approach to conflict and the focus of analysis is on the underlying organization of society as shaping and sustaining
violent conflict (Demmers, 2012 p.13). The structures being referred to are articulated in social interaction and tell people how to ‘do’ social life, and the resources on which people can call to achieve their objectives; the structures are shaped by power differences (access to resources) (Demmers, 2012 p.13).
CHAPTER THREE

3.0 METHODOLOGY

Methodology refers to techniques associated with the procedures used to collect, store, analyze and present information as part of a research process (UNHCR, 2011 p.24). The methodology section expounds on the research design, population and sampling, data collection methods, data analysis and ethical considerations.

3.1 Introduction

This chapter looks at the approaches that were used to conduct the research. Methodology section explains the “how” of research vis-a-vis this survey on the Makonde people. It explains how the research was conducted, data collection techniques and which tools were used to analyze the data. Various reasons and justifications are also expounded on why the approaches have been picked.

3.2 Research Design

The primary research method for this study is a qualitative research method which is descriptive in nature. Descriptive survey research obtains information from individuals by asking individuals about their perceptions, attitudes, behavior or values and thereby describing the existent phenomena (Mugenda & Mugenda, 2013). The goal in a qualitative research is to gain an in-depth understanding of the subjects’ insights, interpretations, perceptions, beliefs, attitudes and views on the area of study (Mugenda, 2013). UNHCR (2011 p.24) notes that qualitative research looks at the perspective of the world through the eyes of the research subjects. Survey-based data use random samples of country populations to ask a series of standard questions on the perception of rights protection (Landman, 2012,p.10). Human Development Report (2016, p.115) highlights that data collection need to be generated while having more reliance on people’s perceptions.
Qualitative research is used when one seeks to have a comprehensive knowledge of the issue (UNHCR, 2011 p. 7)

Mugenda (2013, p.201) while explaining the role of qualitative research in rights based programming points out that the qualitative approach in research and evaluation is changing to rights based programming and that the rights based approach to programming empowers vulnerable groups in society by giving them a chance to participate in the process.

3.3 Population and Sampling Design

A population refers to the whole set of entities that decisions relate to and a sample is representative of the population from which it is selected if the characteristics of the sample approximate to the characteristics in the population (Bloor & Wood, 2006, p.157).

According to UNHCR(2011, p.10), the importance of sampling should not be underestimated because it determines who your research results will apply to, whilst good sampling methods will provide results with the credibility and reliability needed when advocating for government action.

Simple random sampling was used for this study since every member of the Makonde population had the same probability of being selected. Makonde Community Assessment pointed that 90% of the Makonde live in Kwale County on the south Coast of Kenya (UNHCR, 2015, p.5). A sample of 105 respondents were identified from the Makonde population to take part in the survey on the economic and social rights of the Makonde community. 75 persons were interviewed of which 51 were female and 24 male.

3.4 Data Collection

This study uses primary data collection which according to UNHCR (2011 p.24) is the gathering of original, fresh data which does not already exist. A direct survey of individuals
or households is often essential to assess the enjoyment of human rights (UNHRC, 2012 p.60). Landman(2002, p.10) points out that there are three levels of information and the while measuring or carrying out a comparative analysis, we can delineate the three types of data available for measuring human rights in practice as: (a) events-based, (b) standards-based, and (c) survey based. The data for this particular study was collected through a survey-based study done in Kwale County, in two constituencies of Msambweni and Lunga Lunga constituencies. The three locations where data was collected from are Makongeni, Kanana and Kibiga.

Triangulation as defined by Mugenda(2013, p. 9) is the systematic collection, analysis and comparison of data from the same group of participants using multiple techniques, tools and procedures. The data collection techniques used were Focus Group Discussions (FGDs) and in depth interviews.

UNHCR (2011, p.14) points out that FGDs are formed by choosing individuals who do not necessarily know each other on the basis of common characteristics and that they are most useful when needing to explore and analyze group responses to a topic of common concern. The FGDs served instrumental since the discussions and probing proved to be important to understand the attitudes, motivations and experiences of the Makonde in light to being enlisted as Kenyans. The FGDs were held at convenient locations where there was not much interruption. In Makongeni, the FGDs were held in the central camp area secluded area for meetings; the area has always been the central meeting point for all Makonde over the years. It is the same place where the Makonde held their final prayer before the long trek to Nairobi in the quest for citizenship. In Kanana, the meetings were held at the local Makonde elder’s foyer; Being the eldest member of the Makonde community in Kanana, he plays host to most meetings in Kanana. In Kibiga the FGDs were held late in the evening since most of the respondents work in the local sugar industry-KISCOL and the available
time for them was in the evening after working hours. 105 respondents participated in the FGDs in the three locations.

In-depth interviews with respondents were also carried out in the 3 interview locations. Mugenda and Mugenda (2003, p.77) note that when interviewing it is advisable to start with personal data since it creates an opportunity for the respondent and interviewer to interact more personally before they come to the actual content. Before every interview, the respondents were informed of the expectations and the essence of free space where they should feel free to communicate their responses and that there was no right or wrong answers. 75 respondents took part in the in-depth interviews but were also part of the 105 respondents who participated in the FGDs. While triangulation is important in the sense that it reduces the bias of depending on one method but still does not completely eliminate the bias since one method is not used to check the other method.

3.5 Data Analysis

Data coding is the transformation of the questionnaire data into another format that computer software can understand (UNHCR, 2011 p.16). The data from the field was coded as per the themes, since this study was looking at six economic and social indicators, the data collected was arranged in those themes. The indicators were right to work, right to land and property, right to education, right to healthcare, right to adequate food and right to social security. Data was collected and organized into themes which then helped in the analysis. UNHCR (2011 p.16) further describes data analysis as the process of transforming and modeling data in order to highlight useful information and suggest conclusions. The analysis was done based on the emerging themes which were the economic and social indicators.
3.6 Ethical considerations

Ethics as defined by Bloor & Wood (2006, p.64) refers to the guidelines or sets of principles for good professional practice, which serve to advise and steer researchers as they conduct their work.

Noting that this study collected primary data and there was the previewed interaction with respondents, various ethical considerations were upheld. To begin with the principle of legality, an introductory letter from the institution (USIU-A) was received, which necessitated application of a research permit from the National Commission for Science and Technology (NACOSTI). The letter gave clearance for data collection in Kwale County.

The facilitator and interviewers took time to explain the general purpose of the study, assuring respondents of the following ethical considerations: Principle of informed consent where voluntary participation was key, there was no forced participation in the survey. All data collected was handled with utmost confidentiality. All persons who participated in the study were respected and their opinions were considered; there was neither right nor wrong answer. Anonymity has been guarded for there is no external person who would know which specific person from the Makonde gave a certain answer.

3.7 Chapter summary

The methodology section is vital since it guides on many aspects of the study. Having looked at the research design which is a qualitative approach it is important to note that research is scientific and the design was guided by the research questions. The population of the Makonde was also determined and how data was collected especially noting that qualitative data collection methods were used. After data collection, an analysis of the data using a qualitative approach was used.
CHAPTER FOUR

4.0 RESULTS AND FINDINGS

This chapter presents the findings of the study. The data presented is what was collected in both the interviews and FGDs in the three study locations of Kanana, Kibiga and Makongeni. The three study locations are located in Msambweni and Lungalunga constituencies both of Kwale County (County 002) in the coastal area of Kenya.

4.1 Introduction

The data that was collected was primary data which means raw data that was being produced for the first time to be used for this study. This was through FGDs and in depth interviews. After the interviews and FGDs, the data was recorded in the questionnaires and transcripts, later data coding was done which included having unique codes for specific information. This was followed by data entry which was the entering of information into a computer intelligent method, typing and filling the details in an excel computer application. The data was then cleaned and this chapter presents the findings as were presented by the Makonde people.

4.2 Demographics

Demographics refers to the characteristics of a human population commonly including factors such as age, gender, ethnicity, employment status etc (UNHCR, 2011 p.24). Data regarding the respondents was disaggregated by age and sex. Out of 75 respondents interviewed, 51 were female and 24 male which represents 68% and 32 % respectively.
Diagram 1: Gender representation of interview respondents.

The following table represents the age brackets of respondents in the interviews.

<table>
<thead>
<tr>
<th>Age bracket</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 18-24</td>
<td>4</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Age 25-35</td>
<td>5</td>
<td>11</td>
<td>16</td>
</tr>
<tr>
<td>Age 36-50</td>
<td>6</td>
<td>16</td>
<td>22</td>
</tr>
<tr>
<td>Age 51-60</td>
<td>1</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Above 60 years</td>
<td>8</td>
<td>15</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>51</td>
<td>75</td>
</tr>
</tbody>
</table>

Table 1: Disaggregation of data on respondents by age and gender

4.3 Research Findings

The research findings section breaks down the information, issues and responses from the data collected through the FGDs and face to face interviews conducted. Out of the three main indicators of measuring economic and social rights: structural indicators, process indicators and outcome indicators, this study focuses on outcome indicators which capture
individual and collective progressive enjoyment of the human rights. The data is then presented in a logical sequence based on the outcome indicators for economic and social rights. The economic and social indicators include right to work, right to land and housing, right to healthcare, right to adequate food, right to social security and right to education.

Regarding the right to work, there is improvement, albeit little; the right to land and housing is almost non-existent among the Makonde; the right to healthcare is progressive and Makonde enjoy the right to healthcare just like any other Kenyan however there is a gap at a national level which includes lack of drugs in the hospitals and healthcare facilities. As for the right to adequate food, there is discrimination in food aid yet majority of the Makonde do not have their own land to farm in; the Makonde are now enjoying freely the right to education with basic education being free; there is a lacuna in social security since 77.3% of respondents are neither registered on NHIF or NSSF which are the two main insurance schemes for Kenyans. The section below highlights the detailed findings;

4.3.1 Findings on Economic Rights

While looking at Economic rights, it was important to consider the economic outlook and prospects for the Makonde after they acquired citizenship. Economic outlook is not synonymous to economic rights, however it is vital information that could not be swayed away in order to understand or have an overview of Makonde’s economic and social right. This in turn builds up to the question on how the Makonde earn a livelihood.

Three quarters which also represents 75% of the respondents had a positive outlook on their economy. They reported that their economic situation has improved ever since they got citizenship. 18 out of 75 did not see much difference in their economic situation; in essence they reported that their economic situation has remained the same. Only one person said that their life had deteriorated comparing the time the Makonde were stateless and currently when they are Kenyans.
Diagram 2: Graphic representation of the economic situation of the Makonde

A step further into looking at the reasons as to why the respondents viewed their economic situation to have either, improved, remained the same or deteriorated reveals that economic freedom that comes with being Kenyan topped the list. 16% of the respondents reported that they view their economic situation to have improved since they now get government support, something which was absent when they had not acquired Kenyan citizenship. The government support that is being referred to is that of bursaries to sponsor children to school and also government funds for the older persons in society. The funds for the older persons is a special fund that is being rolled out by the government of Kenya to support old people in Kenya.

There are those who look at the fact that they now can now join investment groups; they account for 12.5% of the respondents. One of the requirements to register as a member for the investment groups is to have a valid national ID card. Since the Makonde now have the ID cards, they are eligible to join the investment groups where they can pool funds and get loans from either Village Savings and Loan Associations(VSLAs) or the banks. 5.3
% reported that their economic situation was better because of financial transactions that they can now make using MPESA.

Half of those who had reported that their economic life was the same attributed their answer to the fact that they still lack jobs and the means to make life better. Two persons said the political disadvantage that plays back to their economic rights was still a matter to consider greatly. When the Makonde received their ID cards, it was viewed as a political matter. In one of the FGDs in Makongeni, a participant said they were seen as project Uhuru and even during campaigns they were told "vote for Uhuru and be prepared to be sidelined." Two persons out of eighteen also reported that their life has not changed in any way since they still lack ID cards so economically their life is still the same. The land issue was also reported to be a determinant so as to consider whether their economic life has improved or not; this was considered by two persons.

The one person who said that the economic situation had deteriorated owed this to the fact that he did not receive his national ID when the other Makonde people got theirs. A further inquiry on why this person did not have an ID card shows that he missed one of the procedural steps.

**Right to Work**

Economic, social and cultural rights are resource intensive and outcome indicators-which is what this study assesses- related to right to work need to show the progressive realization of these rights. It is therefore prudent then when measuring the right to work for one to consider the number of Makonde who have meaningful employment or not. Looking at what the Makonde population do to earn a living or to earn a livelihood; majority of the respondents are casual laborers. 22 out of 75 respondents interviewed which represents 29% reported that they work as casual laborers. They reported to be working most of the
times jobs that relate to agriculture such as tilling land but would otherwise also pick up any other manual jobs that people would have. Having manual jobs means that there is no guarantee of having a job every other day and in the long run no assurance of having extra cash at the end of the day, week and month. In essence, this would also mean the Makonde do not have the resources to move up the ladder economically setting a dangerous path of a vicious cycle of poverty.

9 out of 75 persons which represents 12% of the respondents reported to be doing small scale business ranging from selling eggs to selling kaimati—a local delicacy at the coastal regions of Kenya. Those doing small scale businesses are self-employed since they have control over their businesses and they hope for better days ahead when they can get loans to grow their businesses. Their customers come from the Makonde community and also the local communities such Digo and Duruma communities of Kwale County.

There are those who were engaged in employment; a quarter of the respondents informed the interviewers that they are employed. 19 out of 75 said they were engaged in employment whereby each day of the month they wake up knowing they have a place to go and work. They are entitled to a pay at the end of each month. 84% of those who are employed, work for Kwale International Sugar Company Limited (KISCOL), a sugar factory in Kwale, while the rest work in the health sector as a community health worker, in the tour industry as a tour guide and in the security sector as a watchman.

Dependants being those who are past working age and are not able to contribute to the working force attributed to 17% of the total number of respondents.

9.3% of the respondents reported to be actively involved in farming where they were the ones who decided what was planted in the farms what is to be done on the produce. 10.7% of the respondents had never had the opportunity to work and at the moment of interviewing had never engaged in an economic activity to make ends meet.
In the FGDs at Makongeni, participants noted that the Makonde have been taken in for employment opportunities in the government. There are 7 people who were picked to be in the uniformed services of Kenya: Two were picked to join National Police Service (NPS) at the Kenya Police Service (KPS) unit while four joined the Kenya Prisons as wardens and one joined the Kenya Defence Forces (KDF).

All the employed were male persons and not a single woman was picked for the government jobs. In another FGD in Kanana, a participant explained the common worries regarding the right to work as follows:

“We, the Makonde have been sidelined for so long, we were in a cocoon with no education, no opportunities and now that we have IDs we are starting to wake up… but can’t the county government offer us some employment opportunities based on our level of education?”

Another participant remarks as follows: “We know we don’t have papers (certificates) but can’t we be given even manual jobs like cleaning the offices and serving tea?”

*Picture 1: A picture showing a moderator (in red) together with a section of participants while an FGD was in progress in Kibiga.*
The number of persons who are in meaningful employment amongst the Makonde is still low. The desired outcome is that both the low and medium skilled workers are sufficiently employed and their choices of employment opportunities should be unlimited.

**Right to Land and adequate Housing**

International legal treaties and instruments related to the right to land and adequate housing looks at the habitable area and housing to assure of the dignity of an individual. For instance the proportion of population with sufficient living space. As for the Makonde, 80% of the respondents interviewed reported their right to land and adequate housing was not being achieved. They reported that they lived as squatters in KISCOL land whereby they do not know when they would be evicted. They do not own the land, they live in the camp where for generations they had been given housing by the sisal factory which they came to work in, when this factory closed shop and reverted to a sugar industry they were allowed to stay in the same place.

They have stayed there for decades, specifically from 1936 but they do not own the land. They do not have title deeds or any other documentation for security of tenure in that piece of land. 14.7% reported that they had land but this land had no title deed and therefore no legal claim to it. 5.3% of the respondents reported that they had land with a title: A gendered perspective on the land question shows that half of those who owned land with a title deed are women.

A deep look into the land question reveals that 3 respondents reported to have their land being grabbed. 39 viewed their main issue regarding land being that they live in land without title but 29 viewed that they did not have land at all. Those with land which are registered in their own names are contented.
One participant, in one of the FGDs in Kibiga where majority of the participants work for KISCOL reports that:

“I personally had land...4 acres to be precise, our lives were better, we had grown coconuts, peanuts, arrow roots name them all...but when it came to evictions, we were chased as if we were not human beings and given this piece of land where we all now live like tethered beings, we can only have what is within our immediate reach”

In the FGD, the participants expressed their concern on the land where they live. The said that the land where Makonde in Kibiga live is squeezed. In the FGDs at Kibiga, it was reported that in as much as KISCOL moved the Makonde in Kibiga to a different piece of land, they are not allowed to build permanent structures and also they cannot bury the dead there. They have been given some land which is kilometers away as a burial site.

Another key concept when measuring or assessing human rights is the aspect of accessibility to services. This refers to the proportion of population using an improved drinking water facility, whether it is privately owned or owned by the public. In furtherance the discussion on the right to land and adequate housing encompasses the bit of electricity and water supply. During the research study, only one location which is Makongeni had access to borehole water. The borehole was privately owned and the Makonde had to buy water which is sold by a vendor at prices which the Makonde struggle to afford. For a community that is not sufficiently stable in economic terms yet the option of clean water come at a price is disheartening. Water is a matter of life and death and no one should weigh between buying water and other basic needs.

In Kanana, the respondents during FGD sessions said they have neighbors who own boreholes and are water vendors but as for the Makonde, they have not been allowed to dig a borehole since the land does not belong to them and there is not much that they can do. In Kibiga interview location, they do not have access to clean borehole water, and also have
no access to electricity yet electricity poles are lined up few meters across the road. The Makonde have made efforts to have contact with the management of KISCOL with no success regarding the matter. At Kibiga, there is no borehole and the nearest water source is a natural spring found down the slopes in the sugar cane plantation. On the other hand, KISCOL has a well-connected water piping system connecting the various sections of the farms from a central generator powered distribution system. This system pumps water and chemicals to the farms spread along hundreds of acres. When it rains, the chemicals are washed to the low gradient areas where the water spring is found. The only source of water for the Makonde in Kibiga is then intoxicated with the chemicals. As if this is not enough, animals and humans share this spring since that is the only source of water.

A visit to the spring after FGDs indeed reveal this shocking turn of events. The land slopes towards the natural spring which as the Makonde say few years back was a fertile area of farm lands.

A middle aged man sighed as he explains what has become a normal event to them.

“This is the water spring, you can see the herd of cattle drinking water and the children are here waiting for the water to settle before they fill their jericans”
4.3.2 Findings on Social Rights

Right to Social Security

When looking at outcome indicators in relation to the right to social security, one should not only look at the proportion of labour force participating in social security schemes but also the entire population covered by especially the medical schemes. Regarding the right to social security, there are two main government administered social protection schemes in Kenya: The National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF). 77.3% reported that they are neither registered for NHIF nor NSSF while 22.7% reported that they were both covered by NHIF and NSSF. Those that are covered by NHIF
and NSSF are persons who are employed. Majority of those covered by NHIF and NSSF are Makonde who live in Kibiga and work at KISCOL. Those covered by NHIF speak with relish about it.

One Makonde lady during an interview at Kibiga elaborates this:

"I am a beneficiary (of NHIF) and just few days ago my son was operated on and I did not part with any money...not even a shilling. Isn’t that great!"

The Makonde participants at Kibiga seem to have advanced knowledge in NHIF and NSSF as it was noted in the FGDs. While in Makongeni and Kanana, most Makonde said they were not aware of NHIF and NSSF, those at Kibiga were well informed and even pointed out that at times they have their deductions made but this does not reflect immediately in their cards, a matter which they have already raised with the relevant finance office at KISCOL.

Far and beyond health insurance, another key aspect when looking at right to social security is the public support offered by the government to dependent adults. This scheme is available in Kenya popularly known as Inua Jamii programme. This programme is given to older persons past the age of 70 years. The older participants also reported to have been enrolled to the government sponsored fund for old age. They said that they go to the public administration offices to get the cash which has helped their families in a big way. They say that immediately they were registered as Kenyans in October 2016, government officials from the national government registered them and now they feel fully Kenyan.

**Right to Health Care**

Healthcare is a major human rights issue hence the need for every individual to enjoy the highest attainable standard of physical and mental health as assured in Article 12 of ICESCR. For the Makonde population, they mostly visit public health facilities as
compared to private health facilities. In Makongeni, they visit Msambweni and Gazi which are public health clinics. 100% of the respondents across the three interview and FGDs locations of Makongeni, Kanana and Kibiga reported that they had not experienced any form of discrimination in the right to healthcare. They reported that they received health services in any clinic or hospital that they went to. They were happy that this is one area that is well taken care of and over the years they were treated just like other Kenyans.

Picture 3: A Makonde respondent takes part in the interview

The fact that they are not discriminated against in the public health facilities does not in any way mean that all is rosy in the clinics. It only means there is no structural violence against the Makonde minority which is selective discrimination of a select group of persons through the institutions and structures of society. The respondents also reported that lacking medication in the public facilities was a common occurrence but keen to add that this happens to anyone who visits the hospital even the locals experience the same.
The women in one of the FGDs at Kibiga location indicated that even maternal healthcare was well taken care of and a pregnant woman gets all medical attention she needs and gives birth without being charged extra amounts.

**Right to adequate Food**

Right to adequate food includes the availability of food, nutrition standards and food safety and consumer protection. For the Makonde population, 83% of the respondents reported that they always had a meal each day while 17 % reported that they were not assured of having all meals in a day since it is a struggle.

Regarding food aid 67 out of 75 which equals to 89 % said they had never received any food aid from either national government or county government. 11 % reported that they had received food aid; specifically rice, sugar and beans. The last batch of food aid that was received was in 2017 during the political campaigns.

Participants in the Kibiga FGDs noted with concern that even though they have IDs, the locals still sideline them. One Makonde lady reported that:

"Yes, we now have IDs but when it comes to food aid we still face discrimination from the local administrators like the chief..."

"...Recently, the locals were given some food aid but no one called the Makonde community"

The right to land and adequate housing has a link to right to adequate food since with a piece of land, one could farm on it and have the bare minimum and reduce the stress on other monies being spent on food.

**Right to Education**

The right to education involves universal primary education for children, accessibility to secondary schools as well as educational opportunities and freedoms. For the Makonde
population, 56 % of the respondents reported that all the children in their household were currently registered in the different schools. The remaining 44 % either had their children past basic education level or had not joined school yet.

A slight majority of 51 % of those interviewed said they had not experienced difficulty in accessing education in the past years while 49 % reported that they had experienced difficulties in accessing education before. Majority of those who had reported to have had difficulties in accessing education services, attributed that to lack of birth certificates while 6 respondents said lack of school fees was the main issue.

One of the FGDs in Makongeni was held during the day and as children came back home for lunch, they had been sent by their teachers to collect their original birth certificates. It is now a mandatory rule for all Kenyan children to show their birth certificates in schools for registration. One lady who was participating in the FGD excused herself for few minutes, rushed to her house gave the child the birth certificate and came back. She noted that this would not have been the case two years ago. That very moment would have meant the end of the road in the pursuit of education for the child but ever since they were registered as Kenyans, they have the birth certificates and all necessary documentation. Nowadays the request of a birth certificate from a Makonde child does not sound like a spell over Makonde’s education.

4.4 Chapter Summary

The outcome indicators is based on desired outcomes associated with the implementation of human rights obligations and the enjoyment of rights and relating them to the required process (UNHRC, 2012, p.78). While the much advocated for rights based approach puts the people at the centre, their perceptions views and remarks say a lot about their world view. The data presented was based on the perceptions, views and feelings as first-hand
information on how the Makonde perceive their economic and social rights. The different economic and social indicators included the right to land and adequate housing, right to work, right to adequate food, right to education, right to social security and right to healthcare.
CHAPTER FIVE

5.0 DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

This section summarizes key findings from the survey on each of the outcome indicators that were being measured: Right to work, Right to land and adequate housing, right to social security, right to health care, right to adequate food and right to education.

5.1 Introduction

This chapter looks at the summary of key findings from the data collected and analyzed. This chapter also recaps some of the relevant discussions from the study and puts them into perspective regarding human rights, specifically economic and social rights of the Makonde people. Recommendations and conclusion of the study is also made at this point. This study sought to answer the following research questions

i. To what extent have the economic rights of the Makonde people in Kenya been implemented?

ii. Have the social rights of the Makonde people in Kenya been protected, fulfilled and respected? How?

Based on the research findings and analysis, there has been a description of the context to show the extent to which specific economic rights have been implemented. More specifically, right to work as well as the right to land and adequate housing have been elaborated to show that right to work is progressing but right to land is almost nonexistent.

An analysis of the social rights which include right to healthcare, right to adequate food, right to social security and right to education has been explained and an analysis drawn. For a more detailed discussion regarding the economic and social rights the following concluding remarks can be pointed out.

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5.2 Summary of Key Findings

In a summative way, the following can be reported: Regarding the economic rights indicators studied, it can be said that there is progress, albeit very little that has been achieved. The right to work has been experienced since there are those who are now employed by the government. The Makonde can now work just like any other Kenyan but there is selective discrimination against women in the jobs. The Makonde should be given some preference in jobs allocation at the county level. The outlook indicates that owing to having a national ID card, the Makonde can freely travel and look for economic opportunities elsewhere. The right to land and housing is however close to non-existent for the Makonde with 80% reporting that they do not own land and they live as squatters.

Regarding social rights, it’s a mixed reaction since some rights like the right to education and healthcare are now being achieved just like any other Kenyan. The Makonde children can now go to school without being worried since they have Kenyan birth certificates. However the right to social security and right to adequate food are far from being achieved for the Makonde. NHIF and NSSF being the main insurance schemes for Kenyans have the reach of only 21.3% of respondents.

5.3 Discussion

Right to Work

While Zeleza (2007) opines that the prospects for human rights in Africa remain firmly latched to the wobbly ox-cart of development, Todaro and Smith (2012) posit that we need to ask ourselves three fundamental questions when looking at the economic aspects of development? What has been happening to poverty, what has been happening to unemployment and what has been happening to inequality? From the data collected during this study of the Makonde people, there has been indeed affirmative action taken so as to
increase employment among the Makonde. The national government employed eight Makonde men to the National Police Service and Kenya Defence Forces. For the first time in many years the Makonde feel they are taking part in the development of Kenya. The feeling of being patriots of the nation is felt all across the Makonde community.

That notwithstanding, it is imperative to point out that the action of only picking men demonstrates gender inequality which is structural injustice entrenched in the Kenyan society. Men and women need to be given equal opportunities to employment. Some barriers are deeply embedded in social and political identities such as unequal distribution of opportunities between men and women. If this trend goes on, then Makonde women would be more sidelined and would not enjoy their right to work due to the social barriers.

A matter of concern amongst the Makonde is that they have been segregated for long, majority have not been able to go to school up to tertiary level. When jobs are advertised, the Makonde are told they do not have the requisite certificates but does one need to have certificates to do general cleaning in the offices and even to sweep roads? Even though it is not of good status the Makonde will be better off working as casual laborers in the county than in the farms of individual people. By working for the county government, they will be assured of a regular pay at the end of the month and also they would be registered in the insurance schemes, something which would be difficult if they worked in farms.

**Right to Land and adequate Housing**

The right to land and adequate housing amongst the Makonde is close to non-existent. During interviews, 80% of the respondents in this study reported that they did not have land and lived in KISCOL land like squatters. For a majority of a Kenyan minority community to be living in perpetual fear not knowing when they will be evicted is beyond comprehension. It is against provisions provided for by the UDHR and the 2010
Constitution of Kenya. Action must be taken to make sure that the rights holders enjoy the highest degree of housing and standard of living.

The right to land and housing is still not being enjoyed; there is a reported case of land grab from the Catholic Church in Kanana. While a Makonde elder had donated land to the Catholic Church, the church turned to be the predator and now snatching land from the children whose father donated the piece of land. The Catholic Church now prevents the family from even building a permanent structure.

Land is the basic economic denominator for the Makonde yet 81 % of the interview respondents and participants in this study are living as squatters in KISCOL land. They live there not knowing when they will be told to pack their belonging and vacate the land. KISCOL also carried out human rights violations by making Makonde vacate their land while not offering a suitable solution to the Makonde; they uprooted their coconut trees that had grown for years, they moved them away from land in which they had buried their family members. Currently the piece of land that the Makonde have been put up in Kibiga is too squeezed. They cannot also dig boreholes since they have to get permission from KISCOL. This leaves them with one option: to draw water from the nearby spring. To make it worse KISCOL sprays chemicals and pesticides in the sugarcane farms and when it rains, the chemicals flow to the spring—the only source of drinking water for the Makonde in Kibiga. This is arguably a recipe for disaster since human beings drinking water polluted by chemicals and pesticides.

The respondents in Kanana reported that at times, people believed to be land surveyors and valuers come to their pieces of land and start measuring and demarcating without saying a word to the Makonde. This leaves a lot of questions in the minds of the Makonde; Is the land being prepared to be sold? Will they be evicted on this land that they’ve been staying
in for years? Will their side of the story be heard? Will they be compensated if the land is taken away? From the FGDs a key outcome observed is that all these questions linger in the minds of the Makonde but no answers are forthcoming. Makonde are no lesser beings and such subjection is dehumanizing inconsistent with the provisions of international human rights instruments. Such kind of treatment is far from human dignity and worth of human beings.

**Social Rights**

Education is now being enjoyed to its full extent by the Makonde, which is commendable. However for a community that has not been enjoying education to its full extent, it’s not enough to know that education can now be enjoyed. The Makonde suggest that tentative measures such as starting a programme for old people’s education is key to addressing the structural violence that has been happening. They also request for a vocational training centre or polytechnic which can serve both the Makonde and the local Digo and Duruma communities.

In order to assure of food security among the Makonde, the land question has to be tackled. If more Makonde have land that is registered on their names it will go a long way in ensuring there is food security among the Makonde community.

**Right to Social Security**

While looking at the right to social security, there are two main social security provisions for Kenyans, NHIF and NSSF, It is positive to report that there are those Makonde persons who are very much aware of NHIF and NSSF but there is need for massive public education of the social security, especially that Makonde in areas where there are no active employment. They also need to be informed since NHIF and NSSF can also enroll those who are not working to the scheme.
As for the interviews, 77% of respondents are not covered and worse still, had not heard about it. All of those who are covered are employed. This brings to light a number of issues: Is social security only for the employed? No, social security also gives allocation for those who are not employed. Public education for the social security is lacking since the Makonde are not even aware of the basic social security funds.

The government fund for old age was being enjoyed by the elderly Makonde population, this they attribute to the fact that they were entered into the system once they became Kenyans; this is indeed a positive feedback since vulnerable old persons can receive money; almost 8,000 Kenya shillings, roughly 80 USD, for their own use. This creates a measure against extreme poverty levels.

**Right to Health Care**

The right to healthcare has been consistent but the issue which applies to all public hospitals is ensuring that there is enough medication to cater for the population. 100% of those interviewed said they had not had any discrimination, which is a progressive step for all Kenyans especially minority Kenyans. However, during the FGDs it was clear that not facing any form of discrimination in their access to healthcare is not synonymous to the ideal healthcare; far from it. They at times went to the clinics and hospitals around but drugs were not stocked, this forces them to go and buy drugs in private pharmacies. Some of them do not necessarily have that cash at hand to buy the medicine which makes them go home and do nothing about their sickness.

**Right to Education**

Only 49% of the respondents reported that they have found it difficult to access education. During the FGD, the Makonde said that only 1 person had their son who had gone past university level. For the previous generations, they have not had good transition rates to institutions of higher learning. The elderly persons lament that this has been a structural
violence issue keeping them out of opportunities that arise but do not see this as a lifetime condemnation. To address this challenge, they request in one of the FGDs in Makongeni for set up which basic education can be provided for the old Makonde person. This kind of education often referred to as “Gumbaru” should be provided as a tentative step and it is inconsistent with SDG 4 of lifelong learning.

They also advocate for a polytechnic in Makongeni where the younger Makonde people who are past school going age can join for vocational training.

**5.4 Conclusion**

In conclusion, just as observed in various reports, despite the growth and proliferation of legal instruments for protection of human rights, there is a continuing disparity between official proclamation and actual implementation of human rights protection (Landman, 2002). It is easy for governments to sign up to economic and social rights, but compliance is another matter (ODI, 2008 p.1). The UN Human Rights Commission also notes that a key particularity in developing countries is that economic and social rights can be realized only progressively because of resource constraints and therefore it is logical to monitor this progress.

Article 21(1) of the Constitution of Kenya(2010) relating to the implementation of rights and fundamental freedoms posits that it is a fundamental duty of the state and every state organ to observe, respect, protect and fulfill the rights and fundamental freedoms while Article 28 states unequivocally that every person has inherent dignity and the right to have that dignity respected and protected.

Therefore in the spirit of _pacta sunt servanda_, Kenya as a state has to fulfill its obligations of respecting, protecting and fulfilling the human rights of the Makonde. The Makonde are Kenyans and are protected by the CoK (2010). Their rights to work, right to land and
adequate housing, right to social security, right to healthcare, right to adequate food and right to education need and should be implemented to the letter.

That notwithstanding it is imperative to reiterate that this study does not cover the state mechanism and rationale on the rate of implementing the economic and social rights of the Makonde by the government of Kenya, rather presents the experiences, views, perceptions of the first hand Makonde experience on how their economic and social rights are respected, protected and fulfilled. This undertaking therefore relied primarily on the first hand right holder accounts rather than government feedback on action or inaction in implementing the economic and social rights of the Makonde. More importantly noting that the implementation of economic and social rights requires amongst other things, budgetary allocations and therefore imply trade-offs of financial sort, it is incumbent upon the government to show and or explain the positive direct effects of government spending designed to have the progressive realization of the economic and social rights of the Makonde. The process that the government will undertake for such an assessment report, as ODI (2008 p.4) notes would require an indepth econometric analysis, costing exercises, assessing affordability. The government is not absolved since the principle of progressive realisation cannot be interpreted as implying that states defer efforts to ensure progressive realisation of economic and social rights but are instead required to immediately put in place measures aimed at fulfilling their obligations under the ICESCR(Rintari, 2011).

5.5 Recommendations

The essence of assessing human rights is to first have a contextual description of how things are with a view of the ideal scenario which is possible, can be achieved and should be achieved. The following recommendations are made so as to bridge the gap between the ideal and reality.
a) The right to non-discrimination and equality recognizes the need for temporary special measures (sometimes referred to as affirmative action or positive discrimination) as enforcing the right in itself is not always sufficient to guarantee true equality. There has been structural violence against the Makonde for close to seven decades. Affirmative action for jobs in Kwale County should favour the Makonde for they have been left in the dark for years. For them to be at an equal standing, there needs to be special measures undertaken. Over the years affirmative action which is positive discrimination for distributive justice has proved to be important in redressing historical and persistent disparities in growth of groups and individuals.

b) States and their agents need to take the necessary measures to prevent any individual or entity—including non-state actors such as companies—from violating human rights as this is the standard and obligation required for protecting human rights. The Kenyan government needs to put measures whereby the Makonde’s rights will not be curtailed such as is the case at Kibiga where KISCOL sprays chemicals that wash way to the spring where the residents draw water from.

c) Organize systematic community sensitization and awareness fora for the Makonde community on specific economic and social rights such as right land ownership and housing; right to work and also right to social security. This can be done in partnership with the government of Kenya together with specialized agencies, NGOs, local CBOs and human rights practitioners. By so doing the Makonde will be more aware of their rights and in the long run would be able to put more pressure as right holders for their rights to be respected, fulfilled and protected.

d) Have timely monitoring visits and studies on the assessment of enjoyment of economic and social rights of the Makonde. There are rights which have not been
respected, implemented or respected. Such a right is the right to land; despite land being a basic socioeconomic denominator, there has been lack of respect to such a right. It is only imperative to assess such a right until parity and full enjoyment is achieved.

e) With in-depth research carried out by various entities like human rights organizations, academia, policy think tanks and other NGOs, then the research can be used to keep the government in check for their acts of omission and commission since that states are legally obliged to respect, protect and fulfill human rights of individuals.

Further studies are recommended on stateless communities in Kenya who have not been registered as Kenyans. Since the Makonde community are the pioneer stateless community to be registered as Kenyans after the promulgation of the CoK (2010) and now considered as a success story in integration of stateless persons, it is highly advisable to carry out timely research on their enjoyment of rights so that they can set the bar for other stateless communities to be registered as Kenyans.

Minority rights have not always been enjoyed. Human rights of minority groups in Kenya is precarious and research on minority rights (civil and political as well as economic, social and cultural rights) need to be researched on.
References


ICJ Kenya; SCI; EGPAF; KELIN. (2016). *Joint Civil Society alternative report to the 2nd-5th state report of the republic of Kenya on the implementation of the Covenant on Economic Social and Cultural rights*. Nairobi: ICJ Kenya; SCI; EGPAF; KELIN.


APPENDICES

Appendix 1: Questionnaire

Introduction

I, Brian Kombo intend to carry out a research entitled- An Assessment of the implementation of the social and economic rights of the Makonde people in Kenya.

This research questionnaire is aimed at assisting me collect data for completion of the named research study. I would be grateful if you can kindly spare some time to fill in the questionnaire. Your responses will be treated with utmost confidentiality.

Instructions

Kindly tick (√) inside the relevant box to indicate the correct answer where choices are given. Write your answer in the spaces provided where choices are not given.

SECTION A: DEMOGRAPHIC DATA

1. Gender of the respondent?

   Male ( ) Female ( )

2. Age of the respondent ( )

SECTION B:

Part A: Civil documentation for Kenyans.

1. Did you ever register to acquire an ID card before 2016? Yes ( ) No ( )
2. Did you acquire the ID then?

3. Did you get any challenges? Yes ( ) No ( )

4. What were the challenges?

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5. Do you currently have a Kenyan ID card? Yes ( ) No ( )

6. Which other civil documentation do you have (birth certificate, marriage certificate, death certificate)?

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Part B: Economic and social rights of the Makonde people.

7. What do you do to earn a living?

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8. Which option best describes your economic situation now after acquiring Kenyan citizenship?

Has it A) Improved……………..B) Remained the same……………….C) Deteriorated

9. Expound further (based on the response above)

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10. **Right to Housing**: Has your right to housing been sufficiently implemented?

   Expound

11. Have you faced any challenges regarding land ownership? Expound

12. Regarding **social security**, are you covered by:

   NHIF?
   
   NSSF?

13. Prior to Makonde registration as Kenyans, did you ever seek medical services and was denied based on you not being Kenyan?

14. Is there any difference now? Explain

   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………
   …………………

15. Freedom from hunger: Do you afford to have a meal every other day? Yes (  ) No (  )

16. Have you ever received any food aid from the county government or national government?

   Yes (  ) No (  ) If yes, what kind of food items?
   ………………………………………………………………………………………………………
   …………………

17. Do all school going children in your household attend school? Yes (  ) No (  )

18. Was there any difficulty in accessing basic education before being registered as Kenyans?

   Yes (  ) No (  )
19. If (yes above) kindly describe the difficulties.

20. Is it any different now that you are Kenyan?

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21. As we conclude, is there any other thing you would like to let us know regarding
    the implementation of your economic and social rights?

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Thank you

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