

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**SUBMISSIONS TO:**

**THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS**

**OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (**ohchr-srculturalrights@un.org**)**

**27th April 2021**

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1. **INTRODUCTION**

The Kenya National Commission on Human Rights is an Independent National Human Rights Institution established under article 59 of the Constitution of Kenya and operationalized by the Kenya National Commission on Human Rights Act, 2011 (revised 2012). The Commission has a broad mandate to promote the respect and a culture of human rights in the Republic of Kenya. The Commission’s mandate is implemented through various strategies including research, advocacy and lobbying, education and training, complaints and investigations, litigation, monitoring, partnership building and networking among others. The Commission’s functions are guided by the 1993 United Nations approved principles on the establishment and functioning of national institution (Paris Principles) and is accredited as an ‘A’ status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples’ Rights.

The Commission makes this submission pursuant to its human rights mandate and as the designated principal organ in ensuring state compliance with regional and international human rights obligations.

1. **The Cultures of Development**
2. While development has been defined using economic terms, indicators and parameters, from a human rights perspective, “**development is a human right that belongs to everyone, individually and collectively. Everyone is “entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized,”** the UN declaration on the right to development.

Development has key elements that make it compliant to human rights; it must be people centred, be based on the Human Rights - Based Approach, invoke participation, equity, non -discrimination and self-determination. In the absence of these elements and support by the human rights instruments as codified in international law, then development loses the human rights touch.

1. Kenya’s development is modelled around three key pillars: Economic, Social and political. This is espoused through the development blue print christened Vision 2030.[[1]](#footnote-1) While the vision was formulated before Agenda 2030 (SDGs), it has key ingredients that can be compared to the 2030 agenda. Again, it was developed as the world was in the process of implementation of the MDGS and hence had intentional/aspirations of ensuring the achievement of the MDGs, Indeed the MDGs are quoted in the Vision formed the motivation of Vison 2030.
2. While the development model does not have equivalent targets and indicators as contained in the SDGs, Vision 2030 has key elements of sustainability, among them the recognition of the centrality of human rights as a key aim of development. The Vision is also cognisant of the importance of environmental sustainability, strong institutions to carry out the development and also the fact that participation, gender equality and political stability are key in achieving the Vision.
3. While the government is the driver of the development process and also its monitoring, other actors take active roles in monitoring and reporting on development. This includes CSOs, Kenya National Commission on Human Rights, development partners, UN agencies and multilateral development agencies such as the World Bank. The Vision 2030 for example has 5-year Medium Term Plans (MTPs) which inform the priorities for the term but also measure the deficiencies of the preceding term and are used for determine the priority areas for the next medium term plan. It is also noteworthy that other actors develop shadow reports and or identify human rights gaps during implementation and development of the MTPs. The Development of the MTP is a very consultative process and includes several actors (state and non - State) in the development and monitoring and reporting of the realisation of the Vision.
4. The government of Kenya has fully integrated the SDGs into the Vision 2030, which has ensured that the progress made through Vision 2030 enhances the realisation of the SDGs. In the last 5 years, Kenya has submitted 2 Voluntary National Reports (VNR) which give the status of implementation of the SDGs. This reporting invites all interested stakeholders to input into the report. KNCHR take spart in this process and identifies areas where human rights have been left out or where they have been infringed while implementing the agenda. Additionally, the Universal Peer Review (UPR) process gives further avenues to identify and seek redress for human rights oversights in the development model of Kenya.
5. The development process has however not been without key human rights challenges, oversights or negative impacts. In many cases, the development projects have had massive displacement of people without adequate compensation or consultation with regard to their lands. This has in many instances also had great impacts of cultural rights of communities and individuals. For example, projects have been insensitive to the grave sites of people, moved people without resettling them in a manner that would enable them continue practising their cultural rights, religious ceremonies and also to access ancestral shrines or even medicinal flora.
6. Environmental impacts have also been adverse in some localities. For instance, pursuit of conservation efforts by the Government of Kenya in Mau forest saw the eviction of members of the Ogiek community who later successfully challenged the action by the state before the African Court on Human and Peoples Rights. Among other findings, the African Court was satisfied that the eviction (by the State) of the Ogiek violated among others the rights of the Ogiek to Culture and Development.[[2]](#footnote-2)
7. Multilateral actors have also been cited for financing projects that have had negative human rights outcomes. Indeed, some development projects have been stalled as a result of community rejection or reporting the negative impacts to the said agencies hence leading to stoppages or delays in implementation.[[3]](#footnote-3)
1. a long-term development blueprint for the country and is motivated by a collective aspiration for a better society by the year 2030” - see <https://vision2030.go.ke/about-vision-2030/> for more details [↑](#footnote-ref-1)
2. Application 006/2012- African Commission on Human and Peoples Rights v Kenya especially Paragraphs 207-211 [↑](#footnote-ref-2)
3. <https://redd-monitor.org/2020/10/01/eu-scraps-us35-million-conservation-and-climate-change-programme-in-kenya-over-forced-evictions/> see also: <https://redd-monitor.org/2018/01/17/eu-suspends-funding-to-conservation-and-climate-project-in-kenya-one-day-after-a-kenya-forest-service-guard-shot-and-killed-an-indigenous-sengwer-man/> [↑](#footnote-ref-3)