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Analysis of Human Rights and Fundamental Freedoms as basis of Constitutional Making and Social Economic and Political Development Perspectives

By

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Abstract

Today the concepts of human rights and fundamental freedoms have formed the basis upon which modern democratic governance and leadership can be measured. The UN prioritizes human rights and has intentionally made them to be the underpinning principles that cross cut all its programs and initiatives. The promotion of human rights in various perspectives of peace, security, developments, governance, leadership and humanitarian assistance has greatly impacted on the achievement and realization of democratic governance globally. One of the places where human rights and fundamental freedoms have been incorporated is in constitutions. This is intended to ensure all rights that are inalienable by nature, all the fundamental freedoms as well as fundamental principles are incorporated and enshrined in the constitution which is the sole and most fundamental guideline on how public power, political organization and structure of governance are to be carried out in any state in the world. This article explores and discusses the role of human rights and fundamental freedoms in realizing the most responsive, democratic, revolutionary and dynamic constitution. Lastly, the article will attempt to show how human rights and fundamental freedoms are critical in initiating and in the resurgence of social economic and political development in a country.

Key words: Human Rights, Fundamental Freedom, Constitution Making and Development

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Introduction

Fundamentally, human rights belong to man and are inherent in man as human being. This should be well articulated in any prevailing constitution, intended amendment or reviews in order to be regarded as progressive, dynamic, revolutionary, respective, and democratic. This article argues that without a clear and cogent understanding of human rights; its role in constitution making of any state, unequivocal implementation of these rights, adherence to justice and equality in enforcement of such right, then the constitution will be weak document that cannot guarantee safety, protection, security and prosperity to the people. In order to demonstrate this, the article will first explore on the diverse conception and meaning of human rights. It will go on to show the historical development of human rights right from the antiquity. Further, the article will discuss the scope of involvement of human rights and fundamental principles in the constitution making. Here the focus is to demonstrate how human rights are involved in the process and in the materiality of making the constitution. Moreover, this article uses cases to show how human rights are inherent in development engendered in self-determinism, transparency, egalitarianism, non-discrimination, participation in the social, economic and political life of the people. Finally, the article shows the reason why human right and fundamental freedoms must be entrenched in full in any progressive and democratic constitution. By way of conclusion the article offers a critique of various perspective and conception on this topic.

1.1 Statement of the Problem

According to the UN (UDHR, 1948) human rights and fundamental freedoms are the basis upon which human treatment and regard is determined and assessed. Human rights are engendered in all aspect of human life and it is the basis by which human development index is assessed and evaluated. In Kenya, the Constitution declares that the Bill of Rights which are contained in chapter four, is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies (Kenya Constitution 2010: art 19). This ideally means that human rights are the measuring yard for the social, economic and political development. While this is the case, the issue is to what extent does human rights and fundamental freedoms been incorporated in the constitution -making and subsequently in the determination of social, economic and political development. This article explores and examines the role of human right in constitution making and how this will foster social economic and political development that is responsive, respective and people oriented.

1.2 Human rights: Diverse Conceptions and Meaning

Human rights are fundamental norms and ethical principles that sets the standard on how human being should be treated as an individual, as a human race (Nickel, 'Human rights' in *Stanford Encyclopedia of Philosophy*, 2013). They are the basic rights and freedoms that belong to man as man, and are not based on any human qualification. They are gained by an

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individual during conception and withes away only when one dies. Every person regardless of age, gender, race, ethnicity, nationality, belief, conscience, religion or status has full possession of human rights. In a vernacular sense human rights are the moral guidelines which are accepted across the world as the best way of treating any human being. They are essential for the protection and maintenance of human dignity of individuals. One of the sole functions of these basic rights and freedoms is that they have been able to create conditions in which every human being can develop and actualize his personality to the fullest extent without being inhibited by any other. It is not easy to trace the origin of human rights but scholar agree that human rights are based or informed by the value and the innate desire for human dignity, fairness, equality, respect and independence.

Due to the above, one can say that the scope of human rights is unlimited to particular place or time. Human rights are universal and can be claimed regardless of where one is living. This is because human rights are universal and common to all human persons in the world. The commonality that perhaps should be emphasized is the fact that man is a rational being. This rationality is what underpins his humanity and propels him to be treated as such because he is a human being. UDHR starts by recognizing the ultimate foundation of human rights to be the inherent dignity of all members of human family and the need to exercise freedom, justice and peace.

Human rights are rights in themselves because they involve a claim rights whereby there is an intended duty and responsibility. This means that human rights installs a duty and responsibility on the addressee or duty bearer. Human rights are intended to firmly restore freedom, protection, status and benefit for the right-holder (Beitz 2009). In this case right-holder for human rights is the human being irrespective of race, gender, status and religion. Likewise human rights bestow duty to all human beings, groups, actors, governments and non-governmental agencies to act in such a way as to ensure respect, protection, facilitation and provision of the same. Human rights are characterized by a number of aspect which all fundamental in the realization of specific and uncompromising demand for their provisions. Such characteristic can be regarded as generic and intrinsically held by the very fact that human rights are so fundamental that even defining them, you in one way or the other, invoke the very terms you are using.

First, human rights are regarded as universal. By universal we mean same everywhere. They are same irrespective of the place and time in the universe. Their application is neither limited to a particular country or continent or region, nor limited to particular gender, race, religion, political organization, or status. The reason why human rights are regarded as universal is because they apply to all human beings; all man and women are bound by them because we share the same dignity, that is, the dignity of rational animal. In the Universal declaration of human right, it is contemplated that rights are universal in the sense that everyone is entitled to all the rights and freedoms which are set forth in the declaration.

Secondly, human rights are inherent in all man by the fact that he is a human being, that is, a rational animal. Such rights are not given on any basis or are not qualified in any way by anybody. They are inherent in the sense that we are born with them. This aspect has been contested in that some rights are limited by the circumstance where one finds himself. This is true but they cannot be removed from the person. For instance, if one is imprisoned, the right of movement is limited but it cannot be pronounced nonexistent or void. Despite being the case, in order to protect this right, the process of having one to be imprisoned must

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be that which is not unfairly, which is not based on ill motive and intention. In other words to imprison a person such must be sanctioned by a competent court with full cognizance of right that we are equal before the law, your human rights are protected by the law, no unfair detainment and finally the right to fair trial of all arrested persons. This is made even more mandatory when such process of imprisonment still guarantees those under custody, imprisoned, or detained some rights which should not be breached or infringed at all (UDHR Art 7-11). This has been cascaded down to various constitutions in the world. For instance, in Kenya the right to fair hearing, right to justice, fair administrative action and rights of persons who are detained, arrested or in custody are all given full and strict observance to ensure that their freedom and rights are not overstepped (Kenyan Constitution, 2010 Art 47-50).

Third, human rights are fundamental. By fundamental here is meant that human rights are so basic and underpinning such that without them man cannot be regarded as full human or accorded dignity and fairness which befits human being. Human rights are the primary source of humane treatment of human being.

Fourth, perhaps this is the most celebrated characteristic of human rights. Human rights are inalienable. By this is mean that human rights are such that they are inseparable and inexorable from man. They cannot be taken away wholesomely. Human rights are existent even when they are not enforceable by a given state or region, government or authority, and two aspect stand out as regards inalienability. One is that human rights cannot be rightfully taken away from a free agent or being. Even when they are restricted, it is done in such a way that humane standards are maintained. Second, human rights are inalienable in the sense that they cannot be forfeited or transferred to another person. You cannot for instance say that I am willing to remove my right to life and give it to somebody. It is not untenable and inconceivable. The protection of human rights is such that all are qualified and none can forgo his rights for others. In some cases, some rights that don't belong to human rights category can be forfeit in some circumstances. For instance, if you have a right to occupy a given property, you can willingly transfer or forfeit that right to another person of your choice. This is not only inconceivable but also unjustifiable when dealing with human rights.

Fifth, human rights are interdependent and mutually inclusive. They are integral concepts that cannot only be realized while exempting or exonerating any. In other words, the application of one, intrinsically creates a need for the other rights so as to be perfect. This in essence is to say that, the application of one necessarily mean that all others should also be applied. If one finds it fit to apply one, then he will definitely find it necessary apply others. The philosophy for accepting and admitting one form of human right is the same and similar to the other human rights. For instance, in applying the right to equality, one realizes that the right to justice, right to dignity, freedom, and right to expression all come in forcefully. In equal measure, a right to life entails right to liberty, fair treatment which includes no torture, cruel or inhuman treatment, punishment and right not to be in slavery or servitude. In light of Hector Gros Espiell's contention s that: Only the full recognition of all of these rights can guarantee the real existence of any one of them, since without the effective enjoyment of economic, social and cultural rights, civil and political rights are reduced to merely formal categories (Espiell (1986:17). He goes further to argue that human rights are implicitly realized when none of them is under violation. This idea of the necessary integrality, interdependence and indivisibility regarding the concept and the reality of the content of human rights is indispensable.

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Human rights are indivisible. This has been a thorny issue among the human rights experts and scholars. The question that has triggered the debate since 1948 up to date is whether it is possible to divide or categorize human rights in whichever form. On one side are those who strongly believe in indivisibility and on the other side of the debate are those who are firmly in believe in divisibility. To start with, by indivisibility is meant the principle that all human rights ought to be understood as a unit and can only be realized if they are applied simultaneously. In other words indivisibility is a notion that no human rights can be fully realized without attaining all other human rights. You cannot group or categorize some to be applied now and others as time goes by. This principle advocates that no human rights can be applied fully without others being in existence. There is no line between one right and the other. All must be seen as one and mutually reinforcing and revitalizing each other. Those who has rejected the divisibility of human rights do this based on the assumption that if divisibility is granted, then, it will open a Pandora box where by some organization may choose to emphasis and prioritize some category at the exclusion of the other.

Admittedly, this view holds that any division will be either arbitrary, incomplete or based on false dichotomy. For instance if one group chooses to prioritize on the first generation, it will mean that major interest and effort will be put to realize first generation at the expense of second and the third generation. On the contrary, those who hold that human rights are divisible do this on the basis of not any other sense but from the sense of quality and supportive nature of some rights. By this is meant that those rights that are supportive of others can be grouped together and those that are similar in application can also be put together. This is to ensure that those that are of supportive relation may help the realization of those that are of primary quality and natures. According to James W. Nickel, there is a difference between indivisibility and interdependence (Craig Scott, 1999). One right can contribute towards the realization of the other. Such relation is that of interdependence. One right can still stand on its own, it is only the fully realization or less functioning that will occur.

A supporting relation therefore exists when one them contributes to the functioning or stability of the other (Nickel, 2008). However, if one thing (A) depends on the other (B) wholesomely such that its existence (Ax) cannot be guaranteed without the existence of (Bx), then such relationship is more than mere interdependence and can be regarded as indivisibility. In such case (Ax) and (Bx) are not indispensable. They cannot be divided. This analogy can be used to bring this debate about indivisibility of human rights into rest in that some rights are in such a way that they are supportive and enable others to be attain full realization. They are the enablers. They are the preliminary and should be implemented so that they can assist those which are indispensable to be realized. Amartya Sen (2003) emphasizes this when he maintains that given the indivisibility of human rights, we must abandon for good the erroneous notion that one class of rights (civil and political rights) require full recognition and respect, while another class (social, economic and cultural rights) does not require observance of any kind (Sen 2003).

1.3 Origin and History of Human Rights

Human rights are thought to be as old as human race. This is true because human rights are inherent in man and exist because of man's human nature and the unequivocal regard to his unqualified respect and dignity. It will be an understatement if anyone thinks that human rights are a response to mere social, economic and political situation. This ideally means that

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the traces of human right exist in almost all human epoch and civilization. According to Moss “Our humanity has a collective expression, and to deny us recognition as a people is to deny us recognition as equal members of the human family” (Moss 1995: 70). The only question that scholars keep debating is the issue of when it was ratified and reinforced nationally and internationally.

In the ancient times, there is a strong emphasis on the sanctity of life. Human life was highly regarded and respected in various traditions and religions and this formed the basis for people believes, values, norms, taboos, ascriptions and the general worldview. This was explicated as a notion based on the firm believes that human beings have inviolable rights by just being human and of human nature. In the Old Testament, life was upheld and uplifted. All justice system was formed and inculcated so as to protect man. In particular, the Judaistic legal system included the sanctification of each member who obeys the laws on sanctity and protection of human life as set by Yahweh. This was a manifestation and an open demonstration of those who had a good will not only to other human beings but also God-Yahweh. As regards the Old Testament, this is seen to be very fundamental in that it was not Moses, nor the prophets but God through the mouth of Moses who gave the commandments and guidance to his people (Lev. 19 1-2).

Among the Greeks and the Romans as demonstrated in the New Testament, religious beliefs influenced and molded their obedience and faith in the laws put to protect human life. For them, the enforcement of the laws was realized along with the faith in the community of the city state which was to be endured. This basically meant that during this time, communities and cities had been developed to an extent that they had entrenched laws and regulations for everyone to observe so as to live in such a way that there was harmonious and peaceful co-existence among each other. These laws had a great connection and were in germane with the existing religious believes which left no gap or nonconformity between the community law and religious laws. People had faith in the heroic wisdom of the legislator of the old times (Yahweh) who demonstrated that all laws were meant to protect, safeguard, secure and lead men to harmonious relationship with one another and with God.

The early philosophers such as Plato do not use the term human rights as witnessed today. For him, he thought that the good of the state can only be realized if there are basic laws. These laws are participation of the idea of justice to everyone which in turn leads to the participation for the good of all individual. He emphasized that there is no law that is worth calling if it is not given for the general good of the community. Any legislation that serves the interest of individual are regarded as matter of pure expediency and has no quality of truth. Due to this, he subjected everyone to the law, that is, that which is for the good of all equality and justice (Law, 715). He advocated that reason and good (morality) should guide all human actions irrespective of what position one occupies in the society.

Aristotle, a great Greek scholar is often accused of having not developed a theory or conception about human rights. However, this does not denigrate the fact that he had the notion with him. A close look at this *Politics* we recognize that he treated widely conception of rights which are today regarded as part of human rights. For instance, his elaborate understanding of Justice, Virtues, Right and truth gives him a name among the human rights proponents. He propagated an understanding that man is bonded with others and with the state. It is in this bond that human rights develop so that they can guide how man should live a life that is dignified and respected. In other words, there is a relationship between man's life and his conduct and how the state should live and act. He realized that the smallest unit is a

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family from where village and community come from. These communities together form a state which must be built under the principle of equality. In order to protect man who is in constant striving for the higher goods, Aristotle introduced justice and rights. Rights for him develop in the creation of a state so that freedom of each man is guaranteed. Out of this conversation, we realize Aristotle had founded a number of human rights which included the right to freedom, liberty, equality and justice.

In the medieval period we see Thomas Aquinas and Augustine interrogating the notion of human rights. Augustine was the first to take on this topic. He divided the world into two the heavenly world (*civitas dei*) and the earthly world (*civitas terrena*). Perhaps this is based on his early leaning to Plato on separation between the world of forms and the world of sensible or materiality. He started by tackling the concept of justice which for him was the foundation of the state. He defined justice “as love serving God only, and therefore ruling well all else”. It was his conviction that where there is no justice there is no commonwealth. In a more radical way he held that justice is fundamental in all actions in that without justice a state would remain a gung of criminals. He says that it is self-evident that the value that is cherished by all in the community is justice. It is most fundamental and all other values and rights are anchored in it (*Civitas Dei* xix. 24). It is on this basis that Augustine replaced a community of law with what he believed in, that is, a community of charity and concluded that where there is love there is no law. This maxim has remained an icon such that every sociologist, anthropologist and jurist today wants to argue about it.

In his *Summa Theologica* Aquinas held an objective theory of human rights whereby he centered himself on natural rights (objective natural rights). Aquinas preferred to use the word *jus* which comes from *Justitia* which means a just thing or just state of affair. He goes on to argue that natural law is the foundation of human rights and not positive or moral law. This is because man has a drive to know and a drive to his creator. Man has a faculty that is able to lead him to know what is fundamental to all man and accord it to all others.

The term human right was coined during modern times. In the modern times the greatest emphasis has been on equality and justice to all. This are the two upon the formulation of principles that should guide how man is to be treated because his nature and specialty. The philosophy and the thinking that man is endowed with inalienable and inviolable nature and truth started being emphasized. This realization coined the conception of human rights to mean all the qualities and standards which belongs to man by the being human.

The modern thinkers, especially philosophers, sociologists, moralist and political scientists started recognizing human rights as elementary precondition for the existence of human dignity. In particular, Hugo Grotius and John Locke attracted much attention in Europe and America for their insistence on human rights. Locke, while advocating his democracy and constitutionalism came up with a list of natural rights where the rights to life, liberty, property, expression, information, choice of leadership were defended. In perhaps supporting this as noble, American declaration of independence, 4 July 1776, human rights were enacted which virtually introduced inalienable rights. He attested that man and woman have rights which include right to life, liberty, equality and peaceful coexistence. Such rights according to Locke are reinforced by the laws of nature which makes them to be part of human nature. This is the first hint we get of human rights right being inalienable and irreplaceable in man.

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With this, there came a resurgence of a new dawn in the way human beings were treated in the entire world. After the World War II, the atrocities that were done to humanity in the whole world forced the attention of the very world to make a rational and moral judgment as regards to fundamental rights of people both, actors and non-actors in the war situation. A shift was made from recognizing it as a preserve of state to the international recognition which saw new procedure, guidelines, clarity and advocacy being made on human rights. Due to this, charter were developed annexing this proposals of human rights safeguarding and protection in the whole world. In particular, the UN Charter of 1945 became the first to attempt to bring human rights and its defense into the international scene. It marked the advent of systematic human rights protection within the International system. Despite the fact that the world's first bill of human rights was discovered on a clay tablet dating back from the reign of Cyrus the Great (555-529 BC), the proclamation and declaration of human right as the international parameter took place in 1948. In this unique venture, some of the documents which form the historical foundation of modern human rights jurisprudence are the English Bill of Rights (1688), the American Declaration of Independence (1776) and the French Declaration of Rights of Man (1789). The legal process in the universality of human rights effectively commenced with the Universal Declaration of Human Rights 1948 (UDHR).

1.4 Human Rights Underpinned in Constitutional process

Constitution-making processes are a central aspect of democratic processes, peacebuilding and state-building. To ensure this process is informed by the niche for better welfare and prosperity, human rights and democratic values must be entrenched solidly. In particular, human rights have today become key pillar and at the heart of constitution making because the assessment of how vibrant and democratic the constitution is, is determined explicitly on how it adheres, responds and fulfills human rights and fundamental freedoms. It is unimaginable to have a constitution which is the supreme law of a state without adequate consideration of human rights as critical embodiment both of its process and its content. Modern constitution should incorporate human rights and fundamental freedom which will bring to force civil and political rights as well as economic, social and cultural rights. In addition, it should address how the rights of women, children, and persons with disabilities, minorities and indigenous peoples can be expressly protected.

Furthermore, it would be right to say that recognition of the need for human rights advocacy can by itself form the basis for constitutional review, amendment or creation of the whole constitution. This is because of the fact that if the constitution is missing proper articulation of human rights, then its progressivity, dynamism and revolutionary character is already dead. And if this is dead, then there is no democratic principles and values in such a constitution. In light of this, UN steers the implementation and proper inclusion of human rights in the process of constitution-making in various countries and states. This mandate has been remained vital and has extensively influenced this course. Together with this initiative, even amendment or review of constitution in the world has always gotten the support of UN. In particular many of the countries the niche for constitution amendment or review comes when there is conflict and in most cases it has proved futile to resolve such conflict without clear legislation being enacted. As a matter of fact, for UN Constitutional making process and engagement is a wide concept which is quite involving. It starts from assessment of the need for constitution amendment or review or overhaul.

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The second stage comes in with the process of drafting and substance of a new constitution, or reforms of an existing constitution. The third step involves the process of adopting the constitution which may be either through parliament for parliamentary constitution or through referendum. Lastly the final step is that which involves the post review and follow up to see whether the impact has been positive or negative. Perhaps what is important in the entire process is the fact that the process and substance for legislations need to be underpinned by human rights.

1.4.1 Process in Constitution Making

The process involved in constitution making; substance or legislations are critical for the success of constitution-making. By this we mean that the process of getting views and building consensus of the suggested amendments and review must be seen to be human rights oriented approach. Rights based approach should be the guiding principle. Such guiding principles are terms of reference for the process as a whole. They are intended to provide guidance for the process without being unduly restrictive.

In most cases, constitution is reviewed or amended because of a given legal gap or imprecision, or most recently because of conflicts and crisis posed by social, economic and political aspects which need to be addressed. This is ideally to say that constitution-making presents a great opportunity for the creation of great desire, common vision and common prosperity of the state in the future. Similarly, the design of a constitution and its process of development can therefore play an important role in solving emerging social, economic and political issues. For instance, if it is not clear on how transitions and succession ought to be done, such are the issues which demand attention to be firmed up in amendments or review. Amendments and review can also play a critical prevention role in dealing with post conflict and peace building. Human rights form a basis for constitutional entrenchment concerning conflict prevention, management and resolution.

In cases where there has been violation of human right during conflict and war occasioned by the belligerent groups on the civilians, especially women and children, UN firmly ensures that UDHR are incorporated in the constitution making. In this process the rights of people irrespective of where and what circumstances they are ought to be respected especially the right to life and dignity, right not to be discriminated and or be in servitude. The product of this is great assurance for and possibility for profound and lasting impacts on peace and security between communities and the state at large.

In terms of process, the emphasis should be more on the steps, procedure and the regulations to be followed in the process of constitutional making. Three fundamental principles which are the heart of human rights should guide the process. The inculcation of these three are likely to encourage consensus around a constitutional framework agreeable to all.

The first among these is participation. There should be participation so that all the stakeholders who include the political leaders, policy makers, civil society and professionals. Participation should be constructive and involving either directly or indirectly where necessary. Such participation should involve give and take and sharing of opinions and suggestion.

Second, accountability should be ensured at every stage. All the steps used in the entire process should be explained to all the parties who are involved. They should be understood so that the process is owned by all parties. The process of making the constitution

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is not accountable to the politicians or the leaders only. Accountability is to the individual persons, civil society, lobby groups, organized groups, union, professional living in such communities and state.

Third, transparency is one factor which should be maintained throughout the process of coming up with amendments or reviews. Transparency is not only a factor in this process, but also, a crucial component in governance and leadership. To be open-ended in all the steps and maintain honesty is what amounts to being transparent. This is achievable when all the steps and the issues being discussed are brought to the people for deliberation and finally when their views are put into consideration in the final document. The right to dignity, equality, justice, expression, information is fundamental in achieving transparency. Ideally, respects for those human rights that enable people to communicate, meet and organize are most essential in constitutional processes.

1.4.2 Substance of Constitution Making

The constitution is made to provide stability and legitimacy to government. Due to this, the content of the constitution must touch fundamentally on regime arrangements, human rights, and general credo (ideology, values, principles and believes espoused by the state). In terms of substance or material for legislation, it is important to note at this juncture that the content to be included in the amendment or constitutional review must be germane to the functions that the constitution is made for. This takes place when people realize inefficiency in their constitution in tackling their social economic and political challenges. All these should emanate from the people because any political system must be democratic and people centered. This is not only advocated by the UN, but also, supported and enhanced by the vision 2030 where the political pillar emphasizes on building a democratic political system that is issue based, people centered, and result oriented and accountable to the public. When this happens, there should be a body that is transparently chosen to collect views and opinion from the various multi agency or interested parties. This should carry out this exercise guided by participatory approach, transparency and accountability.

Furthermore, at this stage the actors must ensure that human rights and fundamental freedoms are properly enshrined in the constitution. This should go hand in hand with the enforcement mechanism and the entrenchment which together ensures strict observance, universality and necessity (Gavison, R. (2002). In particular, this should include civil and political rights as well as economic, social and cultural rights. This inclusion will ensure that all other legislation are founded on a proper solid ground which would promote the social, economic and political governance gains made under the previous constitution is neither reversed nor lost (Vision 2030). Perhaps, one thing which should not be left out are the legislation that protect and address the rights of women, children, and persons with disabilities, minorities and indigenous peoples. Respect for man's dignity, equality and justice should form the cornerstone of all legislations dealing with structuring and organization of political power and administration.

1.5 Human Rights: Basis of Developments

According to UN's UDHR, human rights are so essential and necessary to all aspects of human life. They are not to be taken as only influencing human life from the legal point of view, but also, should be seen from the broadest dimension of multifaceted approach. This really means that human rights affect all corners of human development. This makes

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development an aspect of human rights in that the right to experience and enjoy development is regarded as a human right which all peoples are entitled to participate in, contribute to, and enjoy. Such development may fall in the category of economic, social, cultural and political development.

Upon declaration of human rights by the UN in 1948, it became imperative for human rights to be infused in social, cultural, economic and political fabric of human life. The interest of UN especially through its organs is to ensure, firstly, that societies or nations in the world are given all round social, economic and political development with a people-centered approach and growth in all dimension of human life (UDHR 3-21, 22-28). Secondly through UNDP, UN engenders to emphasize the aspect of development that is people centered or people driven. This is to say that the interest of UN in social, economic and political development of the human community is to ensure that man (citizens) becomes the agent and the driver of all these aspect of development. The citizens are the beneficiary while the government or international bodies are the enabler. Third, the UN through its development programs is strongly supporting development that is engendered in human rights. This is to say that the institution that form governance of any country should be incorporated in its development agenda. They should carry the fundamental role of responding to respect for human rights. In particular, what is contemplated by this is that there should be a strict regard for man as man in order for any social, economic and political development to make meaning.

In equal measure, the policies that are formulated, implemented within the society should be those that incorporate, induct, reinforce and augment the need to respect the human rights and fundamental principles. The monitoring and evaluation of how such policies have progressed is not only a purview of nation and its organs, but also, international human rights convention such as UDHR (1948) and VDHR (1993). According to Allan Rosas, the Declaration of Right to Development 1986 should be conceived in the context of responding to the basic needs of social justice. The Declaration emphasizes that both the need to adopt national programs and policies which are in line with international recognized ones to ensure cooperation” (Rosas, 1995: 255). There are factors that demonstrate the resilience and unwavering need for development which is underpinned by the human rights. These factors include:

1.5.1 Participation and Involvement of citizenry

Participation and involvement is a contemporary concept that has been ignited with more force and more demand. While it was not a prerogative of governments and non-governmental agencies to involve people in governance; administration, leadership, resource allocation and utilization, today it is not only an imperative, but also a manner of achieving development to all people in the society. According to Allan Rosas, “With regard to the content of the right to development, firstly, the 1986 Declaration endorses the importance of participation....” (Rosas, 1995: 254). Good governance has prioritized participation and involvement as one of the essential characteristic which builds and expands consensus and support for any initiative that the government wants to do to the society. Ideally, the government must act on behave of the people. Even when they are sure that the steps that they are taking are good and beneficial to the people, involving the people is important because it shows that there is regard for them and there is respect for the fundamental principle of self- determinism. This is necessary because it ensure that their opinion,

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conscience, belief and desires are the ones that are being addressed. No government or society acts for its own interest. It acts for the interest of the people who have willed that such government comes to being. It is through these people that such government gains legitimacy.

Secondly it is the people who give powers to the government through entrenchment of such powers that are only held by the government and not any other person or group. Participation and involvement of people are done in two ways. First, people are allowed to participate through various institutions that are created to facilitate and deliver services to the citizens. Such institution include judiciary, the legislature, the executive who all are charged with responsibility on behave of the common citizen. For instance, in creating various legislations in the constitution review or amendments, the participation of the people is needed through citizen mobilization, civic education and involvement of the people.

One can say that people's voice is also felt when they are deciding about who should lead them. This is done through regulations that have been laid down so that they are followed when appointments, recruitments and promotions are being carried out in various sectors. As regards to elective positions, the people's participation and involvement is seen during the electioneering process. This process is made in such a way that it is people centered. People have the right to choose freely their preferred candidates and in this, all people are equal and carry equal power. Human rights and fundamental freedom are the guiding principle in this process. For instance, the right to equality, political right, the right to be respected and consulted on matters of governance all is central and important to this exercise. As a basic requirement, participation or calling for the active of people in whichever level of governance and in whichever matter is important in achieving social, economic and political development.

Secondly, participation is important in policy creation. Here, every process must involve the people. Policies cannot only work well if it is from down up; meaning if it is emanating from the people. It should emanate from the community where it is intended to be used. It must attend to the social, economic and political needs of those who the policy is targeting. Indeed, it is very important for any policy to incorporate the shared vision and mission of the communities. This is by attending to the social and economic goals and expectation of the people themselves.

1.5.2 Egalitarianism as Principle in Development.

Egalitarianism is a principle that stress on equality in treatment. It states that all persons have a right to equal regard and treatment. Nobody should be discriminated due to race, gender, religion, status, language or beliefs when it comes to full realization of his rights be it civil or political, cultural or social or economic, or solidarity rights. By equality, equity is guaranteed and realized because of its underlying need for the fair distribution of the benefits of development. If there are social, cultural, economic or political benefits, they should be shared equally among the people in the society, community or nation. Article 6 of UDHR requires that all states should undertake, at the national level, all necessary measures for the realization of the right to development for every person. This should be done in equal measure without enriching and putting more benefit to others while impoverishing others. Egalitarians believe that equality is the single most aim of justice. This means that people should be treated as equal, same or as similar in all respects. This is meant to bring equality in social, economic and political status to all people. Egalitarians rest their nascent

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understanding of equality on the fundamental belief that human beings are equal in fundamental worth and status.

Among the Christians, the same principle of equality is a buildup of a basic belief that God loves all his people equally and he has equal regard to all their souls. According to John Locke, all people at all times and places have equal, natural and moral rights that everyone ought to respect at all times. This emphasis is not limited to any specific rights but acknowledges that all human being are moral agents and should be treated as such (Locke, 1990). Perhaps Thomas Scanlon was more specific in his teaching where he connoted that every person everywhere has a moral right to be treated according to the outcome of the procedure which every person of sound and reasonable mind would generally agree to (Scanlon, 1998).

According to Michael Walzer, a society is just if and only if its practices and institution are in accord with shared values and cultural understanding of its people. He insists that in the contemporary society, democratic egalitarianism becomes the shared justice. This is because egalitarian perspective is the basis for shared values and cultural understanding (Walzer 1983). As regards the social, economic and political development, egalitarian principle plays a key role in the sense that it obliges the moral requirement which is what we fundamentally owe each other. In other words, socially as people living together we owe each other social responsibility and orderliness that support our existence in the society. Economically we morally owe each other to see that we develop our natural resources and environment not only responsibly, but also sustainably with responsible production and consumption as outlined in SDG. Politically people owe each other honest and truthfulness in the choices that they make on governance and leadership. Nobody can stand alone and say my choices are the best than the 1000 choices made in favor of the other. This actually means that while each one of us makes his or her own individual choice, we intrinsically owe each other the political responsibility to make a good choice that culminate in good leaders who will bring about sound political development.

1.5.3 Non-Discrimination.

This is a principle which is closely related to equality. They both deal with how we ought to treat and regard man. In view of this, all human beings regardless of where they come from, race, sex, language, belief or conscience must not be discriminated against. There should be no permitting aspects which may lead to discrimination of man as man. This does not mean that if for instance you say that one person is more qualified than the other, you are discriminating. Ideally the discrimination we are talking is on account of moral and natural ground. For instance, demeaning one because of the circumstances or reasons that are natural and beyond his control is an outright discrimination. Reasons that are unconscionable cannot be guaranteed to be the dividing standard for man. Because man is born equal, he has a human soul; no discrimination should be leveled against him of such.

1.5.4 Self- Determination

Generally the origin of both the right of self-determination and the right to freedom is considered to be the same thing. By self-determination we mean the process by which a person, (who is reasonable and sound mind) is able to know what he wants and goes for it without anybody short - changing him or her. Every person has a right and moral obligation of self-determinism. If this is taken away from any individual, his respect for his dignity will

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with away. This principle does not only hold to a person but also any organized group, a community or a nation. In regard to the nation, self-determination is the process by which a state is able to determine its own livelihood or statehood. It does this through the constitution which guides how all its functions, political organization and public power ought to be consumed or utilized. This self-determinism is the principle originator of the concept of sovereignty and self-preservation. The sovereignty of the country rests on the fact that such a state is able to stand on its own in decision making and decision execution on matters of governance, leadership and democratic values and principles. Human rights engenders that all these must be done in such a way that there is utmost respect for man as man. It is in respecting man and his inherent dignity that you are able to allow him or her to determine what is the best for him and better still, what is best for his community and nation at large. Self-determination is prerequisite to the right to social, economic and political development. In this respect, the right of people to self-determination reflects the nature of the type of group to which it belongs: it is a right of independent statehood, grounded in facts about what makes for a state and how best a system in which states exist may promote peace and stability between them (Shaw 1997: 181–2).

1.5.5 Transparency

In terms of human rights and development, transparency is founded on values of accountability, responsiveness and openness. The need for this cannot be gainsaid. It is very important in the sense that there should be a process that is open, honest and outright in order for the rights to be realized. When this is not done, it would seem very hard to claim to have guaranteed human rights as a whole (Klaaren, 2013). It should be noted however that transparency cannot be attained if there is no accountability. These two go together for they are like two sides of one coin, they are mutually inclusive. If you are accountable, then to larger extent, you are transparent. The principle of transparency comprises the principle of accountability in its realization because transparency requires that the decisions and actions of those in government or position of leadership are open to public scrutiny. The Constitution in many states demands that transparency must be fostered by providing the public with timely, accessible and accurate information. This ideally means that the public must be provided with full knowledge and information about the government decisions and actions. In order to talk of democracy, the two concepts must be conjoined and realized concomitantly. These two aspects make the realization of development that is people centered and one where participation of the people is possible and ideal.

1.6 Human rights as Foundational and Enabler of Transformative Development

Human rights play a key and pivotal role in shaping the society, locally, nationally and internationally. Throughout the world human rights have found a place in cultural, social, economic, civil and political dimension of human life. This is especially in peaceful coexistence of the people throughout the world. UDHR in its sitting promulgated 30 human rights that ought to be respected and realized as common standard of achievement for all people and all nation in the world. During this time, 48 countries signed the treaty and became members. In June 25th, 1993, Vienna declaration of human rights expanded the membership to 178 countries with the aim of making the realization of human rights universal.

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The process of universalization of human rights has allowed the formation of an international system for protecting these rights. This system has been set up and sanctioned by international protection treaties. The primary intention of this is to reflect a contemporary ethical conscience which is thought to be shared among states and agreed upon among human community. This agreement is based on the general acceptance of the minimum standard of ethical conduct to be guaranteed to all persons in the world. This is what has been technically regarded as ‘irreducible ethical minimum’.

The rights in a given generation are grouped internationally according to the focus and contribution that they give to the society in a given perspective. There are those whose focus is civil and political, while others are those whose emphasis is cultural, social and economic. The last category is that of fostering solidarity. This article will show how the categorization of human right by UDHR has promoted social economic and political development. As matter of emphasis, these human rights have been distinguished into three categories which are not based on priority of adherence or ascendancy but on the focus of each of them. The categories are civil and political which are enshrined in UDHR article 3 to article 21. The social, cultural and economic realms are held from UDHR as article 22 to 28 and finally solidarity rights from article 29-30.

1.6.1 Civil and Political Rights

Civil and political rights essentially deal with various rights that contribute towards the establishment of well-organized and managed society or *civitas*. Precisely these rights give force to the required moral standards when dealing with the civil and political life of the people. According to Karel Vasak, these groups of rights are regarded as liberty oriented rights in the sense that they support the full life, that is, the best life livable. They include: a right to life, a right not to be discriminated, and freedom from slavery and torture, right to recognition everywhere in the world, all are equal before the law and are entitled to equal protection of the law.

Everyone has the right to an effective remedy by the competent national tribunals for acts that violate the fundamental rights granted by the law. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled to a full public hearing by a national or international tribunal body. Everyone has a right to be assumed to be innocent till proven guilty by a court of law. Everyone has a right to privacy and no one should be subjected to arbitrary interference. Freedom of movement is guaranteed and nobody should be restricted or barred from enjoying it. This supports the right to asylum in any country especially those who are in threat of insecurity. Everyone is born somewhere and has a right to nationality.

Furthermore, all men and women of reasonable age have a right to marry and bear children. Everyone has a right to own property everywhere individually or in association. The freedom of thought, conscience and belief is guaranteed everywhere and nobody should be obliged to believe on the other. Freedom of expression and opinion and thought is guaranteed to everyone. In case one is not satisfied with what is happening, one has a right to peaceful assemble and association. Participation in activities of one’s government is as well guaranteed as a right (UDHR, 1948 Art 3-21)

The above rights and fundamental freedoms endeavor to promote people’s assurance, protection, and revitalization of civic and political dimension of the people. They also help operationalize economic rights and provisions which are important for equal access to economic empowerments of the people. Amartya Sen considers that political rights

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(including freedom of expression and debate) as not only fundamental for demanding political responses to economic needs, but also are central to the very formulation of the economic needs of the people living in a particular society (Sen, 2003). They are meant to support the duties and responsibility that the citizenry have to their society (city state-*civitas*). They grant opportunity for the exercise and enjoyment of the moral standard which are necessary for the society to stand and grow.

Furthermore, when we talk of political rights in particular we means rights that support all activities, structures and organization that propel the best life livable for the people in the society. Such rights as presented all build the political development of a society with the aim of making all people equal, just, empowered and dignified.

1.6.2 Economic, Social and Cultural Rights in Development

The social-economic development in the world is supported by the UDHR 22-28 rights. Rights belonging to this category strive to fundamentally support and grant enjoyment of economic social and cultural development and growth. Generally all these rights are regarded as security oriented rights in the sense that they support man to attain a reasonable living standard which guarantee proper human existence. They enforce enjoyment of education, food, shelter and health care. These rights support the existence of social security and social order (art.22, 28). It proclaims that everyone, as a member of society, has the right to social security and is entitled to its realization. This is done through national and international efforts which make the economic, social and cultural rights indispensable for man's dignity and for the free development (UDHR art 22). The appropriate moral extension of this argument is that if a state or a society is in need of social integration, solidarity and equality, then there must be synergized effort to take economic, social and cultural rights seriously - which rightfully includes the issue of resource distribution (Asbjorn Eide & Allan Rosas, 1993)

Moreover, the central concern of these rights, I suppose, is to ensure that human social amenities are protected. The right to work is economic right. While the right to leisure and rest and education, the right to a standard of living that is adequate for the health and well-being of everyone, including food, clothing, housing and medical care. This ideally gives primacy to these rights in that any necessary social services and social security all are categorized as social rights which support the social dimension of the community. These rights must first be recognized by every member of the society and be incorporated in the instruments of governance by the state itself. According to Asbjorn Eide, government action must promote social equality, confront social inequalities and compensate the imbalances created by markets and guarantee sustainable human development. This is especially in pursuing the paths that enable the state to ensure that it guarantees respect and protection for economic, social and cultural rights so as to preserve the conditions for a relatively free market economy (Eide, 1995: 383).

The right to cultural protection is also enshrined within the UDHR. They include the right to participate in cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Asbjorn Eide & Allan Rosas holds that "Taking economic, social and cultural rights seriously imply a simultaneous commitment to social integration, solidarity and equality, including the issue of income distribution" (Eide, 1995: 17)

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1.6.3 Solidarity Rights in Development

The solidarity rights majorly focus on supporting the livelihood of all human beings in diverse communities and environments. They include the right to live and perform duties to the community in which alone the free and full development of his personality is possible. Nobody should be forced to stay in a place where one is not comfortable or which cannot guarantee full actualization, development and growth of an individual. These groups of rights are important just and significant to the development of the people just like the civil and political; and economic, social and cultural rights are. This is because these rights create enabling and revitalizing environment for the rubber to meet the road in regarding human rights realization. It is in this regard that human rights become universal to all mankind. Art 30 bring this sentiments out when it provides that nothing in the UDHR may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. This realization is not only serious but also critical to the implementation and ascendancy of the human rights as provided in the UDHR.

Conclusion

This article has made a critical survey aimed at demonstrating the role of human rights and fundamental freedoms in the constitution -making in the contemporary society. It has been realized that human rights are critical and fundamental in achieving a progressive, democratic and dynamic constitution. Further, the article has demonstrated how the human rights have been instrumental in fostering the social, economic and political development under the guidance of the UDHR. The article concludes that any development must be responsive and respective of people's fundamental human rights and should be people oriented and centered.

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