THE RELEVANCE OF HUMAN RIGHTS IN FRAMING FOREIGN AID RELATIONS: THE CASE OF UK AND KENYA

BY

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DECLARATION

Declaration by Candidate

I confirm that this project is my original work and has not been presented to any other university or institution for an award of a degree. No part of this project is to be reproduced without prior consent of the author and/or Moi University.

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DEDICATION

I dedicate this work to my dear mum Beatrice Nkatha who sincerely been my pillar in my pursuit to further my education.

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ABSTRACT

Human rights considerations to foreign aid relations have become an important instrument for state diplomacy. Kenya is a signatory to most human rights treaties and conventions and should therefore as a duty bearer be observing and enforcing all human rights provision. United Kingdom (UK) as one of donors to Kenya is a signatory to such human rights frameworks and is under obligation to join forces with Kenya in observing human rights. However, this is not the situation on the ground, in practice, human rights violations still persist and there has been limited implementation of human rights-based approach to aid relations. This study sought to assess the relevance of human rights in the framing of aid relations between U.K and Kenya since 2013 general elections to date. The study objectives were to analyse existing human rights frameworks that guide aid relations between Kenya and UK, to assess the implementation trend of human rights frameworks and aid relations between Kenya and UK between 2013 to date, to evaluate the challenges that affect human rights frameworks and aid relations between Kenya and UK since 2013 to date and to suggest on improvements that can be made to strengthen human rights frameworks and aid relations between Kenya and UK. The theoretical framework of the study is based on two theories i.e., interest theory of human rights and idealism theory of liberalism theories. The two theories complemented each other. Descriptive research design was used to collect qualitative data for the study. The study used purposive sampling to review human rights and aid relations situation between Kenya and UK. Content analysis was used to analyse data collected and findings of the study were be presented in narrative form. The study findings report that, human rights frameworks guiding bilateral aid relations between Kenya and UK were treated as external policies and not a priority for both countries and policies do not affect aid allocation even when human rights are violated. Implementation trend of human rights frameworks and aid relations between Kenya and UK started with early sanctions with economic conditionality which evolved to political conditionality. However, UK specifically applies expressive political conditionality that is meant for local audience hence no instrumental political reforms. Inconsistencies were seen in the pattern of policy application by both countries too. Some of the challenges that affect human rights frameworks and aid relations between Kenya and UK since 2013 emerged that success depends on the ability to put the principle as core to other frameworks such as SDGs. Suggested improvements to strengthen human rights frameworks and aid relations between Kenya and UK were use of African-led implementation approach where policies are not top down from donor to recipient only. These outcomes of the study can be cautiously applied to improve aid relations between and among other countries in the light of human rights recommendations.

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ABBREVIATIONS

CED	International Convention for the Protection of All Persons from Enforced Disappearance
ASEAN	Association of Southeast Asian Nations
BATUK	British Army Training Unit Kenya
CAT	Committee against Torture
CDC	Commonwealth Development Corporation
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
COE	Council of Europe
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
DAC	Development Assistance Committee
DFID	Department for International Development
DN	Daily Nation
EAC	East African Community
EACSO	East African Common Services Organization
EAD	Employment Authorization Documents
ECC	European Economic Community
ECF	East Coast Fever
EHRC	Equality and Human Rights Commission
EPA	Economic Partnership Agreement
FCO	Foreign and Commonwealth Office
FDI	Foreign Direct Investment
GOK	Government of Kenya

HCDA	Horticultural Crops Development Authority
HRMF	Human Rights Measurement Framework
ICC	International Criminal Court
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICMW	International Convention on the Protection of the Rights of all Migrant Workers & Members of their Families
ILO	International Labour Organisation
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya's National Commission on Human Rights
MDGs	Millennium Development Goals
MOJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
NARC	National Alliance Rainbow Coalition
NATO	North Atlantic Treaty Organization
NGOs	Non-Governmental Organizations
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
RBA	Rights based approaches
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKAID	United Kingdom Agency for International Development
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural

UPR   Universal Periodic Review

USSR   Union of Soviet Socialist Republics

CHAPTER ONE

INTRODUCTION

This introductory chapter looked at the study background, research problem, study purpose as well as its objectives and research questions. The study significance, assumptions, scope of the study, delimitation and theoretical framework was done too.

1.1 Background of the Study

According to Ruggie (2014), human rights frameworks in aid relations involve working based on standards of international human rights with project operations directed to protecting and promoting human rights. Human rights conceptual frameworks seek to do analysis on inequalities that lie at the core of development problems and redress practices that are discriminatory and unjust and power distribution that impede progress in development. Rights based approaches (RBA) in development work are guided by international human rights framework. They emphasize on centrality of power relations with core values of participation, accountability and non- discrimination. RBAs seek the responsibility of duty bearers to uphold human rights as well as support right holders to claim their rights.

Donor-recipient relations across the world have with time evolved from plain reasons of benefitting nation's interest at the expense of human rights, Carbone (2015). This thus created the need for human rights tools to frame aid relations whether political, social or economic. Frameworks such as the Universal Declaration of Human Rights (UDHR) are tools that provide possible practical actions at national and domestic levels to aid relations. Human rights-based approach between donor and recipients upholds principles such as participation and accountability, universality and indivisibility, empowerment and transparency to poverty reduction.

Since 1970s, the relationship between human rights and donor relations for development cooperation has been characterized by debates about discontinuing support for countries and government that violated human rights. The punitive aspect however appeared to prevail in public opinion. Some donors have had to withdraw aid even if it is not necessarily an effective measure and does not promote human rights. An example of donor support withdrawal in 2014 is the UK and the government of Malawi Cash gate scandal. Dionne (2014) reported that it involved funds misappropriation through transfer from governments' bank account to private companies in the disguise of goods and services payment. This led to a total withdrawal by the UK government to funding Malawi's budget that year. Other donors in the country such as the United States and International Monetary Fund also temporarily withdrew their support to the country. The two latter donors resumed their support mainly because their support was in form of programs to which the donor is able to have control over funds use with more flexibility in case of response to allegations of misuse. At the same time, promoting human rights through assisting the judiciary or human rights institutions is sometimes taken as interfering with internal affairs.

In 1980s human rights and donor development cooperation took a different direction where support to democratize governments and human rights Non-Governmental Organizations (NGOs) received increased attention. With human rights gradually becoming part of dialogue between donors and recipients. The Lome III convention of 1984 was among the first instruments that formally established linkages that confirmed emerging human rights policy in relation to donor support (Donnelly and Whelan (2017). The convention between the European community and partner states such as Africa, the Pacific and the Caribbean was signed. Its preamble mentioned human rights with further elaborations in joint declarations attached to it.

With the individual now placed at the centre, conviction emerged that the ultimate goal is respect for human rights, rule of law, effective accountable political institutions and political pluralism as the foundation of development and equitable distribution. This was taken a notch higher with the establishment of results-based measures such as Millennium Development Goals (MDGs) in 2000 at UN Millennium summit. The time bound goals with measurable targets of combating hunger poverty, illiteracy, disease, degradation of environment and women discrimination provided a framework for institutions to work towards a common end, Donnelly and Whelan (2017).

Majority of nations would however not reach the MDGs with support from outside. Even though MDGs emphasized on human rights-based approach to development and reduction of poverty, progress towards the goals measured in 2015 showed that they had not been reached and this led to establishment of Sustainable Development Goals (SDGs) as a framework with more or the same goals as MDGs but to be achieved by 2030 (Servaes (2017). SDGs together with other international human rights conventions such as ICCPR, ICESCR, CERD, CEDAW, CAT, CRC and CRPD form basis for practical actions between donors and recipients in countries that are ratified to the instruments.

Kenya and UK have had bilateral relations particularly based on trade and military support with historical relations dating back to 19th century when the country was a colony of UK between 1895 to 1963 when it achieved independence, (Cullen 2018). Even though independence was achieved after a violent struggle, it did not undermine the strong relations enabling UK to continue providing economic and military assistance to Kenya. Diplomatically however, UK sought to distance itself in 2013 presidential elections as Kenya president and deputy were indicted by ICC for 2007

post-election violence crimes as it violated the Rome Statute. The UK stated there would only be essential business between Kenya and UK. The leaders' case in ICC was dropped in 2014 and the bilateral relationship between UK and Kenya remain cordial. Kenya's strong relations with UK has undergone some transformation due to the increasing visibility of China. There has been concern that China is successfully strengthening her presence in Kenya through the "Look East policy" which has benefited Kenya through extension of infrastructural funds which Britain had not done the same especially after isolating itself diplomatically after 2013 election. Bilaterally in trade also UK is one of the largest investors in telecommunication and horticultural produce. However, China has surpassed it in foreign direct investment in the country. UK plans according to Kiamba and Bachmann (2015) is to revive its position within the coming years even though exports from Kenya. There lacks diversification in relations and both countries do not heavily favour each other.

This study aims to establish human rights frameworks that support aid relations between UK and Kenya, how they countries relate and the challenges specifically with a review from 2013 after Kenya general elections to date during UK Brexit era. Suggestions on how donor relations between the two countries can be strengthened using human rights frameworks will be given too.

1.2 Statement of the Problem

Being a signatory to most human rights treaties and conventions, Kenya is duty bound to observe, protect and enforce all human rights provisions. However, in practice, human rights violations still persist at different levels in the country. Bilateral partners as signatories to human rights instruments are also duty bound to observe human rights obligations in their dealings with other states. UK as one of donors in Kenya is a signatory to such human rights frameworks and is under obligation to join forces with

Kenya in observing human rights. However, this is not the situation on the ground; there has been limited implementation of human rights-based approach to aid relations. There are human rights violation in the country ranging from police brutality, corruption, unexplained disappearances of individuals to discrimination of refugees and asylum seekers that happens yet the UK still extends aid to Kenya. The situation highly undermines the success of results-based goals such as SDGs and the big 4 agenda of Kenya yet there are human rights frameworks against violation of people in light of aid.

There is therefore uneven recognition of human rights in aid relations with right obligations being overlooked, yet rights are worthwhile to explore in aid relations and potential for application in future aid related projects. The concern of this study is to assess why the UK continues extending aid despite the human rights violations. This study sought to establish how human rights frameworks govern donor relations between United Kingdom and Kenya as well as how the frameworks work between the two countries. The study also looked at human rights-based challenges that affected the relations and suggested ways to improve the relations while upholding tenets of human rights and aid relations.

1.3 Objectives of the Study

This study purposed to analyse how human rights frameworks govern donor relations between United Kingdom and Kenya as well as how the frameworks work between the two countries. The study also looked at human rights-based challenges affecting the relations and suggest ways to improve the relations while upholding tenets of human rights and aid relations.

The study objectives were to:

    i.   To analyse existing human rights frameworks that guide bilateral aid relations between Kenya and UK.

   ii.   To examine the implementation trend of human rights frameworks and aid relations between Kenya and UK between 2013 to date

  iii.   To assess the challenges that affect human rights frameworks and aid relations between Kenya and UK since 2013 to date

  iv.   To suggest on improvements that can be made to strengthen human rights frameworks and aid relations between Kenya and UK.

1.4 Research Questions

    i.   Are there existing human rights frameworks that guide aid relationship between Kenya and UK?

   ii.   How are human rights frameworks and aid relations implemented between Kenya and UK between 2013 to date?

  iii.   What challenges affect human rights and aid relations between Kenya and UK since 2013 to date?

  iv.   Which improvements can be made to strengthen human rights frameworks and aid relations between Kenya and UK?

1.5 Study Assumptions

The study will assume that there are already existing human rights frameworks that govern Kenya and UK aid relations. It will assume the human rights frameworks are at work and may be having challenges too in achieving their goals thus the need for strategies to strengthen the relationship between the frameworks and aid relations.

1.6 Literature Review and Theoretical Framework

1.6.1 Review of Relevant Literature

The literature review focused on studies on foreign aid relations and their link to human rights. It also focused on studies on concepts of human rights, UK foreign policy, and Kenya's trends in foreign policy.

1.6.1.1 Foreign Aid

Foreign aid is defined as financial flows, technical assistance and commodities from bilateral and multilateral agencies that are designed to promote economic development and welfare as their main objective (Chakravarti, 2005). Multilateral agencies are organizations such as the World Bank and the International Monetary Fund (Krueger et.al., 1989). Individual donor countries like the United Kingdom and China, as well as donor institutions like DANIDA, NORAD, and USAID, are examples of bilateral aid partners (Madeley, 1991).

Following World War II, the Marshall Plan, also known as the European Recovery Program, became an important part of the international political economy (Gilpin, 2011). The Marshall Plan was a US aid program for war-torn countries in Western Europe. This was done in order to re-establish their economic, social, and political infrastructure, as well as to re-establish a market for American goods and to limit communist progress (Kegley & Wittkopf, 1996).

The relationship between African countries and their international partners dates back to the 1960s, when the majority of African countries attained independence. Foreign aid became more important when African economies fell in the aftermath of the mid-1970s oil crisis, severe droughts, continuous conflicts, and weak governance, all of which wrecked havoc on the continent's economic and social situations (Mkandawire

& Soludu, 1999; Frank & Baird, 1975). The aforesaid circumstances prompted growing donor interest in Africa, as aid would provide immediate political benefits to donor countries while simultaneously contributing to recipient countries' economic development (Frank & Baird, 1975). In the nineteenth century, economic issues played a significant role in world politics, even if economic measures were not actively exploited to achieve political goals (Carr, 1945). According to Rosecrance (1973), states employ incentives such as foreign aid and loans to sway other countries. As a result, foreign aid has a direct political impact on the beneficiaries' country, particularly when it is offered to compensate for aid given by another country.

According to Hass (1972), it is difficult to persuade countries to change their political systems or policies in response to foreign aid. He takes the example of Britain, which has been a big provider to Commonwealth countries over the years, but which has notably diverged from Britain's foreign aid policy in countries like Zimbabwe. The United States has provided substantial aid to Greece, India, Pakistan, Taiwan, and South Korea, yet these political systems have not followed the United States' foreign policy line.

Although the United States has provided significant private money to Israel, this has not meant that it has been able to control Israeli policy. Based on the aforementioned countries, the study intended to determine the importance of human rights in Kenya-UK aid ties. This was based on the importance of human rights issues in foreign aid relations as a tool for state diplomacy. As a result, an evaluation of the execution of the concerns between the two countries, which are both signatories to several human rights treaties, was requested. While past human rights evaluations have been conducted since colonial times, there is little research on the subject in regard to the bilateral relationship between the two nations since 2013 and the coming Brexit.

1.6.1.2 Human Rights

The benchmark for the protection of human rights as an international obligation was set in the aftermath of the Second World War, after the trial at Nuremberg of the Nazi war criminals (Steiner & Alston, 1988). On 10th December 1948 in Paris, the United Nations General 16 Assembly adopted the Universal Declaration of Human Rights (Foot, 2000). Over the past fifty years, more and more countries have signed these treaties and conventions. Neumayer (2005) raises a critical question: "does International Human Rights Treaties Improve Respect for Human Rights?" Neumayer found out that treaty ratification had little impact on Human Rights. Neumayer's observation is relevant to this study in the sense that Kenya is a member of the United Nations and it has domesticated some human rights treaties, yet her human rights standards are still wanting and the trend of domestication has been slow. Within Human Rights, there is a discourse that centers on universality of Human Rights verses cultural relativism (Wilson, 1997, p. 14). Proponents of cultural relativism who are mostly Third World countries hold that one's culture plays a large role in what one considers to be right and wrong.

They argue that since cultures are different, Human Rights cannot be the same all over the world. Proponents of universality of human rights, who are mostly Western countries, hold that Human Rights cut across the cultural divide due to the fact that all people are humans (Steiner & Alston, 1988). Falk (2002) avers that the Universal Declaration of Human Rights is based on the claim that the safeguarding of the dignity of the individual, individual freedom and democracy are all based on natural rights theory. Wilson (1997) adds that human rights have become a leading force in international law and in order to participate in the international community, one has to recognize the universality of human rights. This explains Western countries policy that

"the allocation of foreign aid should be linked to political reform and respect for basic Human Rights in recipient countries" (Carey, 2007).

Other scholars have also focused on the link between democracy and human rights. Mutua (2002) states that democracy and Human Rights go hand in hand in that the more democratic a country is, the better its range and protection of Human Rights. Is this the case in Africa? Okoth, (1994) argues that most countries in Africa have constitutions with a clause on Bill of Rights, but Human Rights injustices are common and the rule of law is non-existent. He gives an example of Zimbabwe where the president has changed the constitution thus the separation of power is not upheld and that the judiciary does not protect the Bill of Rights. This means human rights standards are questionable.

According to Thomas, Hannah, Julissa and Leland (2009), many African countries are missing on aid from Western countries because Western countries use foreign aid to influence the behaviors of aid recipients regarding Human Rights and economic reforms. Mancheri (2015) argues that this makes most African countries to turn to donors who give foreign assistance without conditions of human rights observance.

1.6.2 Human Rights Frameworks

The International Human Rights Framework

In the decades following World War II, a global consensus developed around the necessity of defining the personal freedoms and rights that every state should uphold as well as the need to put in place systems that would encourage states to uphold their human rights obligations and address grave violations. Thus, in the decade that followed the war, national governments worked together to establish the Organization

of American States (OAS), the Council of Europe (COE), and the United Nations (UN), each of which included the promotion of human rights among its goals.

These intergovernmental organizations then prepared non-binding declarations or binding treaties which spelled out the specific liberties understood to be human rights, including the Universal Declaration of Human Rights[1], American Declaration of the Rights and Duties of Man[2], and the European Convention for the Protection of Human Rights and Fundamental Freedoms[3]. By the end of the 1950s, these three systems (United Nations, Inter-American and European) had each established mechanisms for the promotion and protection of human rights, which included the (former) UN Commission on Human Rights, the Inter-American Commission on Human Rights, the (former) European Commission of Human Rights, and the European Court of Human Rights.

In subsequent decades, each oversaw the drafting of human rights agreements on specific topics and created additional oversight mechanisms, which now include the United Nations treaty bodies and Universal Periodic Review, the Inter-American Court of Human Rights, and the European Committee of Social Rights.

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[1] American Declaration on the Rights and Duties of Man, May 2, 1948, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949).

[2] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS 5; 213 UNTS 221, entered into force Sept. 3, 1953 [hereinafter European Convention on Human Rights].

[3] See, e.g. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212; American Convention on Human Rights, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969); Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force Feb. 28, 1987, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc. 6 rev.1 at 83, 25 I.L.M. 519 (1992); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Oct. 10, 1994, E.T.S. 126, entered into force Feb. 1, 1989.

More recently, other intergovernmental organizations have also established, or begun to establish, regional human rights treaties and monitoring mechanisms. In Africa, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights monitor State compliance with the African Charter on Human and Peoples' Rights[4]. The decline of the Soviet Union spurred the formation of the Organization for Security and Co-operation in Europe (OSCE) which recognized dialogue on human rights, political and military relations, and economic development as being equally important to sustained peace and stability across Europe and the (former) Soviet States[5]. In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has recently created the ASEAN Intergovernmental Commission on Human Rights[6], and the League of Arab States in 2009 created the Arab Human Rights Committee[7]

Additionally, the UN, Inter-American, and African systems select particular experts to keep an eye on the status of human rights in a number of priority areas, such as discrimination and arbitrary detention. These specialists, who are frequently referred to as rapporteurs, carry out their duties by gathering data from the civil society, traveling to other nations, and providing reports on the state of human rights and the ways in which they either violate or adhere to international standards. Similar duties are carried out by the Commissioner for Human Rights of the Council of Europe, however his

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[4] African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, 245; 21 I.L.M. 58, 59 (1982).

[5] Charter of Paris for a New Europe, Paris, 21 November 1990, 2nd Summit of Heads of State or Government, Conference on Security and Co-operation in Europe (CSCE); and Budapest Summit Declaration: Towards a Genuine Partnership for a New Era, Budapest, 21 December 1994, 4th Summit of Heads of State or Government, Conference on Security and Co-operation in Europe (CSCE). For details on origins of the OSCE, see http://www.osce.org/who.

[6] See ASEAN Intergovernmental Commission on Human Rights, Terms of Reference, http://www.asean.org/publications/TOR-of-AICHR.pdf.

[7] Mervat Rishmawi, The Arab Charter on Human Rights and the League of Arab States: An Update, Human Rights L. Rev.10:1 (2010), 169-178.

mandate is not issue-specific[8]. Like reporteurs, the UN High Commissioner for Human Rights independently addresses pressing issues through country visits, discussions with stakeholders, and public remarks while also supporting and coordinating the UN's human rights efforts[9].

Human Rights Bodies' Functions

The many systems for the defense of human rights can be compared as variously sized, overlapping umbrellas spread out around the world. The courts and oversight organizations of the following universal and regional human rights systems make up the various umbrellas:

United Nations

UN Human Rights Council

Human rights treaty bodies

Independent experts known as "special procedures"

Universal Periodic Review

Americas

Inter-American Court of Human Rights

Inter-American Commission on Human Rights

Europe

European Court of Human Rights

European Committee of Social Rights

Council of Europe Commissioner for Human Rights

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[8] Council of Europe, Commissioner for Human Rights, Mandate, http://www.coe.int/t/commissioner/Activities/mandate_en.asp.

[9] Office of the High Commissioner for Human Rights, About Us, Who We Are, http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx.

Middle East & North Africa

    Arab Human Rights Committee

Southeast Asia

    ASEAN Intergovernmental Commission on Human Rights

  Africa

    African Court on Human and Peoples' Rights

    African Commission on Human and Peoples' Rights

These mechanisms may be responsible for handling complaints against states, conducting independent monitoring through visits to and reporting from countries, and examining states' reports on their own adherence to human rights norms.

Other intergovernmental or political organizations, such as the UN Human Rights Council, ASEAN Intergovernmental Commission on Human Rights, and Commission on the Status of Women, also participate in standard-setting, inter-State discussion, monitoring, or advocacy of human rights.

1.6.3 Implementation Trend of Human Rights Frameworks and Aid Relations

Use of indicators

Indicators for promoting and monitoring human rights are important and quickly developing in various contexts and at various levels of public interaction. At the international level, the use of indicators is becoming more widespread, whether it be by human rights treaty bodies, in the universal periodic review (UPR), when determining the impact of aid flows, or when integrating rights-based methods in national policy and budgeting processes. The use of relevant indicators is aiding in the alignment of national human rights action plans with national development objectives, which helps mainstream human rights. More importantly, the use of indicators increases the impact

of human rights advocacy and gives rights holders and defenders more authority. All these endeavours stand to gain from the work on indicators for human rights (https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators).

Indicators, both quantitative and qualitative, are important in these various applications because they help situation analysis become more concrete, help identify and pinpoint problems that need to be fixed and gaps that need to be filled, help articulate or review strategies, help set goals and targets, help monitor progress, and help evaluate, assess impact, and help articulate feedback. The use of relevant indicators ultimately aids in strengthening public policy measures to promote and safeguard human rights by adding value to each of these phases. (https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators) these indicators include;

  i.   Compliance monitoring
  ii.   Performance monitoring
  iii. Human rights advocacy and people empowerment
  iv.   National Human rights action plans and development plans

In the United Kingdom

A human rights measurement framework (HRMF) for England, Scotland, and Wales has been developed by the Equality and Human Rights Commission (EHRC) in collaboration with the Scottish Human Rights Commission (both accredited with "A" status by the Sub-Committee on Accreditation of the International Coordinating Committee). With the use of the framework, the EHRC will be better able to carry out its mission for monitoring and reporting, including to Parliament, and gauge the advancement of human rights (EHRC, 2011).

The project is a spinoff of the equality measurement framework, which suggested a list of statistical indicators to track (in)equality across a variety of human rights-related domains, such as health, education, physical security, and participation, with a focus on the proscribed grounds for discrimination, including age, disability, ethnicity, gender, religion or belief, sexual orientation, transgender identity, and social class (EHRC, 2011).

This demonstrated the necessity of creating a more comprehensive set of human rights indicators and advised using the OHCHR framework on those indicators, particularly the structural and process indicators, which fell outside the purview of the equality measurement framework due to its emphasis on outcomes. This required the use of alternative data sources, such as event-based data gathered and/or processed by human rights organizations and United Nations bodies, in addition to official socioeconomic statistics. It was also advised that statistics be broken down by other vulnerable or marginalized groups, such as the Roma, travelers, homeless people, and inmates. Against this background, the HRMF project worked on adapting the OHCHR framework and the list of illustrative indicators on civil, cultural, economic, political and social rights for use in the United Kingdom. This included extensive consultations with a range of government agencies, human rights and civil society organizations, as well as a dedicated website for online consultation in 2010 (EHRC, 2011).

It included additional rights derived from the international human rights instruments approved by the United Kingdom as well as rights with a clear legal basis for enforcement in domestic law through the Human Rights Act. It includes the right to life, freedom from torture and other cruel or inhumane treatment or punishment, right to liberty and personal security, right to a fair trial, right to a private and family life, right to an adequate standard of living, right to health, and right to education. It gathered

a wide range of data, including the legal, administrative, and public policy framework for defending human rights, as well as case law, issues presented by domestic and international human rights watchdog organizations, and allegations and worries voiced by civil society (EHRC, 2011).

In Kenya

In order to carry out its objective, Kenya's National Commission on Human Rights (KNCHR) has been creating indicators to aid in tracking the country's progress in achieving its citizens' civil, cultural, economic, political, and social rights. The Government mandates that all public entities establish goals and gather performance information.

This is viewed as a chance to include human rights considerations in both the national development plan and the provision of public services. The Kenya National Bureau of Statistics (KNBS), the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA), the Ministry of State for Planning, the Ministry of State for Public Services, and civil society organizations were among the participants in a workshop organized by KNCHR and OHCHR for national human rights stakeholders in 2009. (www.knchr.org/).

Following the training, action items were identified in recognition of the use of indicators in treaty compliance and the implementation of human rights. They included establishing inter-institutional cooperation to create indicators for use in development goals, eliminating discrimination at work, and entrusting KNBS with data gathering (e.g., statistics relevant to the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment). Additional indicators involving non-State actors are required, it was also noted. (www.knchr.org/).

A working group on human rights indicators was established in 2010 and included representatives from the KNCHR, MOJNCCA, the Monitoring and Evaluation Directorate (MED) of the Ministry of Planning, and the Performance Secretariat. The goal was to promote government agency usage of the OHCHR framework for indicators. As the primary facilitator, MED intended to assist other government organizations in thinking through the process of producing indicators for reflection in the country's framework of indicators in order to improve the use of human rights indicators in national planning. Kenya's development plan, Vision 2030, was monitored during implementation using this framework of indicators. The operationalization of the human rights-based approach and indicators in relation to the objectives set forth in the national development plan and human rights policy instruments were the subject of a follow-up workshop. New suggestions for indicators have been offered for the rights to liberty and security of person, sufficient housing, participation in public affairs, and health. The participants advocated the addition of extra indicators to the national framework of indicators, drawing on the OHCHR methodology. To this purpose, MOJNCCA and KNHRC coordinate follow-up efforts. (www.knchr.org/).

1.6.4 Challenges that Affect Human Rights Frameworks

Legal or mandate constraints

Human rights are considered to fall outside of development institutions' statutory duties. The opinions are frequently based on specific readings of the political prohibition clauses in the founding documents of development agencies. They contend that because human rights are fundamentally political, they are not within the purview of such institutions' legitimate considerations and fall outside the scope of their responsibilities. These opinions are occasionally supported by claims that human rights are best handled by more overtly political organizations whose charters clearly include human rights. A

perception of the distinctiveness of duties in a global context and the appropriate allocation of responsibility among international organizations may also support a narrow definition of institutional mandates (McInerney-Lankford, 2009).

Political resistance and value-based objections

Beyond the formal legal requirements or specific definitions of mandates, it is difficult to claim that there is consensus on the subject of human rights. On a global scale, it is also a politically sensitive issue, with states fiercely defending their human rights records and resisting rankings, assessments, and censure. These factors make it common for development organizations and IFIs to consider human rights as a contentious topic that should be approached with caution due to its potential to provoke conflict, including at the level of governing bodies. Members from the North and the South, or donors and partners, may have radically different perspectives, but there may also be differences between donors and partners. Some oppose the modern, expanded concept of human rights (possibly favouring particular domestic definitions or regional understandings, or an emphasis on one or other category of right). Others resent being told what to do regarding human rights through lending mechanisms or development assistance in general, and many object to what they see as hypocrisy and double standards when the directives come from nations with economic clout instead of exceptional human rights records (McInerney-Lankford, 2009). It is also important to recognize the disproportionate effects human rights-related conditions may have on some member countries. To be specific, some countries may be able to resist such human rights oversight by refusing to borrow from institutions that take into account or impose human rights standards, while others, typically the weakest and most powerless, may not have that option.

Disciplines and approaches

Divergent discourses regulate the practice and policy that have developed around development and human rights, at least in part because distinct disciplines and approaches predominate in each (Seymour and Pincus, 2008). Therefore, there is a perceived mismatch between each approach and language at some fundamental level, making cohesiveness between them very difficult. While the human rights framework is based on legal norms and procedures, which have been largely established and interpreted by lawyers, development has generally been the domain of economists, social scientists, and sectoral or technical experts. Human rights organizations typically function from normative premises, whereas development institutions frequently rely on evidence-based strategies. These may be difficult to reconcile, much as the "empirical" justification for upholding and safeguarding human rights may be challenging to establish, and what empirical evidence there is may be ambiguous or in favor of much more limited connections (Isham et al., 1997). As a result, various discourses based on various disciplines, traditions, and institutional cultures have emerged, none of which are obviously related. As a result, development practitioners may tackle problems in a programmatic, forward-looking manner that is based on real-world solutions, trade-offs, and the provision of technical support, whether at the level of a nation, a business sector, or a specific project. Practitioners of human rights probably begin from a more overtly normative framework that is guided by ideas like universality and indivisibility. They possibly adopt a retrospective outlook, from which responsibility for non-realization of human rights may be assigned and where poverty is viewed as a denial, or even violation of human rights.

Institutional arrangements

Sometimes institutional arrangements or governmental institutions reflect divisions in disciplines and perspectives. Human rights and development cooperation may be overseen by distinct teams inside foreign affairs ministry, or development cooperation may be handled entirely by different aid organizations. This may be seen in the field by individual donors who have their embassies conduct human rights and policy engagement and their development initiatives by their development agency. Similar to how contact with international human rights organizations can be handled separately from participation in IFIs, multilaterals, and development efforts (McInerney-Lankford, 2009). This is evident even within the United Nations, where issues relating to treaties that pertain to human rights are distinct from those that pertain to the Millennium Development Goals (MDGs) or the right to development, or where the UN General Assembly's second and third standing committees deal with human rights and sustainable development, respectively. Human rights may be acknowledged inside development institutions as a matter of cross-cutting importance, but it may not have a specific institutional home and staff members assigned to it.

1.6.5 Theoretical framework

Although there are many contending theories of international relations, this study was anchored upon two thematic theories. These are the interest theory and idealism theory of international relations, to give an analysis of the diplomatic relations between the two nations (Kenya and Britain).

1.6.5.1 Interest theory

The study used the human-rights interest theory initiated by Jeremy Bentham (1748-1832). Interest theorists posit that the function of a right is to further the interest of a right holder, Heikkinen (2020). The owner has a right not by choice but because the

ownership of the right makes the owners better off. One having a right to something means it is in their interest or benefit and someone else has the duty to provide the right. Someone therefore violates the other person's right by not doing their duty to provide the thing that is in one's interest. Recent proponents of the theory such as Joseph Raz (1984) think it is a basic moral duty to show respect for other persons' essential interests such as life and liberty, act as basis for moral rights. The problem with the theory is that it has limiting and third-party interests. In limiting interests, specifying sufficient reasons for a set rights and interests is almost impossible. Third party interests for example in a case where UK promises to take care of a Kenyans interests, UK has a duty and Kenya has an interest in UK doing the duty, so interest theory says Kenyans have a right to the care by UK. But only Kenya has the right. This study will examine whether existence of human rights frameworks and the role of aid providers to support beneficiaries to anchor right owners in furthering their interests for beneficiaries own good.

1.6.5.2 Idealism theory

Idealism theory which is a specific school of liberalism theory emphasizes on need to strive moral goals and ethical actions by states in international arena, Kaymaz (2018). John Locke is regarded as the father of modern liberalism. Enlightenment philosophers are however considered for shaping liberal ideas on political and moral philosophy based on liberty. There is also consent from the governed and equality before law. Idealists' belief is that behaviour that is considered immoral at an interpersonal level is also immoral at international and foreign policy level. Idealists therefore argue that actions of dishonesty, violence and trickery should be avoided. Some of the weaknesses in this theory include lack of full acknowledgement to the role of power in shaping international order. Another weakness is the weak workings of democracy and

inequalities in terms of dependencies that come with free market where the West is no longer supreme. This study will strive to find out whether moral goals and ethical actions are considered in aid relations between UK and Kenya. It will examine whether vulnerabilities in terms of acts of dishonesty, violence and trickery are involved between the two countries with opportunistic exploitation of the vulnerabilities in the light of human rights frameworks and aid relations.

1.7 Conceptual Framework

INDEPENDENT VARIABLES	DEPENDENT VARIABLES
Human rights frameworks	-Aid relations
	-Self-advocacy by right owners for better life

INTERVENING VARIABLES
-Right owner's interests
-Moral and ethical goals of states
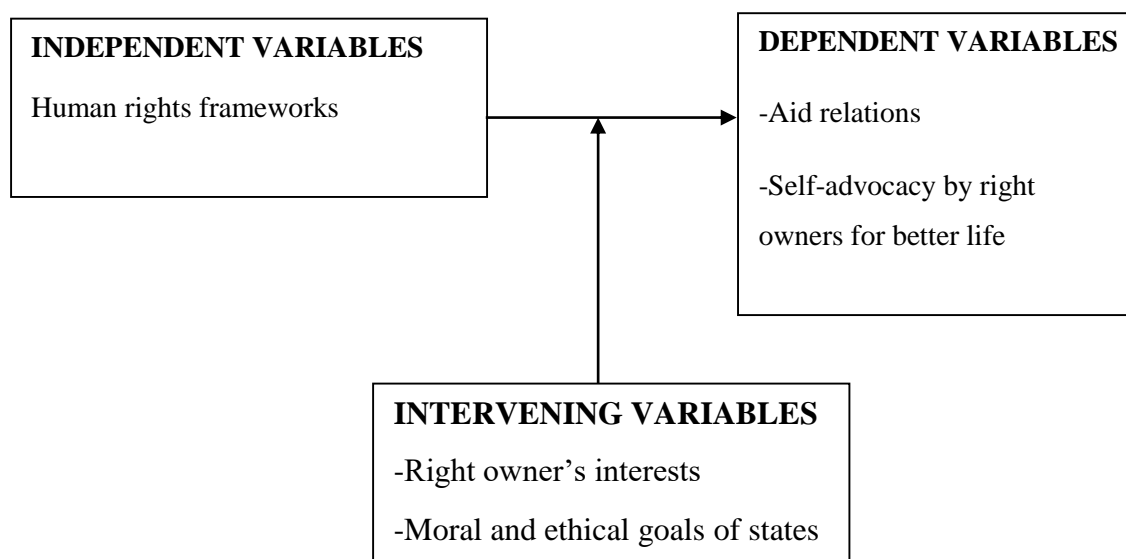
Fig. 1.1: Conceptual Framework

The study's independent variable is the various human rights frameworks that exist between Kenya and UK as aid recipients and donors respectively. How the human rights frameworks are implemented will be dependent on the current aid relations between the two countries in terms of rights advocacy from both countries. For the rights frameworks to effectively work, intervening variables such as right owners' interest as in the interest theory and upholding moral as well as ethical goals of both states is key.

1.8 Research Methodology

This section describes the methodology that were used in the study. The research design, research site, target population, sampling methodology, sample size, research tools, validity and reliability, data collecting, data analysis procedure, and ethical issues encountered during the study period were all covered in this chapter. Explanatory case study research, according to Mitchell and Bernaeur (2004), is a study that aims to determine "what caused this to happen." This is relevant to the purpose of this research, which was to determine the importance of human rights in shaping foreign aid relations (the case of UK and Kenya).

1.8.1 Research Design

The study used descriptive research designs to generate quantitative and qualitative data. Bickman et al. (1998) suggest that descriptive research can answer questions such as 'what is' or 'what was.' The study adopted a descriptive research design that is qualitative in nature. Data was collected through desk reviews using academic databases such as Google Scholar which was freely available. A request to the library institution on access to any subscribed databases for research literature was done. Authors of information relevant to the study were reached out via email where full documents were not accessible without payment.

1.8.2 Sampling Design

The study adopted a purposive sampling technique. Key and well-established journals related to foreign aid and donor relations field were be targeted for reading in academic databases. The review also focused on in depth information about Kenya and UK aid relations in light of human rights frameworks. Therefore, respondents were selected using purposive sampling. Mugenda and Mugenda (2003) define purposive sampling is a sampling approach that allows a researcher to select examples that contain the

information needed to achieve the study's goal. These respondents were selected based on the office or position they held or are holding at present and also through recommendation of others in the field. These included officials from the Ministry of Foreign Affairs, officials from the human rights commissions, academicians and political analysts.

1.8.3 Data Collection Procedure

The study engaged both Secondary and Primary sources of data. The researcher collected primary data through informant interviews and secondary data through library research. Documents such as books, journals, reports and institutional documents were sought for data related to the study objectives. It involved re-analysing, interpreting and reviewing past data and grouping it according to the study objectives. The study focused on literature with human right and aid related relations between Kenya and UK and compared it with other empirical literature.

1.8.3.1 Secondary Sources

These sources reflect the knowledge of those who might not have evidence of the actual events. This was vital in determining the gaps in knowledge and formed a useful building block for this study. The study relied on books, journals, institutional documents, reports, internet sources, public records, historical documents and newspapers. I sought these data from the Postmodern Library at Kenyatta University, the Catholic University Library, Hekima Institute of Peace and International Studies Library, Kenya National Archives, Human Rights Commissions reports and relevant records from the Ministry of Foreign Affairs.

1.8.3.2 Primary Sources

Primary sources are original documents and those sources that have not gone through the process of interpretation. The researcher accessed this information directly from those who witnessed an event or have first-hand knowledge of it. Mugenda and Mugenda (2003) classified primary sources into written and oral sources. Written primary sources that were used in this study consisted of public documents such as government bills, government declarations, political party bills, publications issued by the foreign ministry, UK high commission, human rights commissions and formal treaties between Kenya and Britain. Given the special nature of foreign policy and the fact that it is often made through words, the study also analysed public statements made by members of cabinet and politicians. This included public speeches, debates, articles published in newspapers, statements made during press conference and interviews given to the media. The second form of primary sources is oral. Oral sources were used in this study to compliment written sources. The study sourced this information through key informant interviews. The interviews were conducted according to the position, knowledge and professional background of the respondents. First, officials from the Ministry of Foreign Affairs were interviewed. This ministry was selected based on the role it plays in foreign policy making and implementation. Second, the researcher interviewed officials of the Kenya National Commission on Human Rights (KNCHR) to get relevant information on Kenya's human rights standards. KNCHR is mandated to investigate, provide redress for human rights violations, research and monitor the compliance of human rights norms and standards in Kenya. Lastly, experts in foreign policy issues were also interviewed.

1.8.4 Research Instruments

Warwick and Linger (1975) states that researchers should settle on instruments, which provide high accuracy, generalized and explanatory power with low cost, rapid speed and a minimum of management demands. The field of international relations focuses primarily on states rather than individuals. Thus, international relations cannot be studied systematically using field experimental methods (Hyde, 2007). In this study interview schedules were used as the main instrument for data collection. An interview schedule guides a researcher to obtain data required to meet specific objectives of the study and to standardize the interview situation so that interviewers can ask the same questions in the same manner. The study used open ended questions so as to get greater depth of the response. In order to inspire openness on behalf of the respondents, the research did not work with a tape recorder but instead took notes as the interview progressed so that information was not left out owing to forgetfulness or omission.

1.8.5 Data Analysis

The study culminated in analysis of the collected raw data. Since the data collected was qualitative, shortly after each interview the researcher would go over the notes taken during the interview and make a transcript. The reason for making a transcript was to exclude the possibility of making long quotations and keep track of its validity and ease analysis. So as to reduce information to a more limited set of attributes, content analysis was done. The research findings were presented in narrative form. The method was useful in summarizing and organizing data to make meaning and observe foreign aid trends. The authenticity of the data collected was attained through historical criticism, evaluation and comparison of the collected information with the existing one.

1.8.6 Data Management and Ethical Considerations

Before the start of data collection, the researcher obtained the permit to carry out the research. The respondents were chosen on voluntary consent where the respondents were willing to participate in the research. The respondents were protected by keeping the information confidential and their identity concealed using numbers. For the case of written documents used in this study, plagiarism has been avoided. The findings of this research will be published and copies availed to the ministry of education, foreign affairs and trade for access by interested persons.

CHAPTER TWO

BASIC CONCEPTS OF HUMAN RIGHTS

2.1 Fundamental Human Rights Concepts

Human rights are universal, indivisible, inalienable and interdependent. They are universal because everyone is born with and possesses the same rights regardless of their background, nationality, place of living or status; indivisible because all rights are equally important and cannot be separated from each other; inalienable because all human rights are non-derogable and cannot be removed by any political order; and interdependent because rights – political, civil, social, cultural and economic – are connected and none can be fully enjoyed without the others (Donnelly, J., & Whelan, 2017)

2.1.1 Universality

The main distinction between most parts of rights and human rights is that while "regular" rights apply subject to place and time, human rights apply at all times to every human being across the globe. This has been affirmed by Article 1 of the Universal Declaration of Human Rights (UDHR), which states that "*All human beings are born free and equal in dignity and rights.*" The universality of human rights is a principle proclaimed to ensure and reinforce the weight to be placed on these rights (Donnelly, J., & Whelan, 2017).

However, this idea is not without criticism, and one of the most common arguments leveled against it is cultural relativism, which claims that universal human rights are neo-imperialistic and culturally hegemonic (Donnelly, J., & Whelan, 2017). The UDHR was drafted before the end of the decolonization process, at a time where numerous developing nations transposed the standards set out in the Declaration in their domestic legislation due to western influence. The content of the rights protected as

human rights are strongly influenced by the Western point of view and thus, cannot fit in societies where the cultural values are different, such as Asian societies, as some scholars have argued. Nevertheless, after the Second World War, it was often countries particularly from the Global South that came out of a period of colonialization that called for international human rights which would bind all states and many developing countries were in fact involved in the birth of these rights (Nay, 2014).

Some parties still argue that cultural diversity challenges the very notion of universality. In its 1991 White Paper, China stated that "*owing to tremendous differences in historical background, social system, cultural traditions and economic development, countries differ in their understanding and practice of human rights*". Consequently, cultural relativists state that current human rights principles are the product of the Western liberal tradition and do not encompass notions of wrong and right specific to other cultures, therein making its claim to universality untenable (Nay, 2014). Indeed, human rights precisely pertain to values that may vary across different cultures. One argument sceptics have presented is how the importance of the community in Asian culture is incompatible with the primacy of the individual, upon which the Western notion of human rights rests.

These arguments, on the other hand, tend to emanate from governments rather than civil society, and one must be wary of their strategic intent. Individual members of communities or civil-society organizations all around the world frequently agree with most human rights because they protect them on a personal basis. Despite a debate on cultural relativism, it is hard to argue that many of the most basic rights such as the right to not be arbitrarily deprived of your life, the right to a fair trial, the right not to be arbitrarily detained, the right to food and safe water – just to name a few – are not shared globally (Nay, 2014).

Human rights are universal, which means that while states are responsible for implementing and enforcing them, they are not the source of human rights. Human rights are internationally recognized, but their execution is contingent on the good will of national governments, which frequently assert that their traditions and cultures conflict with human rights concepts. Asian Values, a 1990s philosophy, is an excellent example of this phenomenon, since it has been used by leaders to challenge what they see as the Western understanding of human rights and to justify their actions (Roesdahl, M., &Varughese, 2017). For example, the Foreign Minister of Singapore stated, during the 1993 World Conference on Human Rights, that "*universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity.*" J. Chan similarly argues that the Bangkok Declaration adopted by Asian governments in April 1993 stakes out a distinctively Asian point of view on issues of human rights by reaffirming the notion of universal human rights and their importance while insisting that "*they are interpreted in the context of historical, cultural and religious peculiarities*".

All that being said, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, states that "*it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights.*" In addition, in 2001 the UNESCO adopted the Universal Declaration on Cultural Diversity which states that *"no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.*" Beyond that, scholars have argued that the "Asian challenge" to the idea of universal human rights has been dramatized as a historic confrontation with the West and is a misconceived crude dichotomy. Yet while there seems to be a consensus that acts such as torture, slavery and genocide are unacceptable violations of basic human

rights, in other areas, the question remains of who has the authority to decide what political practices should be adopted by societies of different cultures and socioeconomic conditions.

2.1.2 Inalienability

To say that human rights are inalienable means that every human being has human rights, independently of his or her knowledge of it and that it is impossible for an individual to lose his/her human rights for any reason whatsoever. It thus follows that, theoretically, whether an individual possesses human rights does not depend on State recognition of those rights. Thus, what makes human rights inalienable is the fact that nobody should be deprived from his or her human rights and that it does not depend on any domestic authority to recognize them. Even people who have committed atrocities still have human rights. However, even if this is the case, it is still disputed whether one truly is in possession of human rights if supposed human rights are so often and blatantly violated, or if there is no formal or legal recognition of such rights. The deliberative school of thought around human rights conceives of human rights as "*political values that liberal societies choose to adopt, for instance, through agreement to the UDHR and ratification of various international human rights treaties*" (Dembour, 2010). It is thus argued that human rights exist insofar as they are agreed upon and codified by international and domestic law.

However, whether human rights are inalienable has been a source of debate. For one, Rathore & Cistelecan (2012) have considered the multiplicity of ways in which one might be considered "unhuman". Hannah Arendt has also offered her perspective on the inalienability of human rights against the backdrop of the Holocaust. She concluded that the only actual right was the right to have rights, citing refugees' lack of practical access to rights as a result of their statelessness. Given the current issues of

displacement and statelessness, some have argued that it is critical to move beyond the inalienable principle and recognize that rights are ultimately inextricably linked to citizenship and statehood.

2.1.3 Indivisibility

Human rights are indivisible and represent a coherent and homogeneous whole that is necessary for every human being. It is not for the State to decide which category of rights it decides to guarantee. Human rights reinforce each other – as an illustration, it is hard to imagine an effective right to life without a right to water for example.

It was originally intended that one treaty, rather than two, would give legal force to the 1948 UDHR. During the Cold War, however, the worldwide ideological difference between the West and the Soviet Union weakened this indivisibility by allowing for two covenants that separated civil and political rights (CPRs) from economic, social, and cultural rights (ESCRs) (ESCRs). While Western countries concentrated solely on the first and ignored the second, the Soviet bloc took the opposite stance. China and Russia, in particular, contended that ESCRs are on par with CPRs. These counties have been chastised for violating CPRs but have been less likely to violate ESCRs. The ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) was slower than for the International Covenant on Civil and Political Rights (ICCPR) and nowadays, it still happens that some States are only parties to one of the covenants. For example, Myanmar ratified the ICESCR in 2017 but, while the Human Rights Council recommended that it ratify the ICCPR in its Universal Periodic Review in 2015, Myanmar is still not a party to one of the main human rights instruments.

Some, however, have questioned whether human rights are actually indivisible. Whelan (2010), for example, claims that the rhetoric of indivisibility is routinely utilized to achieve political goals but has little to do with supporting individual rights.

2.1.4 Equality and non-discrimination

One of the core obligations under human rights law is the principle of non-discrimination which stems from the universal nature of these rights. While no express definition is given of the concept of discrimination in the common Art. 1 of the two covenants of 1966, the Human Rights Committee has stated that discrimination should be understood to imply "*any discrimination, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*". The prohibition of such behaviour is repeatedly included in most, if not all, human rights instruments. In addition to the two covenants of 1966 (Art. 2), the Convention on the Rights of the Child as well as the Convention on the Rights of Persons with Disabilities prohibit discrimination as well.

However, it is worth noting that the ICCPR authorises state parties, on certain strictly specified conditions, to derogate from international legal obligations under it (with regards to the principle of non-discrimination). Under Art. 14(1) of the ICCPR, the derogatory measures must not involve "*discrimination solely on the ground of race, colour, sex, language, religion or social origin*". Thus, the provision does not include the following grounds contained in Art. 2(1) and 26 of the ICCPR – political or other opinion, national origin, property and birth or other status. With regard to the word "solely", the UK (which had submitted the draft proposal") considered that it had a

certain importance since "it might easily happen that during an emergency a State would impose restrictions on a certain national group which at the same time happened to be a racial group" and "that word would make it impossible for the group to claim that it had been persecuted solely on racial grounds".

It is now widely accepted that states cannot attain de facto equality without interference, which refers to a state of equal chances and objective equality in results. Indeed, discrimination exists not only when an authority makes a distinction between two people, but it also exists in the culture in which one lives. To attain de facto equality, the principle of positive discrimination necessitates affirmative action. The concept of non-discrimination has evolved from equality before the law, which necessitates repealing discriminatory legislation, to equality in the facts, which necessitates constructive affirmative action to attain true equality of opportunity. Such actions can be public policies in the field of education, employment. Nowadays, electoral quotas are also widely use to assure the representation of a certain group. However, the assumption that such affirmative action achieves de facto equality should be questioned. While many countries allow the practice of positive discrimination, it remains illegal in the UK under the Equality Act 2010, on the grounds that the process does not accord equal treatment to all races. Positive discrimination can also have negative consequences; critics say that affirmative measures that treat various racial groups differently would cement racial animosity.

The concepts of equality and non-discrimination have been the subject of several academic debates. For example, feminist international law professor Hilary Charlesworth claims that in practice, a hierarchy between different types of discrimination has emerged in international law, with racial discrimination being regarded as more serious than discrimination based on other grounds such as gender.

2.2 Classification of Human Rights

2.2.1 Generations of rights

This classification was introduced by Karel Vasak, who was the First Secretary-General of the International Institute of Human Rights in Strasbourg, in 1979. The three generations are supposed to follow the three principles of the French Revolution "*Liberté, Egalité, Fraternité*".

The first generation is composed of the civil and political rights, which have been recognized at the end of the 18[th]century at a time when political regimes compatible with political liberties were emerging in Europe. There are two subcategories of civil-political rights: (i) physical and civil security; and (ii) individual liberties. These rights are "negative" in nature, which means that to implement them, the government simply has to refrain from infringing upon them. Many of the rights in this generation are based on the US Bill of Rights and the French Declaration of Rights of Man and of the Citizen. Additionally, the International Covenant on Civil and Political Rights outlines the global framework for this type of human right.

The second generation The International Covenant for Economic, Social, and Cultural Rights enshrines the second generation, which incorporates economic, social, and cultural rights. These rights are frequently required for the implementation of the former, despite the fact that they were not formally acknowledged in national declarations in the 18th century. As an example, such rights were enshrined in the Mexican Constitution of 1917. Economic, social, and cultural rights are socialist notions that represent a deterioration in liberal thinking. It is a new role for a more interventionist government. These rights, unlike first generation rights, are "positive" and require institutional support from the state - for example, the state must intervene

through legislation to build an institutional system that facilitates exercise of the right to education.

The third generation corresponds to solidarity rights, which are group or collective rights such as the right to peace, development for example. Implementation does not only depend on the relation between the State and the individual, but also the totality of the actors in the society. Consequently, as these rights often do not carry official legal status and are soft law, there is a need for both national governments and the international community to recognize them. There are two subtypes of solidarity rights: (i) self-determination, and (ii) special rights of ethnic and religious minorities. Most recently, these rights may include the right to natural resources and a healthy environment.

In addition, some argue that a **fourth generation** is now appearing which regroups the rights of the future generations and the rights related to genetic engineering. Indeed, the progress of science and communication technologies has consequences on human rights and some international documents already acknowledge that phenomenon. This is notable the case in Europe with the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. In addition, the 2030 Agenda for Sustainable Development reminds us, "*the spread of information and communications technology and global interconnectedness has great potential to accelerate human progress.*" Studying the human genome, genetic manipulation, in vitro fertilisation, experiences with human embryos, euthanasia and eugenics are activities that can generate complicated legal issues, ethical, moral and even religious reason for which public opinion has led states to deal with the regulation of these issues.

While this categorisation can be seen today, such as in the Charter of Fundamental Rights of the European Union, the UDHR does not follow these categories. Indeed, this classification by generations of rights is not free from flaws. First, from a historical point of view, some of the rights of later generations were recognized at the same time, if not before some of the first categories. Vasak did not give any justifications or a specific timeline to put the generational notion into context. While he originally utilized a 30-year period beginning with the Universal Declaration of 1948 and ending with the two Covenants in 1966, he later amended the theory by tying the three generations to the concepts of the French Revolution, bringing it back 150 years. Second, it challenges the idea of human rights indivisibility by implying that the first generation of rights, civil and political rights, might exist without the other generations. To this aim, it has been emphasized that in order to attain balance and coherency in human rights, equal attention must be placed on all three categories of rights. civiThird, the theory's promotion of the hierarchy of human experience – placing French and American historical experiences as defining features of a transnational story – may be problematic in being overly Western-centric.

2.2.2 Civil and political rights vs economic, social and cultural rights

Human rights are usually divided into two groups: civil and political rights and economic, social, and cultural rights. They can all be subdivided. The passage of two different covenants in 1966 supports this categorisation.

Civil and political rights: These rights are said to be "classic", and are known as "liberty oriented human rights" because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. The right to life, the right to be free of torture, the right to a fair trial, the right to freedom of assembly and association, the right to liberty and security, and the right to be free of discrimination

are among them. Civil and political rights are meant to be enforced quickly and precisely, making it easier for judges to interpret them. They are liberal in outlook. These rights rose to prominence in the 18th and 19th centuries, when the struggle for freedom from authoritarian oppression and the accompanying rights of free expression, association, and religion, as well as the right to vote, were at the forefront. Civil rights were particularly connected with the civil rights movement in the United States throughout the 1960s, as well as the US Bill of Rights. By the end of the twentieth century, they had gained global recognition and enshrined essential principles of human dignity and respect for individuals and communities in their many cultures and traditions. While this category of rights was originally thought to only necessitate a negative response from the state, more recent ideas of political rights hold that every person should have the right and opportunity to participate in the conduct of public affairs without unjustifiable constraints. As a result, such rights presuppose that the government deliberately constructs its systems to allow all qualified individuals to participate in politics.

Economic, social and cultural rights: These rights were developed in the aftermath of World War II against the background of growing inequalities and the changed view of the state's role in an industrialising world. Unlike civil and political rights, economic, social and cultural rights typically require more economic resources and positive actions from the State, and have thus been referred to as "rights-debts". They are known as "security oriented human rights" because these rights jointly provide and guarantee the essential security in the life of an individual. They include the right to a decent level of living, an acceptable standard of education, a healthy environment, and social security. The 'progressive realisation' is one of its distinguishing qualities. The International Covenant on Economic, Social and Cultural Rights, for example,

recognizes that such rights are not all immediately enforceable. States are required to take reasonable measures, based on their available resources, to ensure that the ECS rights are fully realized. Economic, social, and cultural rights have been challenged as "vague," difficult to monitor properly, and consequently not judicially enforceable because no gauge exists to determine whether a state has accomplished its commitments. Most sovereign governments, on the other hand, have ESCR established in their constitutions, and there are numerous examples of courts upholding these rights under domestic and international law. The UNDP's human development index and gender-related indices, UNICEF's rate of progress assessments, and the World Bank's World Development Reports are examples of metrics developed by international development agencies to "measure" the extent to which states have accomplished these objectives (Roesdahl, M., &Varughese, 2017).

Evaluation: There has been a deep and longstanding disagreement over the status of and relationship between the two sets of rights. From one extreme to the other, the views stretch from ESCRs being superior to civil and political rights to ESCRs not constituting rights at all. Some argue that the implementation and recognition of ESCRs in domestic legislation have a tendency of being neglected of civil and political rights, and this can be attributed to the different nature of the two sets of rights – ESCRs presupposes a proactive state that attends to citizens' needs whilst civil and political rights revolve around limiting the state's interference in citizens' lives.

2.3 Sources and Basic Principles of Public International Law

International human rights law is part of the broader public international legal order. Thus, to better grasp its complexities and nuances, it is necessary to first understand the basic principles of the international legal order at large.

2.3.1 State sovereignty

In 1648, the Peace of Westphalia marked the starting point of 'the modern system of sovereign states, in which states recognized their equal sovereignty. In the aftermath of the two world wars, the United Nations Charter strengthened the existing international system based on the sovereign equality of the states so as to protect states from unwanted violent intervention from antagonistic external forces, and by extension, protect the human rights of citizens (Art. 2). The concept of state sovereignty has both an internal and external element – while it gives individual states complete control over their territory, it also restricts the influence that states have on one another. Theoretically, this means that states would be able to do as they wished within their territory.

However, the international legal order limits this ability by putting some limit on this internal sovereignty. While it is true in any branch of international law, this is especially relevant to the field of human rights. For one, the international security and human rights norm of "Responsibility to Protect" mandates the international community to intervene to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity. This global political commitment was endorsed by all member states of the UN at the 2005 World Summit.

In domestic law, signing a contract binds the parties; in international law, ratifying a treaty similarly binds countries. The ideas of pacta sunt servanda and good faith are codified in the Vienna Convention on the Law of Treaties, which declares that "any treaty in force is binding on the parties to it and must be performed by them in good faith." As a result, human rights law was created to protect individuals against the state. As a result, state sovereignty is transitioning from an absolute concept of unrestricted

freedom and independence to a relative definition in which states' freedom and independence are constrained by international law.

2.3.2 Sources of international law

Article 38(1) of the Statute of the International Court of Justice lists the different sources of international law the Court can decide to apply. These are:

  i. *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*

  ii. *international custom, as evidence of a general practice accepted as law;*

  iii. *the general principles of law recognized by civilized nations;*

  iv. *subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

The above, however, does not provided for a complete list of sources of international law the ICJ may use, and in effect, has used in its jurisprudence. In addition to the sources listed, other sources exist, such as binding decisions of international organisations and unilateral acts.

2.3.2.1 Treaties

International law is primarily based on treaties. A treaty is defined as "a written international agreement between States controlled by international law, whether represented in a single instrument or in two or more linked instruments, and whatever its precise nomenclature." The Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, which was drafted by the International Law Commission, contains the majority of international law governing treaty formation and compliance. The Law of Treaties sets out the basics rules regarding the capacity to conclude treaties, how treaties should be

interpreted, the resolution of disputes pursuant to treaties and other basic principles including the fundamental rule of *pacta sunt servanda*. According to this adage, agreements rightfully concluded must be honoured. The only limit to *pacta sunt servanda* are the peremptory norms of general international law, called *jus cogens*, a fundamental principle of international law accepted by the international community as a norm from which no derogation is permitted.

A state's decision to sign a treaty emanates from its own free will, thus in doing so, it therein expresses its consent to be bound by its provisions and perform obligations pursuant to said treaty in good faith. However, a particularity of the law of treaties lies in the possibility for states to modify their legal obligations through the mechanism of reservations. According to the Vienna Convention, a reservation is 'a unilateral statement made by a State when signing, ratifying, accepting, approving, or acceding to a treaty, in which it undertakes to exclude or change the legal effect of certain treaty articles in their application to that State, however expressed or designated.' A state can limit the scope of application of particular treaty terms by making a reservation. However, there are significant limitations to this procedure, and a reservation can only be made if it is compatible with the treaty's aims and purposes. If the treaty in question establishes a body, the latter would make this decision.

The reason for this exception to the binding nature of a treaty is purely realistic. The drafting process of a treaty implicates a multitude of actors and disagreements are common; however, to be bound by a treaty, a state needs to express its full consent. As a result of constraints within their domestic law, states often accept obligation in terms of a treaty only insofar as their municipal law allows them to do so. International law thus allows for such reservations in order to enhance the total numbers of signatories and to broaden the geographical scope of application of a treaty. However, this

reservation mechanism has provoked questions on whether efforts to promote respect for and observance of human rights have, to a certain extent, been frustrated by the widespread practice amongst individual states of signing and ratifying international instruments dealing with the protection of human rights while at the same time entering reservations excluding the applicability of specific provisions to their own situations. As a result, critics believe that this technique significantly reduces a treaty's effectiveness and impact.

Some treaties, notably in the sphere of human rights, contain a derogation mechanism that allows parties to suspend their duties in extraordinary situations and for a limited length of time. This tool, like reservations, allows governments to adjust their total level of international commitment. Escape provisions, by allowing nations to temporarily break from treaty rules in the event of an emergency, attract more states to ratify a treaty than would do so without them. Escape provisions, on the other hand, might weaken international agreements by allowing deviant behavior just when treaty compliance is most needed.

At the same time, it should be noted that treaties can also bind non-signatories. Treaties that have been signed by a large majority of states may be viewed of as having such importance as to be universal in effect, so that the minority of non-signatory states are bound. More often, the treaty is universalized by more indirect means. The "objective effect" concept, for example, declares certain treaties to be legitimate erga omnes. It is never made clear which quality causes this impact, or which organ determines whether that quality is there; yet, the result is plainly to assume states' consent (Bodansky & Watson, 1992).

2.3.2.2 Custom

Defined in the Statute of the ICJ as being 'a general practice accepted as law', customary international law is recognized as a source of international law and as such, produces binding obligations on states. While treaty law only applies to those that expressly manifested their consent through ratifying a document, customary international law is binding upon all states. The development of customary international law reflects the characteristics of the international community understood as a legal community. It has the advantage that all states may share in the formulation of new rules and that customary international law can be modified, changed or amended through this international community more easily than is possible for treaty law (Wolfrum, 2011).

Customary international law is made up of two key components that work together. There must be widespread practice among many of the most relevant states, and states must follow the rule not just because it is convenient, but because they feel it is a legally enforceable standard. Usus and opinion juris are the terms for these.

- *Usus* (State practice): There must be a consistent behaviour of states manifested through their actions and statements. This is an objective criterion.
- *Opinion Juris* (Belief in the legal nature of the practice): States must believe that their actions have a legal basis by opposition to a policy. This is a subjective criterion.

While there is no hierarchy between treaty law and customary international law, some norms, which can be the result of either of these sources, are recognized a higher status. Those are known as peremptory norms of general international law or *jus cogens*. The only international treaty to recognize it is the Vienna Convention on the Law of Treaties which defines it as 'a norm accepted and recognized by the international community of

States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'. The principle has not only been acknowledged in the VCLT, but the ICJ as well – the court implied its existence when it referred to obligations *erga omnes* in the 1970 *Barcelona Traction Case*. The ICJ spoke of "obligations of a State towards the international community as whole' which were 'the concern of all States' and for whose protection all States could be held to have a 'legal interest'. Since 1970, the ICJ has also implicitly recognized the existence of jus cogens in several cases. It has stated that the question of whether a norm is part of the jus cogens relates to the legal character of the norm (*Legality of the threat or use of nuclear weapons* [Advisory Opinion] [258]; *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia).

Two main issues arise from that notion of *jus cogens*. First, who exactly is authorised recognize a norm as being peremptory and how; and second, what legal consequences arise from recognising such status. On the former question, it took a while before the International Court of Justice recognized the peremptory nature of norms in international law and even to date only a few have been acknowledged as being *jus cogens* as it is the case for the prohibition of torture. The International Law Commission's Draft Articles on the Law of the Treaties provides greater guidance in this respect. The commentary on Art. 50 mentions as examples a treaty contemplating the use of force contrary to the principles of the UN Charter, a treaty contemplating the performance of any other act criminal under international law, and a treaty contemplating or conniving at the commission of acts such as trade in slaves, piracy, or genocide, in the suppression of which every State is called upon to co-operate. These prohibitions have similarly been listed in the Draft Articles on State Responsibility (2001), in addition to prohibition against discrimination and apartheid. Once a norm is

recognized as having such status, the question of the legal consequences from breaching said norm arises. To date, the only clear and agreed upon obligation for a state is to not conclude any treaty against such norm. According to Art. 53 of the VCLT, a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

2.3.2.3 Soft law

Lord McNair coined the term "soft law" to describe "instruments with extra-legal binding effect". More generally, soft law is used in legal literature to describe principles, rules and standards governing international relations that are not considered to stem from one of the sources of international law enumerated in Art. 38(1) of the ICJ Statute. These extra- or paralegal norms are of particular importance in international relations especially as international law does not recognise a common superior legislature or central, compulsory jurisdiction, thus international actors often resort to using norms that underpin the legal principles and rules constituting the core of international order without being law themselves (Thurer, 2009). There are two major categories of soft law: resolutions (i.e., recommendations or decisions) of international organisations and non-binding inter-state agreements.

However, the soft law phenomenon has faced certain fundamental challenges. For one, it seems to suggest that in international relations, no precise distinction can be drawn between norms of a legal and non-legal character. This questions the established dichotomy between law and non-law and could lead to the denial of the very existence of international law as a set of rules in international relations. Furthermore, soft law has been criticised for its non-binding character, which does not have as much force as treaties and customary international law does in obliging states to perform certain obligations. However, soft law has also been welcomed precisely because of its non-

binding character. The UDHR, for instance, was drafted by the UN General Assembly as a recommendation, and its adoption would not have taken place if it had been in the form of a legally binding treaty given the multiple the objections and abstentions it faced.

2.3.2.4 General principles of law

Although often very general and abstract, the general principles of international law remain necessary to maintain and restore international peace and security, as well as to fill gaps present in the sources of international law when necessary. As for *jus cogens*, the general principles of law have long been, and are still, the object of doctrinal debates. Most scholars consider that such principles derivate from domestic legal systems and consist of shared principles at the national level. Most fundamentally, the principle of *jus cogens* recognises that the goal of preserving peace and protecting individuals presupposes the existence of some basic values.

2.3.2.5 Judicial decisions and teachings of international law

As a general matter, judicial decisions by the ICJ are not binding on states that are not party to the dispute (Art. 59 of the Statute of the International Court of Justice). However, they are particularly useful in interpreting treaty law and customary international law, establishing the evidence of a state practice and gaining insights on principles recognised by the court. While the decisions of the ICJ are only binding between the parties (and not to the entire community of states), the Court often refers to its own case law and it is common for international jurisdictions to refers to the decisions of others to support a particular case to ensure "consistency of jurisprudence" (*Legality of Use of Force (Serbia and Montenegro v Portugal)* (Preliminary Objections, Judgement) [2004] ICJ Rep 1160, 1208).

Teachings of the most highly qualified publicists of the various nations (Art. 38(1)(d) of the ICJ Statute): the work of prominent jurists is not *per se* a source of international law, and the Court may use the teachings of publicists only "as a subsidiary means for the determination of rules of law". However, it does have an essential role in the development of the rules, though the influence of scholars is more conceptual than factual. It is common for international courts, arbitration tribunals and other bodies engaged in resolving disputes to cite scholars in their deliberation, especially at the International Court of Justice. Sir Huphrey Waldock, an ICJ Judge, admitted this, saying, "[t]he way in which individual judges quite often utilize them in their separate conclusions suggests that they have played a part in the Court's internal deliberations and in influencing opinion."

CHAPTER THREE

KENYA-UK BILATERAL RELATIONS

3.1 Introduction

Kenya–United Kingdom relations are bilateral relations. The United Kingdom has been a partner of Kenya in many areas, particularly trade and security (military). Both nations are members of the Commonwealth of Nations and the United Nations.

3.2 British Empire

Kenya and the United Kingdom have a long history of cooperation stretching back to the nineteenth century. The Kenyan port city of Mombasa was occupied by the British from 1824 to 1826. The British leased a 16-kilometer-wide piece of Kenyan shoreline in 1887. Kenya joined the East African Protectorate in 1895. Kenya committed troops to both World Wars I and II as a member of the British Empire. The region became the Kenyan Colony and Protectorate in 1920. Kenya gained independence from the United Kingdom in 1963, after serving as a British colony from 1895 to 1963. (68 years).

Between 1963 and 1964, Elizabeth II remained the country's head of state and Queen of Kenya. In Kenya, the Queen was represented by Malcolm MacDonald, the Governor-General. Jomo Kenyatta was Kenya's Prime Minister. Kenya became a republic in 1964, with the President of Kenya as the country's head of state.

3.3 Post Independence

Kenya and the United Kingdom maintained cordial relations following the bloody independence struggle. Kenya's most important Western ally at one point was the United Kingdom. Kenya received economic and military help from the United Kingdom.

In the early 1960s, Kenyan President Jomo Kenyatta's administration established a robust military cooperation deal with British Prime Minister Alec Douglas-administration. Home's This marked the start of decades of friendship, mutual respect, and cooperation between the two countries. Harold Wilson, Douglas-successor Home's as Prime Minister, visited Kenya in 1966. Wilson affirmed that his administration would honor all agreements reached between President Kenyatta's government and Prime Minister Douglas-administration. Home's. The point of the meeting was mainly to sort out what to do about an exodus of Kenyan Asians leaving Kenya and moving to Britain.

In the 1980s, British Prime Minister Margaret Thatcher visited Kenya, and was received in an elaborate state banquet by Kenyan President Daniel Arap Moi. Prime Minister Thatcher said "Mr. President, we admire what we see: your country's peace and stability; policies which recognize the worth of individual effort and personal endeavor subodied in the concept of "harambee" —self-help; an economy in which private ownership and private industry have been encouraged; above all, a country which has enjoyed strong and decisive leadership within a constitutional framework." This remark was met by applause by those in attendance. At the same conference Prime Minister Thatcher and President Moi discussed ways of combatting the apartheid policies of South Africa. Thatcher wanted to end apartheid through diplomatic pressure, while Moi supported sanctions. However, as Chief Secretary to the Treasury, Foreign Secretary, and Chancellor of the Exchequer in Thatcher's cabinet, John Major believed that targeted sanctions were the best method to combat apartheid. In November of 1990, Major became Prime Minister. This brought the London and Nairobi governments closer together. In 1994, Kenyan President Daniel Arap Moi accepted Prime Minister John Major's invitation to visit London.

The UK sought to distance itself diplomatically from Kenya following the election of Uhuru Kenyatta as President, as Kenyatta had been accused by the International Criminal Court (ICC) for crimes committed during the post-election violence of 2007. Upon the election of Uhuru Kenyatta as President, the High Commissioner of the UK, Christian Turner, stated that the UK would only deal with Kenya on essential business. In 2014, Kenyatta's case in the ICC was dropped.

In 2005, British Chancellor Gordon Brown was a vocal supporter of increased aid and cooperation with Kenya. Two years later, in 2007, he became Prime Minister. During the post-election violence in Kenya in early 2008, Brown pledged support for the country. In 2010, David Cameron became Prime Minister as a result of this. He, too, proved to be a valuable Kenyan ally. Prime Minister David Cameron was one of the first foreign leaders to congratulate Kenya's new President Uhuru Kenyatta when he was sworn into office in 2013. Despite pressure from many international groups, Kenyan President Uhuru Kenyatta was welcomed to the United Kingdom by Prime Minister David Cameron in 2013. In 2015, Prime Minister David Cameron reached an agreement with Kenyan President Uhuru Kenyatta on military cooperation. Cameron also argued in favor of Kenya's position that western countries should not issue "travel warnings" about visiting Kenya since this harms the Kenyan economy and hence hinders the country's anti-terrorism efforts. Prime Minister Theresa May, David Cameron's successor, visited Kenya in 2018. She aimed to improve bilateral collaboration on issues such as trade, crime prevention, and the fight against terrorism. "A partnership for opportunity [and] for our shared security," Prime Minister May stated. When asked if Brexit will make working with the UK more difficult, President Uhuru Kenyatta stated, "I don't see Brexit as having any negative implications for the robust trade connections we already have." Boris Johnson, Theresa May's successor,

urged President Uhuru Kenyatta to return to the United Kingdom. The two leaders inked a comprehensive trade agreement, ensuring that British trade with Kenya will continue unabated after Brexit. President Uhuru Kenyatta visited the United Kingdom in early 2020 and was welcomed by Prime Minister Boris Johnson at 10 Downing Street.

Boris Johnson, the British Prime Minister, and Kenyan President Uhuru Kenyatta signed a five-year defense cooperation deal between the two countries in 2021., Defense Secretary Ben Wallace and Kenyan Cabinet Secretary for Defense, Dr Monica Juma, signed the agreement, which builds on previous agreements and establishes a framework for the exchange of military personnel for defense activities, allowing for increased training and collaboration in peacekeeping missions. Dr Monica Juma, Kenya's Cabinet Secretary for Defense, stated "The Right Honorable Ben Wallace and I reaffirmed our resolve today to further increasing our bilateral defense collaboration. The Defense Cooperation Agreement, which has proven a vital tool for boosting the capabilities of our defense forces, is the structure that underpins this strategic cooperation. Overall, our collaboration continues to increase our forces' ability to operate effectively in high-threat situations." The signing of the DCA came six months after the two defense secretaries met in Nairobi, agreeing a refreshed security compact to deepen cooperation in tackling Al-Shabaab and other shared threats such as cybercrime and human trafficking. On July 28, 2021 Prime Minister Boris Johnson welcomed President Uhuru Kenyatta to Chequers where it was announced that the United Kingdom would send 817,000 COVID-19 vaccines to Kenya. On the same visit the two leaders planted a tree to mark the Kenya-UK Year of Climate Action. Speaking before their bilateral talks, President Uhuru Kenyatta said "This visit has presented a unique opportunity to reaffirm our commitments to the long-standing bilateral relations

between Kenya and the UK, that are founded on shared values and similar aspirations of enhanced cooperation for sustained socio-economic prosperity for our two peoples."

Manoah Esipisu, the Kenyan High Commissioner to the UK, said "Discussions today are an important step in reviewing progress after the President's last visit 18 months ago and how we can move together in combating challenges exacerbated by Covid-19. Mutual respect and prosperity are our guiding principles. Win-win." Prime Minister Boris Johnson and President Uhuru Kenyatta co-hosted the Worldwide Education Summit in London the next day. President Kenyatta said: "Even before the pandemic, we were confronting a global education crisis." We are now in a make-or-break scenario, with earlier progress at risk of being undone, compounded by Covid-19 and its knock-on consequences on learning... Girls have been disproportionately affected, as we know. It has exacerbated the impediments to schooling that they already faced, including as child marriage, gender-based violence, female genital mutilation, and teen pregnancies. We run the risk of losing a generation of girls." Prime Minister Johnson agreed and added that "Educating the world's children, and girls in particular, is the single greatest investment we can make for the prosperity of our societies. I am determined that young people will be at the vanguard of the global effort to build back better from the pandemic. Our role as world leaders is to give them the life chances they need."

Presently, relations between both countries remain close and cordial. The United Kingdom is Kenya's closest European ally and partner and Kenya is the United Kingdom's closest African ally and partner.

3.4 Military

The British Army conducts training exercises in Kenya in preparation for operations in Afghanistan. The British Army Training Unit Kenya is the name of the unit (BATUK).

It's a permanent training unit with bases at Kahawa, Nairobi (a smaller base), and Nanyuki. BATUK is a British Army organization that provides logistical support to visiting British Army battalions. It has a permanent workforce of 56 people and a reinforcement force of 110 people.

3.5 Look-East Policy

The Kenyan government had adopted a Look East policy and since China was key to the policy, the Kenyan government turned to China for infrastructural funds.

Kenya's relationship with the United Kingdom was contested in the British parliament. Because Britain had sought to isolate Kenya diplomatically after Kenyatta's election, British Members of Parliament (MPs) were particularly concerned about China's growing influence in Kenya. The MPs expressed worry that China's attempts to create infrastructure in Kenya had been effective, despite the fact that the UK had not been assisting Kenya in the same way.

3.6 Trade

Both countries' bilateral trade surpasses KES.139 billion (£1 billion). The United Kingdom is also one of Kenya's top investors; Vodafone plc owns a stake in Safaricom, Kenya's largest taxpaying company. Kenyan horticulture produce is extremely popular in the United Kingdom. Kenya imports 8.5 percent of British commodities and Kenya imports 3.4 percent of British goods. Kenya's greatest source of FDI used to be the United Kingdom; however, China is now the largest supplier of FDI. Within the next few years, the UK hopes to quadruple its commerce. Despite Kenya's lack of diversification in its exports, commerce between the two nations is never severely skewed in favor of one.

CHAPTER FOUR

HUMAN RIGHTS AND INTERNATIONAL AID FRAMEWORK

4.1 Existing Human Rights Frameworks that Guide International Aid Relations

International human rights frameworks are designed with binding principles legally, politically and morally for governments, McDougal et al. (2018). There is therefore a distinction between legal treaties, statutes, protocols, conventions, covenants, declarations and principles. The legal frameworks and international instruments or treaties are implemented through appointed committees by ratified countries.

International legal human rights frameworks are obligations by states through signed treaties that are ratified by national parliaments and implemented through state's changing its practices. The Universal Declaration on Human Rights of 1948 is by far the most accepted definition of human rights, be it civil, political, economic, social and cultural rights. These share the universality and indivisibility principles that have been further developed in some human rights instruments that have been accepted by most states. The instruments define standards specific various groups such as women, persons with disability, children, vulnerable groups, minorities, and indigenous people among others.

The International Labour Organisation (ILO) of 1919 as an instrument is also used to generate many treaties. UN system of human rights has a series of organs that promote the rights, monitoring bodies and special mechanisms through the office of the High Commissioner for human rights in addition to the UDHR. According to Chrichton (2015), there are eight human rights treaties with varying levels of ratification, with some ratified by far more people than others. This research will look at the treaties that Kenya and the United Kingdom have ratified.

The treaties include the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR) International Covenant on Civil and Political Rights (ICCPR) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ,Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) , Convention on the Rights of the Child (CRC) , International Convention on the Protection of the Rights of all Migrant Workers & Members of their Families (ICMW) , Convention on the Rights of Persons with Disabilities (CRPD), International Convention for the Protection of All Persons from Enforced Disappearance (CED) and Human rights legal framework 4 Other human rights (OHCHR).

Since the creation of the International Labour Organisation (ILO), almost 200 treaties have been generated relating to labour practices. These lay down basic standards on issues related to labour such as child labour and indigenous rights. The mechanism of enforcement by treaty-based human rights bodies is through committees with independent experts that are elected by governments to monitor implementation by ratified states. This study will seek to examine Kenya and UK implementation of the treaties in reports submitted to the committee.

There are also regional treaties developed based on regions human rights systems. These may vary and include African Commission on Human and Peoples' Rights, African union, Inter-American Commission on Human Rights, Inter-American Court of Human Rights, European Court of Human Rights, European Committee of Social Rights this study will seek to find out the regional human rights treaties that Kenya and UK are ratified to.

A study by Roesdahl and Varughese (2017) in conflict affected countries questioned if aid architecture, conditions for peace building and human rights fit the framework. The authors in the policy note cited a challenge to creating conducive peace building space to liberal peace critique on normative and ideational framework. They also suggested transformation of current framework and practices through thinking in the lens of human rights and human rights. The study was based on conflict related setting; this study will look at human rights aspects between Kenya and UK in aid relations in setting where there is no conflict.

Mulati (2016) study on human rights in reconfiguring aid relations between China and Kenya found that economic concerns of by China outweigh interest in enhancing human rights in Kenya. It also proposed need for placement of measures that guarantee transparency between the two countries. This study will seek to find out if the situation is the same or different between Kenya and UK. It will further seek to suggest measures that guarantee transparency between the two countries.

4.2 Implementation Trend of Human Rights Frameworks and Aid Relations

The question on the extent to which human rights frameworks are reflected in aid relations is important to ensure the people centred approach is adhered to in development. According to Nay (2014), World Bank /OECD 2013 study identified 17 organizations that were bilateral and multilateral that had no overall human rights policies but only referred to human rights limited to sector policies. Nineteen of the organization with multilateral and bilateral relations had established human rights policies that mainly overarched the good governance component. The bilateral donors included Canada, Switzerland, Finland, Austria, New Zealand and the United Kingdom. Seven organizations had second generation policies where human rights were a cross agency theme covering project operations.

The study noted that while many providers have demonstrated varying degrees of reference to human rights in their overarching policies governing development cooperation, few providers actually implemented a human rights-based approach in their programs. This study will seek to examine whether UK reflects human rights as a priority in their aid allocation together with reasons for limited implementation of the human rights-based approach.

Grant (2019) in the IMF, China and conditionality revealed competition among donors through conditions or lack of conditions towards recipient countries. IMF and World Bank have accused China as being secretive about its aid program that comes with unconditional ties. The two former institutions have for the longest time been using conditional approach towards foreign aid relations. A case study of Ethiopia shows a correlation between IMF dropping its conditions due to China's presence and influence in the country. The study unveils donor competition to continue funding its recipients but does not focus on human rights aspects of the relations. Woo and Murdie (2017) study on whether naming and shaming of human right violators affects IMF funding reported that human rights conditions are unlikely to influence IMF decision making. Instead, publicity and information about human rights provided by a country is likely to reduce IMF program participation. This study will seek to find out human rights provision considered among various donors to Kenya with a focus on UK.

Broberg and Sano (2018) study on human rights-based approach to development cooperation in developing countries concluded that the approach gives new avenues to support the vulnerable groups. However, a poverty-oriented approach must continue to play an important role. This study will seek to find out the trend in the Kenya and UK aid relation based on the authors' findings.

Vizard et al. (2011) study suggest that rights promotion has intertwined with development thus the effect on development is mixed. Many rights are also difficult to put on state agenda. Neilsen (2013) also explores the relationship between human rights and results-based approaches such as SDGS in practice since RBAs emphasize on governments obligation to uphold human rights. This study will examine whether both Kenya and UK uphold human rights in their aid relations.

4.3 Challenges That Affect Human Rights Frameworks and Aid Relations between States

Aid provider agencies according to Dijkstra (2015) reported uneven implementation of the human rights policies. Some of the reasons include changing political leadership and support since human rights-based approach to development requires long-term commitment to the changing behaviour and thinking of development by providers. Change in leadership and electoral timeframe affects importance of human rights-based approaches as well as continuity in donor practices. For example, in the Netherlands, the promotion and protection of human rights was a clear foreign policy priority during the 2007 to 2010 period, but less so in the 2010 to 2012 period, when economic interests became a greater political priority, Dijkstra (2015).

A 2014 review of Dutch human rights policy implementation saw the essential need for sustaining support of civil society for Dutch human rights policy implementation. Many organizations were under threat at various levels with conditions being a challenge for aid providers who's human rights-based approach in countries with limited scope for civil society, (Ministry of Foreign Affairs, the Netherlands, 2014). McInerney-Lankford (2009) study on human rights and development reported challenges in integrating human rights and policy frameworks. Issues such as lack of prominence for legal duties in human rights and development as well as lack of a normative foundation

on which to check development processes and outcomes. There was also lack of policy coherence and potential that undermined accountability in human rights. This study will seek to examine if the case of UK and Kenya is the same or different from the above study.

In Kenya, Western countries have had pressure or lacked pressure for peace justice and democracy in terms of aid relations. The period after 2007 post-election crisis led up to an immediate aftermath of elections in 2013. Short-term decisions by Western countries have not favoured stability that undermines democracy and justice principles, Brown and Raddatz (2014). This study will seek to understand the situation of UK and Kenya in relation to human rights and aid.

The 2013 elections also constituted an iteration of donors' pattern of not enforcing conditions stated for political and financial support. Most donors prioritize on their own economic and security interests and not likely anything that may jeopardize these concerns. This study will find out what happens in the case of Kenya and UK.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter expounded on the study objectives which were to analyse existing human rights frameworks that guide aid relations between Kenya and UK, to assess the implementation trend of human rights frameworks and aid relations between Kenya and UK between 2013 to date, to evaluate the challenges that affect human rights frameworks and aid relations between Kenya and UK since 2013 to date and to suggest on improvements that can be made to strengthen human rights frameworks and aid relations between Kenya and UK. Objective analysis was based on brief history, various features of policy, sector and a conclusion.

5.2 Human Rights Frameworks That Guiding Bilateral Aid Relations between Kenya and UK.

5.2.1 History

Kenya and Britain have historical relations dating back to the 19th century. Between 1824 and 1826 the Kenyan port city of Mombasa was under British occupation. In 1887 a 16-kilometre-wide strip in the Kenyan coast was leased by the British (UNESCO, 2015). In 1895, Kenya became part of the East Africa Protectorate. Kenya achieved independence from Britain in 1963 and was thus a colony of Britain between 1895 and 1963 (68 years). During the colonial period, as discussed in more detail in previous chapters of this study, Britain took part in systematic land alienation from the Africans in favor of the white settlers, and exploited the African population, enabling the British to establish a thriving agrarian industry in Kenya. Following the establishment of the said industry, Britain also heavily invested in Kenya's economy which translated into extensive bilateral relations in areas covering trade, investments, tourism, and co-

operation in areas of defense and security, anti-piracy, counterterrorism, climate change, among others, between the two countries. Soon after independence in 1963, Kenya and Britain established diplomatic relations with representation in Nairobi and London respectively. Each country needed to protect and promote its economic, political and military interests, in line with Morgenthau's theory of realism. Since then, and through all four presidential regimes as discussed in more detail in this study, there have been well-established bilateral ties between the two countries.

As shown herein, between 1963 and 1978, during President Kenyatta's regime, Britain was anxious to maintain links with her former colonies including Kenya with a view to continuing to gain economically and strategically and to protect the white settler population which was made up primarily of British citizens. Kenyatta supported these relations as he was a more conservative leader than his fellow African leaders including Oginga Odinga and Tom Mboya. He remained more committed to pursue liberal capitalist agenda that considerably shaped the quest for political reforms in the independence period. More so in 1964, Kenyatta accepted Sir Malcolm Macdonald, the last British governor general to Kenya as the first British high commissioner to Kenya. Four years after Uhuru, over 1,700 Britons still held various state jobs in the civil service with some holding very senior important and strategic positions in the military (Ogot, 1995). Between 1979 and 2002, during Moi's regime, diplomatic relations with Britain continued overall to be warm as he adopted the 'Nyayo' political motto through which he affirmed a continuation of past policies, which allowed him to follow in the footsteps of Kenyatta. In the 1980s Moi continued to use foreign policy as the avenue for attracting the vital resources needed for economic development including financial and technical assistance, foreign investments and trade links, just as Kenyatta had done before him. To this end, he adopted a policy of co-operation and compliance with

Britain even in matters where Kenya did not wholly agree with Britain. Some examples of the above are: with regard to the Njonjo affair, Moi made accusations that an unnamed foreign power (implicitly Britain) was plotting to replace him with Njonjo, which accusations continued to be propagated by his Cabinet Ministers, but at the same time made private assurances to the then British High Commissioner that Britain was not suspect in the eyes of his government. Similarly, after the 1982 attempted coup when the Moi regime began a crackdown on perceived 'dissidents' including Ngugi wa Thiong'o, who fled to and were harboured by Britain, the British government refused to extradite 'dissident' Kenyans in London, or at least, to put a stop to their activities there including restricting their access to the press. Upon being informed by the British government through its High Commission in Nairobi that the so-called dissidents could not be legally extradited to Kenya, and neither could the British government restrict their access to the press, the Kenya government simply backed down and did not pursue the matter any further. In relation to whether economic sanctions should have been placed on the South African apartheid regime, Britain opposed economic sanction but Kenya quietly supported them. Here, however, Kenya's position was understandable given the fact that their different interpretations of the South African question did not affect her relations with Britain (Burton, and Jennings, 2007). From the foregoing, it may be observed that it seemed more important to the Moi regime to co-operate and comply with Britain in order to receive various forms of assistance from it, than for Kenya to observe independence in its foreign policy. However, Kenya's best efforts to comply with Britain did not stop the diplomatic relations between the two countries from becoming strained towards the end of Moi's regime when allegations of grand corruption marred the Moi government. Britain responded by implementing visa bans

against some key persons in the Moi government such as Kulei. During Kibaki's regime, Kenya's foreign policy was revised.

The traditional pillars were revamped and expanded in recognition of new concerns including environmental management, cultural advantages such as sports and the Kenyan community in the diaspora. Kenya's foreign policy now rested on five interlinked pillars of economic diplomacy, peace diplomacy, environmental diplomacy, cultural diplomacy and diaspora diplomacy, as further discussed in previous chapters herein. Relations between Kenya and Britain, though cordial experienced changes and challenges. Firstly, Kibaki adopted a "look-east" policy where he began to entertain China and other eastern states and began considering them an important ally in the areas of infrastructural development, industry, affordable technology, trade and manufacturing. The foregoing was caused by the revision of the older pillar of Economic development allowing the Kibaki government to pursue increased Foreign Domestic Investments (FDI) and aid flows through engagement with alternative nontraditional partners as well as expansion into new markets for Kenya's goods and services especially in Latin America, the Middle East and most importantly Asia. It is also argued that the eastern focus was in response to the disillusionment of Britain and the dim view they took of the allegations of rampant corruption that rocked the Kibaki government as early as 2004, and as a result of the 2007 post-election violence that presaged his second term of office. At the same time China and the other rising eastern economies were making significant inroads into Africa as part of a long-term foreign policy strategy they had initiated in the 1990s, while western nations grappled with an economic crisis that threatened to collapse their own financial systems. Secondly, during Kibaki's 2nd term, his administration was troubled by the yoke of the post-Election violence that occurred in Kenya in 2007 to 2008, following his contested re-

election as President. Britain – Kenya's former colonizer and currently its second-largest donor – was the first to advocate power sharing. The then British Prime Minister Gordon Brown, telephoned both Kibaki and Odinga on 31 December to ask them to negotiate a coalition government (Guardian, 1 January 2008), but neither side was yet willing to renounce its claim to unilateral victory. The British Foreign Secretary began explicitly calling for the 'sharing of political power' on 5 January (UK in Kenya 2008). On 7 January, he stated that 'Kenya's immediate and medium-term future requires the sharing of power' (Guardian, 8 January 2008). Thirdly, Kibaki's government was plagued by allegations of large-scale grand corruption in scandals such as the Anglo-leasing scandal, which Britain and other Western countries loudly condemned. Britain, through its then British High Commissioner, Sir Edward Clay, was extremely vocal in its criticism of the Kibaki government. This condemnation led to further visa bans against important Kenyan personalities such as Chris Murungaru, a powerful minister in Kibaki government. The military relations between Kenya and Britain also began to sour as there were allegations that British officers had raped local women over the years in their training areas such as Samburu. Britain's slow progress in investigating the 694 claims of human rights violation and rape by its service men; stretching back to 30 years, which had been documented by Amnesty International, meant that the renewal of the British military's annual training permit was delayed. Negative civil- military relations continued to cloud the British army's relations with Kenya with sustained calls by major non-governmental organizations for the close of "colonial vestige" in the affected areas in Kenya, although the said British Army still never really pulled out of Kenyan soil. Kenya's close links with the British Army and the fact that the training of British soldiers in Kenya is followed by their subsequent deployment in trouble spots in the world including the Middle East, Iraq and Afghanistan, strained Kenya's relations

with these countries, and made Kenya a vulnerable target of new terrorism associated with the late Osama bin Laden. Its close relationship with the United States and Israel also further aggravated matters. From the foregoing, and as discussed further in previous chapters, it is very clear that diplomatic relations between Kenya and Britain during the Kibaki regime were at an all-time low. President Uhuru Kenyatta's regime began on a troubled note in 2013, due to the International Criminal Court (ICC) cases brought against him and his deputy, William Ruto over the post-election violence of 2007/2008. These cases caused Britain to begin to distance itself from Kenya as it supported the trial of the two leaders and their compatriots before that Court for the role, they were alleged to have played in the 102 2007 to 2008 post-election violence. However, after dismissal of the cases against the President and his Deputy, relations between Kenya and Britain significantly improved.

The Interview Respondents in this study commented extensively on the impact of the ICC cases in the diplomatic relations between Kenya and Britain as discussed in previous chapters herein. In terms of travel advisories Britain joined US in issuing travel warning to its citizens over the ongoing presidential petitions whose ruling was set to be delivered on Saturday, March 30, 2013. The Foreign and Commonwealth Office (FCO) advised against all, but essential travel to within 60 kilometers of the Kenya-Somali border, Kiwayu and coastal areas north of Pate Island, Garissa, Eastleigh area of Nairobi and to low-income areas of Nairobi, including all townships or slum areas. The statement said tensions may remain high in the lead up to the ruling of the presidential election petition (Standard Digital, 2013). If Mr. Kenyatta and his deputy, William Ruto, who is facing identical accusations, are elected, the US and British governments warned Kenyans that business will be disrupted. "Choices have repercussions," the Americans said, while the British warned that relations with Kenya

would be reduced to "minimum contact" (BBC News November, 2017). "We cannot meet ICC indictees, except for urgent business," remarked the then-British High Commissioner, Christian Turner, emphasizing the diplomatic problem that Kenya was expected to face in the event that the ICC duo won the elections (IWPR, 2013). President Kenyatta made clear that he was departing from Kenya's hitherto traditional pro-western foreign policy posture, and has left few doubts that Kenya seeks a drastic and dramatic new foreign policy engagement with its traditional allies; an intensified drive for regional and continental cooperation, and will not be held hostage by historical linkages and traditions be they strategic, economic, military or cultural ties. As such, President Uhuru Kenyatta has embraced bilateral ties with both the East, continuing the legacy of his predecessor Mwai Kibaki, and the more traditional West.

5.2.2 Aid Policies

Britain heightened its charm offensive on Kenya, three years after relations between London and Nairobi soured. British officials in Nairobi were pushing for increased participation of British firms in Kenya's economic activities before the meeting of the two leaders. The efforts aimed at restoring Britain's position as Kenya's top trading partner reached a climax when President Uhuru Kenyatta and British Prime Minister David Cameron met in London in May 2013. David Cameron, the former British Prime Minister, was scheduled to visit Nairobi soon thereafter. However, the loss of the Brexit referendum forced him to resign and the envisaged visit to Nairobi failed to materialize. Daily Nation 27 January (2016) To stem the tide of Chinese influence, Britain signed a deal to boost British firms' exports to Kenya. The UK Export Finance (UKEF), an export credit agency, signed a deal with the African Trade Insurance (ATI) that will see the agency, which offers payment guarantees to British exporters, gain access to information about opportunities for its clients as well as local knowledge of firms and

projects (Musau, 2015). ATI also gives a platform to raise awareness among project sponsors and investors in African countries. In February, Britain also announced a Sh74 billion fund to help Kenyans import goods from Britain.

5.3 Implementation Trend of Human Rights Frameworks and Aid Relations between Kenya and UK between 2013 to date

5.3.1 History

The 1980s trend in human rights and aid relations was driven by economic conditionality while the 1990s aid relations versus human rights ushered in political conditionality. The rationale behind UK's political conditionality since 1991 according to Fisher (2015) involved two motivations. One of them was instrumental political conditionality where the PC applied to force recipients of aid to do political reforms. The other motivation is expressive PC which is applied to show disapproval of actions of aid recipients for both domestic and international audiences. However, no expectation of actual reforms follows.

5.3.2 Features in trend of human rights implementation

The basic trend of PC application by UK to Kenya show a focus on democratic backsliding political space primarily such as arrest and harassment of political leaders in the 1990s while recently it has been more directed towards corruption. Kenya has had greater attention on the above PC due to DFID's heavy focus on the country programs. Fisher (2015) study on effectiveness of political conditionality reported that PC is now used mainly for domestic audience in expressive purposes by DFID due to change in its sociology versus UK political economy. Generally, PC is no longer believed to be an instrument that can change policy by UK in Kenya and other aid recipients.

For decades, Brown and Raddatz (2014) state that Kenyan leaders have been able to resist donor pressure. Linkages that include significant interest by Western countries are seen to undermine instead of sustaining efforts of promoting human rights through justice and democracy. For example, the 2013 elections were evidenced by donors' complacency in enforcing conditionality for future support in politics and finances. Each human rights crisis violated have seen donors having trouble maintaining interest for greater than one year without getting complacent.

Crawford (1997), reiterates the trend in effectiveness and consistency in foreign aid and PC that sanctions taken globally to leverage human rights and democratic principles show inconsistencies and ineffectiveness. Ineffectiveness in political reforms is associated to weakness in measures imposed more than strength by recipient governments. Inconsistencies through a pattern of policy application was revealed thus increasing rhetoric support for human rights post-Cold War led to no corresponding change to fair and equal treatment among all nations.

Enhancement of Kenya-Britain ties is coming at the time when balance of trade continues to grow in favor of Kenya. According to 2017 data by the Central Bank of Kenya, Kenya exported goods worth Sh32.28 billion to Britain in the period between January and October 2017, but imported goods worth Sh24.34 billion during the same 93 period. Britain is Kenya's second most important export destination in Europe after the Netherlands which imported goods worth Sh36.56 billion from Kenya between January and October 2017. Kenya accounts for 27 per cent of the fresh produce and 56 per cent of the black tea market in Britain. Although China has in recent times dethroned Britain and the US as the biggest source of foreign direct investment for Kenya, Britain still accounts for 40 per cent of Kenya's FDI from Europe. The foregoing was confirmed

by the Interview Respondents in this study as discussed in previous chapters (The Star, 2018). According to the 2017, Foreign Investment Survey by the Kenya National Bureau of Statistics (KNBS), at least 100 British based firms operate in Kenya, bringing in Sh15 billion in 2015 (KNBS, 2017). France, Sweden, and Netherlands brought in Sh11.2 billion, Sh4.6 billion, and Sh2.3 billion respectively. Britain's push to come out of the EU is a blessing in disguise for Kenya's fresh produce exporters who are finding it hard to sell their goods in Europe due to strict health standards. According to Horticultural Crops Development Authority (HCDA), horticultural exports from Kenya to the EU were intercepted 29 times, reducing the country's chances of being removed from the EU's quality watch list. In 2012, the EU made changes to its legislation, allowing more inspections to verify exporters' compliance with quality standards (Ruto, 2018) As at 2017 British investments in Kenya are estimated to be worth more than £4 billion (Sh.510 billion) and half of the top 10 taxpaying companies in Kenya are British owned. By stationing a military base in Kenya Britain foresaw the need to secure their vital interests in case of unforeseen upheavals and the security of foreign investments to them was paramount. Throughout Kenya's colonial history, Britain's 94 wider interests and global competition and its administrative and political structures were secured by the buildup of security forces and the occasional resort to arms (Lang'at, 2018). On 23rd June 2016, British citizens voted to withdraw from the EU and this impacted on the world markets and the economic environment not only in the EU (Hunt and Wheeler, 2018). Kenyan exports comprising horticultural and flowers worth 1 billion sterling pounds were subjected to tariffs unless the Economic Trade Agreement is signed by the East African countries (ibid). However, Tanzania and Uganda declined to sign the same citing need for further negations. Kenya is not classified as among the least developed countries unlike her neighbors and who have

nothing to lose or gain from the agreement Kenya risks paying a Sh10 billion tax per year for its exports to the European Union, once Britain leaves the European Union as per the terms of the Brexit deal, if her neighbors fail to sign the agreement. This is because Kenya is the only country in the region that is regarded as a developing nation by the EU hence qualifies to be charged Sh10 billion annually in export tax (Financial Times 14-7- 2016, The Standard 22-11-2016). Britain Brexit plans also provide Kenya with a chance to cushion itself from the EU's Economic Partnership Agreement (EPA) demands that have not been welcomed by other East Africa countries especially Uganda, Burundi and Tanzania. The EPA is intended to guarantee the East African Community (EAC) traders' duty-and-quota free access to the EU market in exchange for a gradual opening of up to 80 per cent of the region's market to European products. Failure by the EAC countries to sign the EPA agreement exposes the Kenyan exports to potential prohibitive taxes in the EU market. The row in East Africa over the agreement is yet to be resolved.

In summary to this, human rights continue to be subordinated to other polices specifically economic interest thus the partiality in commitment to the policies is likely to hardly require aid recipients to abide by them with respect. This is the case between Kenya and UK.

5.3.3 Sectors

McConnon (2014), reports another of trends in human rights and aid relations between UK and Kenya as major policy documents from the 1990s having more words inclined towards national security than the Washington Consensus terms that focused on poverty reduction. DFID's policy discourse links poverty to instability in developing countries that pose threat to UK national security in cases of terrorism and extremism in religion.

DFID has merged security and development thus bigger budget to engage with conflict and security issue as seen in Kenya which borders Somalia, a country that is highly volatile and poses risk to Kenya too. Non –Western donors such as China have also been cited as a threat to Western donors since they show little interest on expenditure in social affairs. These they do without criticising the government or its human rights record thus the trend in the look East policy by Kenya.

In conclusion, the trend in human rights and aid relations can be seen to have started from early sanctions with economic conditionality which evolved to political conditionality. However, UK specifically applies expressive political conditionality that is meant for local audience hence no instrumental reforms. Inconsistencies are seen in the pattern of policy application by both countries too. Policy documents by UK are also inclined to its interest, i.e., the current trend can be picked from 1990s where national security is priority to poverty reduction. The researcher therefore concludes lack of will more than ability by UK to uphold human right since the donor puts her interest first. The situation has been aggravated by non-western donors who do not criticise human rights records of Kenya as well as politicians who do not yield to donor pressure. However, East or West, all is dependency by Kenya and human rights have turned out to be rhetoric of both politicians and treaties as it was during Cold War.

5.4 Challenges That Affect Human Rights Frameworks and Aid Relations between Kenya and UK since 2013 to date

Waituru (2013), in a study on post 2015 MDG and SDG frameworks, the role of Kenya is significant in development with the author requiring leaders to be more proactive in negotiating among international agreements. There lacked synergy between leadership roles in development thus the remained underexploited during the MDG period. The notion was that it was externally driven and the imperative of SDG likely to dilute

human rights if the principle does not form the core of the framework agreement. This is the case for Kenya and UK as the history in trends of human rights and aid relations discussed above is repeated post 2013.

Langan and Scott (2014), posit that the aid for trade charade that came after the Washington Consensus has been characterized by an override of commercial and geopolitical interests of donor community. The case is the same for Kenya and UK, the win-win situation expected in the relation in trade liberalization has seen poverty eradication not forthcoming but unjust trade regimes solidified and alternative strategies of development marginalized.

The findings also concur with Dijkstra (2015) report on uneven implementation of the human rights policies; the same is seen between UK and Kenya. For example, the 2013 elections were evidenced by donors' complacency in enforcing conditionality's for future support in politics and finances. Each human rights crisis violated have seen donors having trouble maintaining interest for greater than one year without getting complacent. Another of the challenges in enforcing human rights frameworks by UK include personnel changes that lead to lack of corporate memory as well as professional imperative of spending aid budgets. Above all, UK prioritizes on economic and security interests and therefore unlikely to act in a manner that may jeopardise their concern, Brown and Raddatz (2014).

In conclusion, success in application of human rights in development depends on the ability to put the principle as core to other frameworks such as SDGs. Some of the challenges in implementing the principle between UK and Kenya include and override of poverty eradication in Kenya by UK commercial and geopolitical interests. The other challenge is inconsistency in policy implementation thus the moral and ethical goals of

the Idealism theory in this study are not taken into consideration. Aid for trade charade in this case takes over the weakness of this theory where power present in shaping international order disadvantages the developing countries as they are powerless compared to developed ones. The researcher's opinion is that the challenges are also heightened by rhetoric's of donors' threats being empty with no consequences. There are weak workings in democracy and inequalities in terms of dependencies that come with free market where the West is no longer supreme.

5.5 Suggestions to Improve and Strengthen Human Rights Frameworks and aid relations between Kenya and UK

Based on the trend and challenges in upholding the principle of human rights in aid relations between Kenya and UK, Olukoshi (2013), study suggest one of the solutions to the situation as ownership by aid recipients and less donor- dominated attention to programs. For example, having African-led contexts in institutions and participation with accountability as compared to external influence. This will ensure human rights and democratic governance is secured and advanced from a local perspective.

In the aid for trade charade unequal relationship by Langan and Scott (2014), a policy space is needed to allow interventionist policies that would promote economic interests of the poor in international markets. Policy makers in both developed and developing states need to be reflexive of strategic purpose of aid for trade instruments and to be open to alternative economic strategies.

In conclusion, a general need for ownership through African-led implementation of the human rights principle in development is needed. A situation where policies are not top down from donor to recipient only is likely to eliminate human rights violation crisis. The researcher's opinion is for instead of donors such as UK threatening to suspend aid

while avoiding to hurt Kenyans in need, donors ought to channel aid through civil society on the ground to initiate dialogue on human rights with citizens.

5.6 Conclusions

The study sought to find out the relevance of human rights in aid relations between Kenya and UK. This was on the basis of human rights considerations to foreign aid relations as paramount and an instrument for state diplomacy. It therefore called for an assessment of the implementation of the considerations between the two countries who are signatories to various human rights treaties. Whereas previous analyses on human rights have been done since colonial time, there is little literature on the same for the two countries bilateral relationship since 2013 and towards the looming Brexit.

The study adopted Interest Theory that was also complemented by Idealism Theory. Interest Theory posit that the function of a right is to further the interest of a right holder, Heikkinen (2020) and one having a right to something means it is in their interest or benefit and someone else has the duty to provide the right. Idealism Theory emphasizes on need to strive moral goals and ethical actions by states in international arena, Kaymaz (2018). In relation to this study, the expressive address of UK towards Kenyan political leaders violating rights of electorates show preference in use of safe approach as opposed to instrumental one which may interfere with UK's economic interest. Moral goals and ethical actions at international level is out rightly violated as aid for trade charade favours UK over Kenya.

The findings report that, there are human rights frameworks that guide bilateral aid relations between Kenya and UK. The researcher however, feels the two countries treat them as external policies and not a priority for both of them. Presence of conditionality by UK and a constitution with Bill of Rights does not affect aid allocation even when

human rights are violated. Objective two closely examined the implementation trend of human rights frameworks and aid relations between Kenya and UK between 2013 and found that the trend in human rights and aid relations started from early sanctions with economic conditionality which evolved to political conditionality. However, UK specifically applies expressive political conditionality that is meant for local audience hence no instrumental political reforms. Inconsistencies are seen in the pattern of policy application by both countries too. Policy documents by UK are also inclined to its interest security over poverty reduction. Objective three assessed the challenges that affect human rights frameworks and aid relations between Kenya and UK since 2013 and it emerged that success in application of human rights in development depends on the ability to put the principle as core to other frameworks such as SDGs. There is an override of poverty eradication in Kenya by UK commercial and geopolitical interests that pose another challenge as well as inconsistency in human rights policy implementation. Objective four suggested on improvements that can be made to strengthen human rights frameworks and aid relations between Kenya and UK. A general need for ownership through African-led implementation of the human rights principle in development is needed. A situation where policies are not top down from donor to recipient only is likely to eliminate human rights violation crisis.

In relation to the study's problem statement and assumptions made in the study is a clear ignorance of human rights by both Kenya and UK. UK prefers to apply expressive political conditionality to rights violation situations to avoid losing their interest in trade and security. The fear is also against losing its stake in Kenya to the already competitive East. Kenya at the same time does not apply rights equally as in the Bill of Rights and corruption is seen to dominate the scene. There is therefore need for an African-led approach to implementation of human rights where the minds of people from grassroots

level can be tapped towards fighting against their human right violation through education by civil societies among other human rights actors.

5.7 Recommendations

UK comes out as one of important partners in social expenditure to Kenya. Even though the benefits that UK reaps in trade and security aid outweighs human rights enhancement for Kenya, the study has the following recommendations for both aid donor and recipient. UK and Kenya need to adhere to international frameworks such OHCHR as a legitimate source of human rights approach. This applies to human rights actors to keep interacting with UN bodies, academics, lawyers and NGOs. Human rights organizations should be familiar with concepts and approaches to be able to participate effectively in development debates within both countries.

UK and Kenya being member countries of the UN need to keep supporting initiatives aimed at strengthening and mainstreaming human rights. Standards and general comments of treaty monitoring bodies also need to be well known among states and recommendations followed up.

Space for adjusting policies to alternative ways that will lead to win-win situation is required

5.8 Areas of Further Study

This research recommends further study with a comparison of non-western donors versus Kenya. While this study looked at bilateral relationship of Kenya and UK in terms of aid and human rights, further research can be done with variables such as democracy or economy versus foreign aid.

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APPENDICES

Appendix I: Interview Schedule

Dear Sir/Madam

The researcher is conducting research for Master of Arts project entitled ***THE RELEVANCE OF HUMAN RIGHTS IN FRAMING FOREIGN AID RELATIONS: THE CASE OF UK AND KENYA***. The interview guide will be to help the researcher in obtaining your views on the relevance of human rights in framing foreign aid relations between Kenya and Britain. Your cooperation will be highly appreciated. Kindly respond to the questions as deemed appropriate. I guarantee total confidentiality of your response and the use for no other purposes except for this academic research.

 Thank you in advance for your cooperation.

Section A: General Information

(i) Name ……………………………(ii) Age…………. (iii) Sex ……………….

(iv) Locality………………………...(v) Occupation…………………………….

(vi) Marital status……………………. (vii) Religious affiliations …………….

Section B: Main issues

1. Are there existing human rights frameworks that guide aid relationship between

   Kenya and UK?

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2. What has been the nature of activities conducted by the diplomats of these two countries (Kenya-Britain)?

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3. How are human rights frameworks and aid relations implemented between Kenya and UK between 2013 to date?

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4. Does Kenya have a foreign policy in place? If so, has it been influenced by the diplomatic relations?

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5. What improvements can be made to strengthen human rights frameworks and aid relations between Kenya and UK

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6. How has Kenyan diplomats gained by having diplomatic relations with Britain?

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THANK YOU FOR PARTICIPATION