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Realising the right to development in Kenya under the 2010 Constitution through poverty alleviation, anti-corruption and public participation interventions

Munene, Anthony Wambugu

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Abstract

The political crisis that was precipitated by the 2007 General Election in Kenya revealed a country that had many unresolved governance problems, which revolved around economic and social inequality, poverty, corruption and marginalisation of certain areas and communities, and had affected the well-being of many Kenyans. The violence was halted following the adoption of the Kenya National Dialogue and Reconciliation (KNDR) accord that was premised on four agenda points: to end the violence; address the resultant humanitarian crisis; end the political crisis; and address long-term issues such as constitutional and legal reform.

The need for constitutional reform resulted in the promulgation of the Constitution of Kenya 2010 (Constitution), an instrument that is founded on a social transformation ideology of rights, welfare and empowerment of the people. It seeks to resolve the historical injustices that arose during previous constitutional orders. In a radical departure from its predecessors, the Constitution seeks to transform the governance structure to create a system of government that emphasises improvement in the well-being of Kenyans. For this purpose, it identifies several national values and principles of governance, among them being human dignity, non-discrimination and protection of the marginalised, integrity, transparency and accountability, participation of the people, and sustainable development. The Constitution therefore lays a basis for realisation of the right to development (RTD) in Kenya through alleviating poverty to give effect to human dignity and ensure non-discrimination and protection of the poor, combating corruption by setting standards of integrity, transparency and accountability in the public sector, and facilitating participation of the people in development to ensure its sustainability.

The RTD is an important right that espouses a concern for the protection, fulfilment and promotion of the holistic well-being of individuals and of "peoples" especially the marginalised and disadvantaged. Yet, it is also a controversial and misunderstood human right. The RTD has been misunderstood conceptually because of what its content and nature is, especially at the UN level where it was initially viewed as a claim by developing States against developed States. The political contestation on the RTD at the UN level led to controversy as to whether it is a human right. At the African regional level, the problem of defining its beneficiaries, among other challenges, creates difficulties for its realisation.

This study considers challenges to, and opportunities for, realising the RTD in Kenya. The study primarily answers the questions: (i) what is the status of the RTD in international law? (ii) is the RTD recognised in Kenyan law and policy? and (iii) can poverty alleviation, anti-corruption and public participation interventions facilitate realisation of the RTD in Kenya? In answering these questions, chapter 2 interrogates the status of the RTD in international law, chapter 3 determines if the right is recognised by Kenyan law and policy, and chapters 4, 5 and 6 examine poverty alleviation, anti-corruption and public participation interventions, respectively, as opportunities for realisation of the RTD in Kenya.

The study establishes that the RTD is a human right in international law. It finds that Kenya has assumed international obligations in relation to realisation of the RTD, and that the RTD is also recognised, with correlating obligations, in Kenyan law and policy through the Constitution and Kenya Vision 2030, respectively. By weaving through Kenya's international law obligations, its constitutional duties under the 2010 Constitution, as supported by legislation and case law, the study advocates for realisation of the RTD in Kenya through interventions that address Kenya's triple challenge of poverty, corruption and public participation in decision-making processes. The study therefore concludes that poverty and corruption are major obstacles for realisation of the RTD in Kenya and that public participation is of fundamental importance in realising it.

The study is significant and breaks new ground because it focuses on realisation of the RTD in Kenya under the new transformative Constitution, and with reference to the triple challenge of poverty, corruption and public participation. Also, the nature of the RTD that the study advocates is one that is sustainable, in line with the principle of sustainable development declared in the Constitution and contained in international standards that Kenya has committed itself to. Since the study's findings are based on a consideration of the general principles and law relating to the RTD as applicable to everyone, as opposed to a specific group, they are intended to provoke further research on specific aspects of the RTD in Kenya, particularly with respect to historically marginalised groups or specific groups of people such as women, children and persons with disabilities.