

## "Adopting A Human Rights Based Approach to Kenya Development Plan"

By Uchenna Emelonye<sup>1</sup>

My presentation this evening is predicated on the thesis that **the Government of Kenya cannot achieve sustainable development unless it respects human rights; that Kenyans cannot enjoy human rights unless there is development; and ultimately, human rights and development will remain elusive in Kenya unless there is respect for the rule of law.**

There are several theoretical questions about human right based approach to development and its many different definitions. For the sake of brevity, human rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards. It focuses on beneficiaries as the owners of rights, the directors of development, and emphasizes the human person as the centre of the development process. It requires a high degree of active and informed participation by the citizens. This approach is founded on the conviction that mere charity is not enough from a human rights perspective; rather, people should be empowered to participate in policy formulation and hold accountable those who have a duty to act on their behalf. The norms, standards and principles of human rights based approach to development include equality and equity, accountability, empowerment, participation and non discrimination. It considers the full range of indivisible, interdependent and interrelated rights and calls for accountability in the development process.

Human development, human rights and the rule of law are interwoven, complementary and reinforce good governance. Jointly and severally, they aim to promote the well-being, freedom, inherent dignity and equality of all irrespective of social background. In programmatic terms for instance, the development of new technologies for effective HIV prevention is a legitimate and even desirable outcome. But in rolling out these technologies, development actors should clearly assess and explain the possible negative effects of the testing; ensure that the end products of the technologies are accessible and affordable and that vulnerable groups are not excluded. By extension, human rights contribute to human development by guaranteeing a protected space where the rich will not covert development processes to the detriment of the down trodden. As a new paradigm, human rights-based

---

<sup>1</sup> Mr. Emelonye is the Senior Human Rights Adviser to the United Nations Office of the High Commissioner for Human Rights. This paper is presented in a personal capacity and does not represent the views of the United Nations. For comments on this presentation please contact emelonye@gmail.com

approach to development has intertwined development, human rights and rule of law into one dynamic tool of social change.

While many factors play an important role in development, human rights mainstreaming is now recognized as a catalyst for the advancement of sustainable development. In so far as good governance promotes accountability and transparency, human rights mainstreaming allows for sound and efficient management of human, natural, economic, and financial resources for equitable and sustainable development and life in dignity. Since development assistance must contribute to social rights, human rights mainstreaming in development is no longer the exclusive preserve of the Department of Justice, but a communal remit of all line ministries. This is so because unless other line ministries mainstream human rights and rule of law in their development initiatives and policy-making processes, the solo efforts of the Department of Justice will in literary terms remain a drop of water in Mombasa beach.

Development cuts across rule of the law and human rights and is the best predictor of a country's economic success. Any violation of human rights and breach of rule of law impacts negatively on the citizenry and the investment community. The resultant lack of investment, in turn, impedes economic growth and consequently deprives the governments of resources to invest in social services all of which are critical for sustainable development. It is on the realization of the interconnectedness of human rights, rule of law and development that the member states of the United Nations renewed commitments to promote and protect human rights through the declaration of eight quantified and time-bound development goals. The millennium declaration explicitly places both human rights commitments and development goals at the centre of the international pro poor agenda.

Having set out the conceptual framework of human rights based approach, it is now pertinent to examine to what extent the principle of right based approach to development has been mainstreamed into governance in Kenya? On the other hand, why is it that despite abundant man and material resources, coupled with deliberate pro-poor policies by successive governments, elementary welfare to vast numbers or perhaps the majority of Kenyans is still an illusion? Could it be right to conclude that Kenya is still developmentally challenged because the norms, standards and principles of human rights based approach to development are yet to form the core fabrics of governance?

In responding to these questions, it is imperative to underline the fact that although poverty is not a recent social malaise in the country, it is a continuing human rights issue and its current intensity requires urgent

national attention. Poverty is not only a lack of material goods and opportunities; it is also the inability to live a life with respect and dignity. Adopting the definition of poverty by the UN, it is a state of long-term deprivation of the essential material and non-material attributes of well-being which are considered necessary for decent living. According to the 2013 International Human Development Indicators, Kenya ranks 145 on the world table and with a life expectancy of 57 years.

At this juncture, I commend the constitutional, legislative and policy initiatives of government of Kenya towards elevating human rights as the overarching framework of its pro-poor policies and plans. For instance, the Kenya's Second Medium Term Plan (MTP II) for 2013-2017 as part of the Kenya Vision 2030 is being finalized three years following the passage of the 2010 Constitution that heralded the establishment of a new value-system and governance framework for better and sustainable development of Kenya.

In the implementation of the Vision 2030, it is commendable that the MTP II is taking cognizance of and is informed by principles, objects and institutional arrangements established in the 2010 Constitution and the fact that the drafting of the MTP II is sensitive to infusing human rights as part of the content and process of the Plan. The normative basis of infusing human rights principles and content into MTP II is found in the 2010 Constitution which makes firm acknowledgements of the centrality of human rights in the nation's foundation and development. The preamble of the Constitution recognizes the aspirations of Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law; and Article 10 of the Constitution establishes a set of national values and objectives at whose core are human rights principles and objects. The Constitution also has a comprehensive Bill of Rights ensuring the rights of individuals and groups, establishing the responsibilities of duty-bearers, and fashioning the institutional framework for enforcing those rights.

Extremely practical considerations explain the importance of including human rights in development initiatives in Kenya such as the MTP II Plan. Human rights values and concepts entrenched in the Constitution such as those of equality and non-discrimination offer an objective framework within which the country would ensure that its development agendas take account of all its peoples, including vulnerable persons or groups who are on the margins of society and hence most liable to discrimination. Furthermore, the government of Kenya on behalf of its citizens has made constitutionally-guaranteed and internationally-binding legal commitments to respect, protect and fulfil human rights. Article 21 (1) of the Constitution makes it a

fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

In human rights based approach to development, outcomes are as important as the process leading to such outcomes. The 2010 Constitution espouses this international principle and provides Kenya with an apt process for determining how to tap their diverse competencies and peculiarities to ensure national development. The milestone, outcome and goal expectations from a development perspective are not dissimilar to anticipated milestones, outcomes and goals deriving from a human rights framework. Indeed, there is a close relationship between statistics, development and human rights which is confirmed by the similarities of the development and human rights compliance and performance indicators that the MTP II intends using in measuring the success of its various outcomes and goals. Little wonder that the national values listed in Article 10 of the Constitution mirror principles which are at the heart of the human rights based approach to development: participation; inclusiveness; equality; non-discrimination; transparency and accountability.

Finally, for Kenya to score a pass mark on the millennium goals set for 2015 and emerge as one of the leading economies by the year 2030, the economy does not only require a tremendously consistent high growth rate, but the government should as a deliberate policy implement right based developmental policies and prioritize resource utilization for the well being of its vast population presently living below the poverty line. If both the National and County governments appreciate and effectuate the veritable nexus between human rights and rule of law in developmental policies and programs, they would have by so doing erected the scaffolding for the realization of the time bound goals of Vision 2030. Implementing human rights based approach to development in all tiers of governance in Kenya would obviously serve to strengthen the capacities of citizens to make the requisite claims on government and for the governments to meet their statutory obligation of promoting equality, equity, accountability, transparency, empowerment, participation and non discrimination.