

CONCEPT PAPER

A CASE FOR THE ESTABLISHMENT OF THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS

A REGIONAL HUMAN RIGHTS NGO SPECIALISING ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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**A CASE FOR A REGIONAL HUMAN RIGHTS NGO SPECIALISING
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS:
THE NEGLECTED CHILD OF THE HUMAN RIGHTS FAMILY**

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Foreword

This Concept Paper has been developed by an individual putting forth a case for the establishment of **The East African Centre for Human Rights Trust**, (also to be known as **The EACHRights Trust** and hereinafter referred to as The Centre). The creation of this Centre follows consultation and sharing of ideas with Professor David Harris of the Human Rights Law Centre at the University of Nottingham and lawyers from INTERRIGHTS¹. Thereafter, the idea was presented to Human Rights defenders in Kenya for purpose of peer review. Thereafter, The Centre was formally created as the first institution of its kind in East Africa to enhance the realisation of economic, social and cultural rights in Kenya, Uganda and Tanzania through lobbying and advocacy. The Centre will consequently ensure that in the process of promoting the fulfilment of Human Rights within the region, that the respective governments will always take an approach that also recognizes the progressive realization of economic, social and cultural rights.

This paper therefore seeks to provide conceptual clarity to the sponsor of this initiative, who is currently **seeking to establish this NGO whose focus will be to seek the progressive realization of economic, social and cultural rights while considering the gaps that currently exist and also taking advantage of the various opportunities that have presented themselves** at this very moment in time, an idea that will be developed further over the years to come. It is envisaged that any decision that shall be made in future regarding the institution, its strategic direction and/or programmes, shall always be with due regards to this Concept Paper as a constant reminder as to why The East African Centre for Human Rights was established.

This Concept Paper is divided into different and distinct headings that elaborate on a particular issue at length with the findings forming the basis of the decision to take on a particular direction as opposed to another.

It must be mentioned that in developing the initiative, the sponsor had due regard to the programmes of other national Human Rights organisations such as The CRADLE-The Children's Foundation², the Kenya Section of International Commission of Jurist³, Kituo cha Sheria⁴, The

⁺ Gilbert O. Onyango is an Advocate of the High Court of Kenya, Commissioner for Oaths, Notary Public, a Human Rights, Development and Organisational Development Consultant, member of various national and international Human Rights and Child Rights committees and a 2010 Chevening Fellow. The idea of setting up the East African Center for Human Rights came up when the sponsor was participating in the Chevening Fellowship. It was then that he identified the gap and the potential of a regional institution that deals with and specializes on the realization of economic, social and cultural rights.

¹ International Centre for the Legal Protection of Human Rights. See <http://www.interights.org/about-us/index.htm>

² See <http://www.thecradle.or.ke/>

³ See <http://www.icj-kenya.org/>

Kenya Human Rights Commission⁵, the Kenya National Commission on Human Rights⁶ among others. Due regards has also been had to the work being done by regional and international organisations such as the Society for International Development⁷, the African Child Policy Forum⁸, the East Africa Human Rights Trust, the Foundation for Human Rights Initiatives⁹, the Institute for Human Rights and Development in Africa¹⁰, the Southern Africa Human Rights Trust¹¹(now defunct), Save the Children¹², the Centre for Child Law at the University of Pretoria¹³, Community Law Centre at the University of Western Cape¹⁴, the Children's Legal Centre at the University of Essex¹⁵ among many others.

In conclusion, the sponsor wishes to thank all those people who believed in this initiative for their support both moral and material. Special thanks go to the lecturers and staff of the Human Rights Law Centre at the University of Nottingham, United Kingdom in particular Prof. David Harris and Ms. Kobie Neita for their immense support, words of encouragement, wisdom and providing direction. Special thanks also goes to the staff of INTERIGHTS, London that hosted the sponsor for a period of two weeks as part of the Chevening Fellowship programme in 2010, for their words of support especially Mr. Iain Byrne, Ms. Judy Oder, Ms. Sibongile Ndashe and Mr. Padraig Hughes. This initiative could not have been possible without their advice. The sponsor wishes to appreciate the work done by Ms. Enricah Dulo in the UK for taking time to read the Concept Paper and make useful suggestions. Thank you.

4 See <http://www.kituochasheria.or.ke/>
5 See <http://www.khrc.or.ke/>
6 See <http://www.knchr.org/>
7 See <http://www.sidint.org/>
8 See <http://www.africanchildforum.org/>
9 See <http://www.fhri.or.ug/>
10 See <http://www.africaninstitute.org/>
11 SAHRI
12 See <http://www.savethechildren.net/>
13 See <http://www.childlawsa.com/>
14 See <http://www.communitylawcentre.org.za/>
15 See <http://www.childrenslegalcentre.com/>

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1. PART I: UNDERSTANDING INTERNATIONAL HUMAN RIGHTS

1.1 Background

The Universal Declaration of Human Rights¹⁶ (hereinafter referred to as “UDHR”) recognizes the equality, inalienability, universality and indivisibility of Human Rights. Because it was drafted in the period of the Cold War, the inter-relationship between Human Rights was never agreed upon. This inter-relationship got entangled in politics of that period as the Western States and Socialist States each had a set of ideologies to support. This led to the drafting and codification of two international treaties namely; International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”), which Kenya acceded to on 23rd March 1976 and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “ICESCR”) which Kenya acceded to on 1st May 1972¹⁷. This codification further categorized the rights into first generation and second generation rights. Indeed the economic and social rights were overshadowed by civil and political rights. They were disputed on the grounds that they were collective rights and that they confused goals and rights by entailing positive obligations that were not realistic to fulfil and lastly, they identified no duty holder.¹⁸ All these weakened the position of ICESCR in the international discourse.

However, the 1990s saw an end of the Soviet Union. Its demise brought the emergence of a new global order that was based on the principles of democratization, participation, and international co-operation.¹⁹ This re-emergence led Human Rights into having a discourse with international co-operation and it gradually regained prominence which became a feature of a host of world summits held from 1990s onwards.²⁰ These World Summits set targets to be achieved and the 1993 Vienna World Conference also led to the adoption of Vienna Declaration and Program of Action²¹ establishing an agenda for the new world order. This Conference was more significant as it underscored the indivisibility of and the equal prominence of all rights.²²

The 1993 Vienna World Conference was more particular in recognizing that democracy, development and Human Rights are interdependent and mutually reinforcing. The United Nations General Comments²³ passed by the Committee on Economic, Social and Cultural Rights in 1990

¹⁶ A/RES/217A(III) adopted on 10th December 1948

¹⁷ G.A.Res.2200A(XXI) both instruments were adopted on the 16th December 1966

¹⁸ David Beetham, *Democracy and Human Rights*, p. 115

¹⁹ Jakob Kirkemann Hansen and Hans-Otto Sano, “The Implications and Value Added of a Rights-Based Approach” in *Development as a Human Rights: Legal, Political and Economic Dimensions*, p.36

²⁰ Some of the World Conferences were: World Conference of Human Rights in Vienna (1993); Fourth World Conference on Women in Beijing (1996); World Social Summit for Development in Copenhagen (1996); the World Food Summit in Rome (1997); the World Summit on Sustainable Development in Johannesburg (2002)

²¹ A/CONF:157/23

²² Supra no. 21, p.39

²³ General Comment 2: International Technical Assistance Measures and General Comment No. 3: The Nature of States Parties’ Obligations

further reinforced economic and social rights as being of the same value to civil and political rights. Thus Human Rights have gained prominence in the development co-operation activities of the UN among its other operational areas. It brought in the concept of having a rights-based approach to development, as it had as early as 1970 emerged that development should be geared more towards the meeting of peoples basic needs.²⁴

1.2 The Kenyan experience

All Human Rights are considered equal, inalienable, universal and indivisible under the United Nations Human Rights system. However, at the national level, these rights are still divided. Indeed, over the years, civil and political rights have in many respects, received more attention, legal codification and judicial interpretation and have been instilled in public consciousness to a far greater degree than economic, social and cultural rights.

For many years, many NGOs in Kenya have concentrated on civil and political rights at the expense of economic, social and cultural rights leading to a gap in the understanding of the latter. Indeed, it took Kenya over 34 years to submit her initial report²⁵ which it did on 7th September 2006²⁶. This gap among Kenyan NGOs was first noted by the sponsor of this initiative in June 2007 when the NGOs were drafting a strategic plan for CSOs that were working around issues of governance, justice, law and order in Kenya under the Government of Kenya's GJLOS²⁷ Reform Programme. During the said meeting that was held in 2007 at the Merica Hotel in Nakuru, Kenya, participants were divided into two groups; namely civil and political rights and economic, social and cultural rights with the task to project the Kenyan situation between then and five years later, that is 2012. The participants that were discussing civil and political rights were able to project very clearly but those that were working on economic, social and cultural rights had a challenge doing so with regard to these latter set of Human Rights.

From this, it became apparent that very few participants and organisations at the meeting had engaged with or worked on economic, social and cultural rights particularly from a Human Rights perspective and that those that had attempted had only done so from a developmental perspective without integrating a rights-based approach in their work.²⁸ A simple, brief and casual survey confirmed that indeed in Kenya, economic, social and cultural rights had over the years received less attention than civil and political rights. Thus, the need to have an organisation in Kenya that exclusively focuses on the progressive realisation of economic, social and cultural rights from a Human Rights perspective as opposed to a developmental perspective. Indeed this can be justified further by the fact that Kenya has made a lot of progress in the front of civil and political rights as compared to and at the expense of economic, social and cultural rights.

²⁴ Supra No. 21, p. 40

²⁵ E/C.12/KEN/1 11 September 2007

²⁶ See http://www.bayefsky.com/reports/kenya_e_c12_ken_1_2006.pdf

²⁷ Governance, Justice, Law and Order Sector reform

²⁸ The issue development and economic and social rights are discussed further herein below

1.3 Challenges of realising economic, social and cultural rights

The ICESCR has provisions on rights relating to working in just and favourable conditions, to social protection, to an adequate standard of living, the highest attainable standard of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress. These rights are designed to ensure the protection of people as a full person, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously. Thus, the need for renewed attention and commitment to the full realisation of economic, social and cultural rights is self evident and cannot be overstated as we currently live in a world where, according to UNDP, “a fifth of the developing world’s population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, and a third lives in a state of abject poverty at such a margin of human existence that words simply fail to describe it.”²⁹

There are many writers and academics that posit that economic, social and cultural rights are merely declaratory principles not capable of being justiciable. Felner³⁰ says that while millions have for years been deprived of clean water, primary health care and basic education, most States do not recognise economic and social rights as more than an abstract declaration of principles. This position is derived from most of the Covenant but mainly from Article 2(1) of the ICESCR which provides that “*each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*”

Governments have been known to argue that they do not have the resources to make these rights fully justiciable as declaring them so would make the Courts have control of the Government’s independence and freedom with regard to setting of priorities. This could not have been better evidenced than in a report by the Joint Committees of the House of Lords and House of Commons of the United Kingdom while scrutinising the Child Poverty Bill who expressed these concerns and stated that “*we agree with the Government that including fully justiciable and legally enforceable economic and social rights...carries too great a risk that the Courts will interfere with legislative judgements about priority setting...*” The Joint Committees went on to add that “[...] *it would not be constitutionally appropriate [...] for the courts to decide whether a particular standard of living was “adequate”, or whether a particular patient should be given priority over another [...] Such questions are quite literally non justiciable: there are no legal standards which make them capable of resolution by a court*”³¹. This classic example of a response by Government is galvanized by those that have for many years presumed that only civil and political rights can be subject to violation, measures of redress and international legal scrutiny and that

²⁹ Center for Human Rights. (1996). *Human Rights: The Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16 (Rev. 1)*. Geneva: Centre for Human Rights.

³⁰ Felner, E. (2008). A new frontier in economic and social rights advocacy? Turning quantitative data into tools for human rights accountability. *SUR International Journal on Human Rights*, 109.

³¹ House of Lords and House of Commons Joint Committee on Human Rights, 2009

economic, social and cultural rights are often viewed as effectively “second class rights”, unenforceable, non-justiciable, only to be fulfilled “progressively” over time.³²

But, the right to live a dignified life can never be attained unless all basic needs of life namely work, food, housing, health care, education and culture, are adequately and equitably available to everyone.³³ To this end, it was positive to note that the Joint Committee of the House of Lords and House of Commons in the aforementioned report stated that in seeking a solution, they “*explored the variety of ways in which economic and social rights can be given legal effect in a way which falls short of making them fully justiciable and legally enforceable rights...and concluded that there is a viable middle way between the traditional positions in which the government is placed under duty to make progress towards realizing those rights, and is required to report regularly on that progress...*”. Therefore, it is the view of the sponsor that it is possible, (and The Centre shall seek), to **enshrine within the workings of Government’s, a commitment in among other things, policies and target setting legislation, defining the success in realizing economic and social rights, creating a framework for monitoring progress at both local and national levels and seeking political and legal accountability from the duty bearers at the national, regional and international level.**

1.4 Post the 1993 Vienna World Conference era: Realising the reaffirmation of the nature of Human Rights

The 1993 Vienna World Conference on Human Rights presented a new opportunity to Human Rights practitioners in the world. It came up with the Vienna Declaration and Programme of Action³⁴ which stated that “*all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms*”.

Since the Vienna World Conference, there has been major progress made the world in the Human Rights arena and particularly in the field of economic, social and cultural rights. Felner in his article stated that, the international community has given an increasing recognition to the indivisibility and interdependence of Human Rights: civil, political, economic, social and cultural rights. This position is further galvanized by the African Charter on Human and People’s Rights which was the first Human Rights treaty to combine the different types of rights in one instrument. It states in its Preamble that economic and social rights are necessary for the realization of civil and political rights and it provides that “[...] *it is essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as the universality and that satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and*

³² Center for Human Rights. (1996). *Human Rights: The Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16 (Rev. 1)*. Geneva: Centre for Human Rights.

³³ Center for Human Rights. (1996). *Human Rights: The Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16 (Rev. 1)*. Geneva: Centre for Human Rights.

³⁴ Adopted by the World Conference on Human Rights, Vienna, 25th June 1993 (A/CONF.157/24 (Part I), Chap. III).

*political rights.*³⁵ But as has already been noted, though economic, social and cultural rights have over the years received less attention in comparison to civil and political rights, far more serious consideration than ever before is currently being devoted to them.

Therefore, **the question is not whether these rights are basic Human Rights, but rather what entitlements they imply and the legal nature of the State obligations towards their realization**, a position also taken by Felner who says that, extraordinary progress has been made by academics and Human Rights advocates in articulating both content of economic, social and cultural rights and the nature of the corresponding State obligation. Indeed, Arjun Sengupta in his report³⁶ reiterated that most institutions and States that do not accept such legally binding obligations do not deny the morality of these claims as ethical entitlements of all civilized members of the community. **Thus, it is for this reason that while appreciating the equality, inalienability, universality and indivisibility of all Human Rights and the status of economic, social and cultural rights in the international Human Rights discourse, that The Centre shall make a deliberate effort to focus on the promotion and protection of economic, social and cultural rights which has for many years been ignored and that is an emerging and developing area of Human Rights.**

1.5 Understanding State obligation: Suggestions on how to deal with the challenges of monitoring economic, social and cultural rights

The success of assessing the levels of realisation of economic and social rights is dependent on how well the progress is monitored. According to Felner, developing rigorous monitoring tools has been an uphill battle for Human Rights advocates working on economic and social rights. This is because of the manner in which State obligations have been defined with respect to these rights.

The nature and definition of these State obligations as outlined under Article 2 of the ICESCR determines how States must approach the implementation of the substantive rights as provided in Articles 6 to 15. Article 2 states in particular that,

- 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*
- 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

³⁵ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986

³⁶ Commission on Human Rights. Economic, social and cultural rights, human rights and extreme poverty. Report of the independent expert on the question of human rights and extreme poverty by Arjun Sengupta. UN DOC: E/CN.4/2005, 2 Mar. 2006

These obligations are therefore divided into “levels” reflecting a 'tripartite typology' of State obligations. Article 2 of ICESCR as already mentioned imposes these three levels of obligations on State Parties to undertake either a positive or a negative measure for the full realization of the Covenant rights – these 'tripartite typology' of State obligations are to (a) respect, (b) protect, (c) , and (d) fulfil the rights as provisioned. Each of these legal responsibilities can take on more specific obligations of “conduct” (such as action of inaction) and obligations of “result” (such as ends).³⁷

If we take “...undertakes to take steps...by all appropriate means, including particularly the adoption of legislative measures”, it is clear that the State must take measures towards the full enjoyment by everyone of all the rights in the Covenant. This will include the **enactment of laws, the adoption of policies together with other administrative, judicial, policy, economic, social and educational measures and many other steps in order to ensure that the rights are enjoyed by all.** Therefore under this Article, **the State is legally obliged to undertake legislative action in instances where the law is clearly incompatible with the obligations** assumed under the Covenant, especially where a law is discriminatory or has the express effect of preventing the enjoyment of any of the rights in the Covenant or when a legislation allows the violation of a right. **This presents an opportunity for The Centre to hold the Government accountable for failure to enact these laws.**

States are thus required, within international Human Rights law, to take steps “*with a view to achieving progressively the full realisation*” of economic and social rights. This phrase is often mistaken to mean that the State only assumes the obligation once it attains a certain level of economic development. But, **the provision places a duty on a State that notwithstanding their level of national wealth, it must move immediately and as quickly as possible towards the progressive realization of economic, social and cultural rights.** The clause should never be interpreted to allow States to defer indefinitely efforts to ensure the enjoyment of the rights under the Covenant. Some of the obligations that may apply immediately for example are **the provisions on non-discrimination and those that oblige the State to refrain from actively violating economic, social and cultural rights or withdrawing legal and other protection relating to those rights.** **These too hold a major potential for The Centre.**

To “*the maximum available resources*” has also been often used to justify the non enjoyment of rights. But, this provision obliges the State to ensure minimum subsistence rights for all the citizens regardless of the level of economic development in the country. Thus, it is in the utilization of the available resources that **priority should be given to the realization of the rights recognized in the Covenant with special consideration for the need to assure that everyone receives their subsistence requirement as well as the provision of essential services.** All the aforementioned must be undertaken “*without discrimination*”. In this regard, **the State should ensure that any aggrieved party can apply for judicial review and other recourse procedure** should any violation or discrimination occur.

In addition to the tripartite typology of the States obligations, there are additional obligations which are cross-cutting on all economic, social and cultural rights. These additional obligations are non-

³⁷ Center for Human Rights. (1996). *Human Rights: The Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16 (Rev. 1)*. Geneva: Centre for Human Rights.

discrimination and equality, access to information and participation, progressive realization and availability of resources, accountability mechanisms and international assistance and co-operation.

According to Felner, **the duty to guarantee the exercise of rights without discrimination, particularly discrimination formally enshrined in law or discriminatory practices carried out by public officials, such as doctors, teacher, etc is the most tangible aspect that can be easily monitored. This can also be monitored together with the *duty to respect*, which requires the State to refrain from interfering with people's exercise of a right and the *duty to protect*, which requires the State to ensure that third parties do not interfere, primarily through effective regulation and remedies. These too present an opportunity that should be exploited by The Centre and shall be the entry point for filing of Strategic and Public Interest cases in national Courts** and should the local remedies be exhausted, then further recourse shall be sought in the **African Court on Human and People's Rights³⁸ the African Commission and/or the African Committee on the Rights and Welfare of the Child³⁹.**

The work shall include monitoring documented violations such as denying access to health and education for minority and marginalized communities and groups, failing to enact or enforce laws, etc. On this, Felner says that monitoring the various dimensions of State obligations requires a methodology not based exclusively on qualitative research but should also include quantitative tools. These tools are not typically part of Human Rights organisations research toolkits, which in many cases were originally developed to measure civil and political rights.⁴⁰ He adds that without a monitoring methodology to address these crucial advocacy efforts are severely undermined. Governments can easily claim that the lack of progress is due to insufficient resources, yet in fact the problem is often not the availability (or lack thereof) but rather distribution of resources.

Fortunately, UNDP is currently working on developing indicators⁴¹ for monitoring economic and social rights⁴². It is envisaged that this together with the work of several scholars, are important efforts to give concrete shape and guidelines for these indicators which shall ensure that development is equitable and that it takes a human rights based approach to development. The groundwork undertaken thus far has gone a long way in setting the typology for the development and selection of Human Rights indicators and proposing specific indicators related to specific rights. Felner says that “what is missing to turn indicators into an operational tool to monitor economic

³⁸ It must be noted that Kenya has not made a declaration in accordance with Article 34(6) of the Protocol establishing the Court that it recognizes the competence of the African Court, to receive complaints from NGOs and individuals, see Article 5(3) of the Protocol

³⁹ It must be noted that this Committee does not give adequate remedy, its reports have to be submitted first to the Assembly of Heads of States and Governments every two years before they can be made public, see Article 45(2)

⁴⁰ Felner (2008) says “a few notable exceptions include the work of several NGOs that have been engaged in assessing economic and social rights using budget analysis, such as Fundar in Mexico, the Children's budget project at the Institute for Democracy in South Africa, and DISHA in India, as well as the use of epidemiology in research conducted by Physicians for Human Rights”

⁴¹ UNDP, A User's Guide, Mar 2006. This practical guide addressed to UNDP Country Offices contain different aspects relating to development and use of indicators across key elements of human rights programming, summarizing the main existing indicators for human rights and discussing their limitations for development programming

⁴² Also see for instance, OHCHR, Report on indicators for promoting and monitoring the implementation of human rights, UN Document HRI/MC/2008/3, June 2008, available at <<http://www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf>>

and social rights in specific situations is a methodology toolbox that would explain more specifically how and when to use the toolbox” **The Center shall seek to understand and appreciate these developments with a view to utilizing the new ideas in monitoring the realization of these rights.**

1.6 Human Rights and Development: Bringing the international discourse closer

Article 22(1) of the African Charter on Human and Peoples Rights states that *“all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.”* It adds in Article 22(2) that *“States shall have the duty, individually or collectively, to ensure the exercise of the right to development”*. The nexus between Human Rights, particularly the need for realisation of economic, social and cultural rights while promoting the right to development cannot be ignored. Indeed the Declaration on the Right to Development⁴³ recognises *“that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”*. It adds that *“the existence of serious obstacles to development, as well as to the complete fulfilment of human rights and of people, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.”*

Kenya and her neighbours within the region are currently undergoing major developments. It is the submission of the sponsor that the dynamics that surround the struggle for resources are about an intersection between development and Human Rights. Indeed, a country cannot realise equitable development unless other Human Rights standards have been realised equitably for all citizens. For example, for a country to provide employment for its citizens which, in so doing will ensure the individuals’ right to work⁴⁴ which is an economic, social cultural right, there must be a conducive political atmosphere and a country free from corruption that then allows for investors to come into the country thereby creating more jobs. **This postulation reinforces the argument of indivisibility of all Human Rights in the realisation of all the rights of citizens of a country.** But as is well known, the Human Rights and developments sectors have had an exclusive past. Indeed, Nelson says that immediately after the drafting of the Universal Declaration of Human Rights, the Human Rights and development movements proceeded on separate conceptual tracks which was strongly influenced by cold war politics. Human Rights and development experts worked through parallel sets of intergovernmental institutions without overlapping, and so did the majority

⁴³ Adopted by the General Assembly resolution 41/128 of 4th December 1986

⁴⁴ Article 6(1) of the ICESCR provides that *“the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work, which he freely chooses or accepts, and will take appropriate steps to safeguard this right”*

of non-governmental organisations in both fields. Therefore when governments and international organisations address problems of health, education, clean water and housing, they usually tackle these exclusively as development challenges, ignoring their relation to Human Rights obligations. It is difficult to assess whether the lives of citizens are improving and thus making it impossible to determine the issue of maximum availability of resources.

According to an article by Fukuda-Parr, the intersection between development and Human Rights is about how the resources generated by economic growth are put to use by the Government. It is also the question of how budgets are allocated among different sectors and uses that has important consequences. Some uses are more likely to contribute directly to the fulfilment of Human Rights as supporting primary education, primary health care and health systems, social security, the judicial system and legal aid for people who cannot afford private legal services, rural roads, while uses such as mining or military spending are less likely to contribute to the realisation of Human Rights and may even have negative consequences. But lately, the Human Rights movement has begun to take economic, social and cultural rights seriously and the development movement on the other hand has adopted Human Rights approaches to their work. Fukuda-Parr adds that it is only recently that theories and practice of Human Rights and development have interacted and been brought together. Presently, Kenya like most countries in the world is implementing the Millennium Development Goals⁴⁵ which have been configured into eight goals, eighteen associated targets and forty eight progress indicators. According to Fukuda-Parr there are indeed **many overlaps between the Millennium Development Goals and others but of interest shall especially be the overlap with economic and social Human Rights. This shall be explored in greater detail by The Centre with a view to developing the same further.**

1.7 Human Rights Based Approach to Development: The potential

Human Rights Based Approach (HRBA) is a conceptual framework for the process of human development that is normatively based on international Human Rights standards and operationally directed to promoting and protecting Human Rights. It is based on the **concept that development is about promoting and protecting Human Rights because development can impact Human Rights positively or negatively.** Its application requires a level of commitment as it calls for addressing development challenges in a more comprehensive way. The challenges include **confronting persistent patterns of inequality and discrimination** in development and formulating responses to deal with them which would involve taking into account the structural responses to deal with them such as political and societal environment that may foster exclusion and marginalization in development and ultimately, the denial of Human Rights.

According to a publication by the OHCHR, **“human rights based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distribution of power that impede development**

⁴⁵ See <http://www.un.org/millenniumgoals/>

progress”⁴⁶ This publication further adds that “while there is no universal recipe for a human rights based approach, the United Nations has agreed that as development policies and programmes are formulated, the main objective should be to **fulfill Human Rights and a human rights based approach identifies rights holder and their corresponding entitlements and corresponding duty bearers and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty bearers to meet their obligations and principles and standards⁴⁷** derived from international Human Rights treaties should guide all development cooperation and programming in all sectors and on all phases of the programming process.”⁴⁸ Seeing as this is a new area that is currently developing, it therefore presents a major opportunity for The Centre which is envisaged as an area of specialisation as it will undertake capacity building.

2. PART II: THE GAPS AND OPPORTUNITIES

2.1 Moving from abstract concepts to practice: Assessing the gaps, possible solutions and opportunities available to realising equitable development by enforcing economic, social and cultural rights in Kenya and East Africa

Having noted the issues listed above, it would now be necessary to look at the gaps, recent development and the potential that subsists at the moment which The Centre must now respond to or take advantage of.

2.2 Assessing recent developments in the international Human Rights protective framework

On the international plane, there have been emerging developments that seek to give cognisance and strength to economic, social and cultural rights. We shall look at some of them below.

2.2.1 The adoption of the Optional Protocol to the ICESCR on Individual Complaints Mechanism

The Human Rights Council adopted the Optional Protocol on Economic, Social and Cultural Rights (hereinafter referred to as “OP-ICESCR”) on 10th December, 2008 and opened for signature on 24th September 2009⁴⁹. This Optional Protocol seeks to create an individual complaints mechanism for the ICESCR and recognizes the competence of the Committee on Economic, Social and Cultural

⁴⁶ Frequently Asked Questions on Human Rights-Based Approach to Development Cooperation. p.15. UN Doc. HR/PUB/06/8. Available at <http://www.unhchr.ch/development/approaches.html>

⁴⁷ Among the operational principles to be observed in the programming process are: universality and inalienability; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; and accountability and the rule of law as has been mentioned in a preceding paragraph

⁴⁸ Office of the United Nations High Commissioner for Human Rights. (2006). *Frequently asked questions on human rights-based approach to development cooperation*. New York: United Nations.

⁴⁹ General Assembly Resolution A/RES/63/117

Rights to receive and consider communications alleging violations of economic, social and cultural rights set forth in the Covenant. This presents a very positive step in the arena of Human Rights and in particular to the realisation of these rights as victims of the violation of these rights will be able to get remedies at an international level if they are not able to get an effective remedy in their State. This will go a long way in shaping the jurisprudence on the realisation of these rights.

2.2.2 Developments at the African Commission on Human and People's Rights

The African Commission on Human and People's Rights (The Commission) was established under Article 30 of the African Charter on Human and People's Rights (The Banjul Charter). The role of the Commission is *"to promote human and people's rights and ensure their protection in Africa."* To this end, the Commission is mandated to consider communications presented by other parties other than a State and the provisions regarding mandate and procedure are found from Articles 55 to 59. Article 55 specifically provides that *"[...] the Secretary of the Commission shall make a list of the communications other than those of the State parties to the present Charter and transmit them to the Commission"*. The provisions regarding the principles applicable are contained from Article 60 to 63. Article 60 specifically permits the Commission to *"[...] draw inspiration from international law on human and people's rights, particularly from the provisions of various African instruments on human and people's rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and people's rights..."*.

The import of this is that in working on economic and social rights, it is possible for The Centre to use the Banjul Charter in assessing and benchmarking the international standards and use it together with other international Human Rights instruments. **The Centre shall seek to send communications to the African Commission for consideration. This shall initially be done with support from and in conjunction with other established national institutions (such as CEMIRIDE) that work in the same area of rights and has experience of filing communications and arguing them before the Commission. The Centre shall also seek to build the capacity of Human Rights lawyers and practitioners in Kenya, Uganda and Tanzania to litigate cases through the national Courts and also be able to identify cases that could potentially be litigated before the Commission in accordance with Article 56 of the Charter.**

2.2.3 Developments with regard to the African Court on Human and People's Rights

The African Court on Human and Peoples Rights has been established by the Protocol to the African Charter on Human and Peoples Rights⁵⁰ which came into force on 25th January 2004. The goal of the African Court is to complement the protective mandate of the African Commission.⁵¹ It was also necessitated by the fact that the African Commission on Human and People's Rights had

⁵⁰ OAU/LEG/AFCHPR/PROT (III). Article 66 of the Charter creates the provision for the establishment of special protocols or agreements, if necessary to supplement the provisions of the Charter

⁵¹ Article 2, Protocol of the African Court on Human and Peoples' Rights

not been very effective due to the fact that it can only deliver decisions and not judgements and such decisions are never binding on States parties against whom they are issued.

It is the view of the sponsor of this initiative that the Court could not have come at a more appropriate time as the continent is slowly developing a Human Rights consciousness. This Court does therefore provide an opportunity for Human Rights lawyers and practitioners to push the legal boundaries around this area of Human Rights jurisprudence in the continent with a view to enhancing development and Human Rights for the people.

Even though the establishment of the Court has been welcome, unfortunately, there is a claw back on the realisation of Human Rights. This is because the Protocol does not allow individuals and NGOs direct access to the Court. The Protocol states under Article 5(3) that *“the Court may entitle relevant non Governmental Organisations (NGOs) with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol”*. Thus it only allows access if the States that have signed the Protocol creating the Court, further make a Declaration accepting the competence of the Court to receive individual communications. Article 34(6) states that *“at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive petition under article 5(3) involving a State party which has not made such a declaration”*. But this is self defeating for the citizens whose rights are violated as they cannot access the Court. As pointed out by Beyani, *“it is the individual and NGOs who have made use of the complaints procedure before the Commission and are likely to benefit most from the establishment of the Court.”* Kenya signed the Protocol on 7th July 2003, ratified on 4th February 2004 and deposited the instruments of ratification on 18th February 2005.⁵² Since Kenya is yet to make a Declaration in accordance with Article 5(3) of the Protocol, it is therefore envisaged that The Centre will make association with Coalition for an effective African Court on Human and Peoples Rights⁵³ to realise this goal.

2.2.4 Developments at the African Committee on the Rights and Welfare of the Child

The African Committee of Experts (The Committee) draws its mandate from Articles 32-46 of the African Charter on the Rights and Welfare of the Child (The African Children’s Charter). The Committee has been plagued by perennial shortage of funds to support its activities which has resulted in a very little work being done. Indeed since its establishment in 2001, the committee has held eleven meetings. It has received several initial reports from various States parties but it was during the 8th Session held in Addis Ababa in November 2007 that it was able to consider reports for the first time being the initial reports of Mauritius, Rwanda, Nigeria and Egypt. Since then, it has considered reports from other member States including Kenya. The Committee has so far received two communications from the Institute for Human Rights and Development in Africa (IHRDA)

⁵² See <http://www.africanunion.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20African%20Court%20on%20Human%20and%20Peoples%20Rights.pdf>

⁵³ See http://www.africancourtcoalition.org/editorial.asp?page_id=15. The objectives of the Coalition are to have full ratification of the Protocol establishing the African Court by all the 53 member State of the African Union (AU) [...] Since its inception, the Coalition has had notable successes in efforts to ensure that the creation for an effective and credible African Court.

based in The Gambia and the Child Law Centre of the University of Pretoria, South Africa. To date, it has not delivered its findings. **The Centre shall work with speed and dispatch to lodge a communication with the Committee. It is envisaged that the opinions from the Committee will contribute to enhancing the jurisprudence within the continent. Indeed, a case has already been identified together with a partner organisation that is willing to work with The Centre.**

2.3 The recent and evolving international jurisprudence on economic and social rights

The South African Constitution and the Constitutional Court of South Africa have been lauded as one of the most progressive in the world. The Constitution includes a justiciable Bill of Rights which provides under Section 7(2) that the State is under an obligation to “respect, protect, promote and fulfil”. Indeed Articles 26 and 27 of the said Constitution provides for the protection, promotion and fulfilment of some of the well known economic and social rights – these being the right to housing and the right to health care, food, water and social security. These rights have indeed been the subject of litigation in the Constitutional court and the jurisprudence created therefrom can be used as a good example of how these rights can be promoted and protected irrespective of the resources available to a State. Indeed the Grootboom case, which was the first Constitutional Court judgement on economic and social rights in South Africa became the foundation case in assessing the State’s responsibilities on socio-economic rights and has been used as the basis of other legal arguments such as in the case of *Minister of Health and others v Treatment Action Campaign (TAC)* Case No. 211821/2001⁵⁴, the State was ordered to offer health services equitably.

2.4 Recent and evolving developments in Kenya

2.4.1 Constitutional developments in Kenya

Kenya attained independence in 1963 and passed its then Constitution in the same year This independence Constitution was a negotiated document between the British Government that colonised the country and a few leaders including Mzee Jomo Kenyatta, Daniel arap Moi, Martin Shikuku, Achieng’ Oneko and Jaramogi Oginga Odinga to mention but a few. Chapter 5 of the Independence Constitution provided for the protection of the fundamental rights and freedoms of the individual. But despite these safeguards and protections including provisions on civil and political rights, successive regimes had continued to oppress and violate the rights and freedoms of individuals who are opposed to their political ideals.

For over 20 years, there was a clamour for a new Constitutional dispensation. This culminated into a referendum that was held on 4th August 2010 and subsequent promulgation on 27th August 2010. The new Constitution of Kenya for the first time provides for an unprecedented Bill of Rights in Chapter 4. It also makes very elaborate provisions with regard to the economic, social and cultural

⁵⁴ *Minister of Health and others v Treatment Action Campaign (TAC)* Case No. 211821/ 2001)

rights and also more importantly the enforcement of Human Rights. But worth noting is the content of Article 20(5) which provides for the considerations when one is making an application regarding the violation of their economic and social rights. It states that

“In applying any rights under Article 43, if the State claims that it does not have the resources to implement the rights, a court, tribunal or other authority shall be guided by the following principles

- (a) It is the **responsibility of the State to show that resources are not available;***
- (b) **In allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the rights or fundamental freedoms having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and***
- (c) **The court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion”***

Article 43 cited hereinabove provides that

- (1) “Every person has the right*
- (a) to the **highest standard of health, which includes the right to health care services, including reproductive health care;***
- (b) to **accessible and adequate housing, and to reasonable standards of sanitation;***
- (c) to be free from hunger, and to have **adequate food** of acceptable quality;*
- (d) to **clean and safe water** in adequate quantities;*
- (e) to **social security;** and*
- (f) to **education***

But equally important is Article 22 which deals with “**Enforcement of Bill of Rights**” and it states that

- (1) “**Every person has the right to institute Court proceedings claiming that a right or fundamental freedoms in the Bill of Rights has been denied, violated or infringed, or so threatened”***

It further goes ahead to state in Article 22(2) that proceedings may be instituted by “**a person acting on behalf of another person who cannot act in their own name; a person acting as a member of, or in interest of, a group or class of persons; a person acting in the public interest; or an association acting in the interest of one or more of the members”**

These provisions present an opportunity for The Centre to use the Constitution to set judicial precedents and seek conformity with the Constitutional and international Human Rights standards.

2.4.2 National Policy and Action Plan on Human Rights

In response to the Vienna Declaration and Programme of Action, the Government of Kenya like many other countries is required to develop a National Policy and Action Plan on Human Rights. This process once complete will provide a Human Rights vision and a road map for a Human Rights responsive country.

2.5 The intersection between development and Human Rights in Kenya

2.5.1 The Kenya Vision 2030

The Kenya Vision 2030 is the “Government of Kenya’s Development Blueprint”. It provides a “collective aspiration for a better society by the year 2030”. The aim of Kenya Vision 2030 is to “create a globally competitive and prosperous country with a high quality of life by 2030” and to “transform Kenya into a newly-industrialising, middle-income country providing a high quality of life to all its citizens in a clean and secure environment.”

To achieve this, the Vision has been anchored on 3 pillars namely economic, social and political governance. Under the economic pillar whose running call is “moving the economy up the value chain, The Vision envisages tourism, agriculture, wholesale and retail trade, manufacturing, business process outsourcing and financial services as the flagship that will help sustain a 10% growth rate until 2030. With regard to the social pillar which has a running call of “investing in the people of Kenya”, The Vision envisages a just and cohesive society that enjoys equitable social development in a clean and secure environment and shall focus on 8 key social sectors namely education and training, health, water and sanitation, the environment, housing and urbanisation as well as gender, youth, sports and culture. It also makes provision for Kenyans with various disabilities and previously marginalised communities. The political pillar that will be “moving to the future as one nation” shall focus on rule of law; electoral and political processes; democracy and improved public service delivery; transparency and accountability; public administration reforms; security, peace building and conflict management.”

The Kenya Vision 2030 seeks to contribute to the achievement of the Millennium Development Goals most of which are economic and social rights in nature. These include the elimination of extreme poverty, universal primary education; gender equality, reduction in child mortality; improvement in maternal health; lower HIV/AIDS and major disease incidence, environmental sustainability; and better partnerships with international development partners.

But despite its ambitious provisions, **The Kenya Vision 2030 has been criticised as not being Human Rights focussed and did not take a human rights based approach to development. The Centre has an opportunity to infuse Human Rights in the realisation and implementation of the flagship projects as it seeks to look at and engage with it holistically from a Human Rights perspective.**

3. PART III: POTENTIAL WITHIN THE REGION

3.1 The East African Community

The East African Community was revived on 30th November 1999 when the treaty for its re-establishment was signed and it subsequently came into force 7th July 2000, some twenty three years after the total collapse of the defunct Community and its organs. Some of the objectives of establishing the community were to enhance trade among the member States. But, it was noted that

even though the EAC partner States have signed and ratified a number of instruments, the biggest challenge has been their weak implementation.

At the second annual conference of the East African Community on Good Governance that was held in Nairobi in August 2010, the partner States discussed a draft EAC Protocol on Good Governance which seeks to unpack fundamental principles enshrined in the Treaty. It addresses governance issues in four broad pillars namely (i) democracy and democratisation processes; Human Rights and equal opportunities; anti corruption, ethics, integrity and rule of law and access to justice and places great emphasis on separation of powers. Indeed, some of the proposals contained in the Draft Protocol will require amendments to the Constitution of the member States to bring them in tandem. Some of the issues for example include term limits, real separation of powers with MPs forming the Legislature and Ministers forming the Executive and also the creation of two Chamber Houses. Indeed, the new Kenyan Constitution for example has provided for this while in Rwanda and Burundi MPs are not ministers.

The conference in Nairobi also singled out the need for Partner States to place good governance at the top of their agenda through enhanced budgetary allocations to expedite administration of justice and accountability at all levels. It also identified the provision of social services, human security and economic development as an integral part of the governance process. Therefore **the Centre can concentrate on issues of good governance only in so far as they affect the realisation of economic, social and cultural rights**

3.2 East Africa Court of Justice

The East African Court of Justice is an organ of the East African Community established under Article 9 of its Treaty. However, the challenge has been that it has not been empowered enough even to achieve its own objectives. Presently, it is only tasked with interpreting the Treaty. Therefore, **there is need to lobby for the extension of its jurisdiction beyond mere interpretation to the Treaty but also to try cases of a regional nature including those related to impunity and the violation of Human Rights.** This is a task that the Centre can lobby for in collaboration with other like minded organisations. Indeed, the East Africa Court of Justice once empowered will be another avenue for the search for legal recourse for the citizens of the East African countries. The Centre should therefore be placed at such time when this happens.

3.3 Recent and evolving developments in Uganda

Uganda ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 21st January, 1987, and a number of other international instruments that recognise economic, social and cultural rights such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the African Charter on Human and Peoples' Rights, together with its recent protocol thereby binding herself. Uganda has however not yet submitted the first periodic report to the Committee on Economic, Social and Cultural Rights.

3.3.1 The Constitution of Uganda

Under Chapter 4 of the Constitution of Uganda that was adopted in 1995, there are a number of provisions on economic, social and cultural rights which presents an opportunity to seek their realisation. In 2005, there was an amendment to the Constitution through Article 8A on the “*National Objectives and Directive Principles of State Policy*” which were previously perceived as having no binding effect but merely persuasive. But this changed because now under Objective I, it states that “*the following objectives and principles shall guide all organs and agencies of the State, all citizens, organisation and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decision for the establishment of a just, free and democratic society.*” From this, it is clear that these objectives and principles can be used to enhance economic, social and cultural rights which are specifically mentioned therein.

In his other article “*The Problematique of Economic, Social and Cultural Right In Globalized Uganda: A Conceptual Review* (Human Rights & Peace Centre, 2007) Mr. Oloka opines that “*the problem of economic, social and cultural rights in Uganda is not merely the fact that this category of rights is largely neglected in comparison to the attention that has been given to civil and political rights (CPRs), but also that when economic, social and cultural rights issues are addressed, there is an absence of a critical focus on questions such as access, accountability or appropriate mechanisms of redress.*” He concludes in his paper that “*ESCRs in Uganda is still rudimentary and in need of radical reformulation*” and makes the following suggestion in regard to ESCR going forward:

- (i) Public Interest Litigation (PIL) needs to be pursued in earnest in order to address the many negative consequences of unchecked economic reform, and to ensure that ESCRs are transformed from the status of ‘gifts’ of the state to basic entitlements for the population;
- (ii) That the approaches currently being employed for the attainment of the MDGs and to the eradication of poverty need to be sensitive to core Human Rights principles and to transform them into mechanisms that will effectively address issues such as discrimination, inequality and social vulnerability;
- (iii) New strategies need to be adopted to address the achievement of gender equality at all levels of state action;
- (iv) All government ministries and related state agencies involved in the provision of basic social and economic services need to study the Human Rights Based Approach to Development (HRBAD) and to reintegrate the same in their work

3.4 Recent and evolving development in Tanzania

Tanzania has been ranked as one of the poorest countries in the world ranking 162 out of 177 states (UNDP Human Development Index 2006). Though Tanzania has ratified most of the international Human Rights instruments, implementation of most of the standards and norms into its jurisdiction still remains wanting as some of the basic principles of democracy such as an independent judiciary, an independent media, free and fair elections are still to be realised. Noting that these constitutes realisation of civil and political rights, promotion and respect for economic, social and cultural rights have not as yet received adequate attention thus rights such as the

education and health still being under prioritized and issues such as gender discrimination still being rife. However, a Commission for Human Rights and Good Governance whose objective is to promote Human Rights through education as well as campaign against Human Rights violations was set up in March 2002.

3.4.1 The Constitution of Tanzania

Tanzania debated the need for a Bill of Rights in the early 1980s and indeed introduced a framework in 1985, which embodies the wide range of principles found in the UDHR. However, economic, social and cultural rights such as the right to adequate housing, water and sanitation and health have not been included in the Constitution.

Indeed, the enforcement of these Human Rights as contained in the Constitution can be sought in the High Court, which has been given jurisdiction to hear such cases under Article 30(3) of the Constitution. There is also the Commission for Human Rights and Good Governance, whose mandate includes *inter alia*, sensitizing the population on Human Rights and receiving complaints in relation to Human Rights violation.

3.5 The need for an institution to undertake capacity building in East Africa on Human Rights

In light of and in addition to the above mentioned developments, it must be noted that the East African region has only one institution of higher learning that trains on Human Rights through short courses namely, the Human Rights and Peace Centre at the Makerere University⁵⁵. To obtain post graduate qualification in Human Rights, one has to travel either to Hong Kong, Australia, Europe, the United States or South Africa. There is a major gap that needs to be filled, particularly in Kenya. , **The Centre shall to this end initially register in and operate solely from Kenya before launching in Tanzania Thereafter, The Centre shall initially commence working in those countries by undertaking short courses and trainings on various Human Rights instruments including civil and political rights, economic, social and cultural rights and group rights in order to develop skills in strategic and public interest litigation. These training will take the form of 2-4 week trainings that will bring together leading experts on various topics. It is envisaged that with time, The Centre shall, in collaboration with Human Rights lawyers that are citizens and residents in those countries, undertake and needs and gaps assessment with a view to developing country specific programmes in the two countries. It is envisaged that this will consequently enhance jurisprudence within the East Africa region thereby improving and standardising the implementation and consequent realisation of Human Rights.**

⁵⁵ The Human Rights and Peace Centre (HURIPEC) was set up by Makerere University in 1993. It is the first human rights centre of its kind in Sub-Saharan Africa. See http://www.huripec.mak.ac.ug/?page_id=2

4. PART IV: THE ORGANISATION

4.1 Proposed departments and programmes and their justification

4.2 Compliance Department

4.2.1 Monitoring programme

As already noted, one of the biggest challenges with regard to economic and social rights have been the inability to objectively measure them. Indeed, very few countries and/or institutions have developed indicators against which it would be possible to monitor how a country is moving towards the “progressive realisations” of economic and social rights. In many countries, there is no centralised and/or credible data that would inform and engage policy makers, academics, and NGO’s and UN institutions to ensure that they make well informed decisions. The organisation will seek to assess the status of realisation of these rights by monitoring the Government’s commitment to the implementation of Human Rights, especially and with a bias to economic and social rights.

The Centre shall assess international standards, monitor the compliance with these standards, propose improvements to the various institutions and propose the restructuring of institutions that are tasked with enhancing economic and social rights. It will seek to ensure a mutual understanding of various economic and social rights and that the realisation of resources is equitably distributed. The Centre shall spearhead the development and drafting of shadow reports on economic and social rights. The Centre shall lobby for the creation of a desk to monitor States party reporting on all Human Rights instruments with a view to improving data collection. It shall also lobby for the development of a National Strategy on Implementation of recommendations of the various treaty bodies.

4.2.2 Knowledge Management programme

The objective of this programme shall be to enhance the scholastic research on Human Rights and thereby push the boundaries of Human Rights within the East Africa region. This is driven by the fact that there is only one academic institution in East Africa that specialises on international Human Rights Law and that is HURIPPEC in Uganda. Kenya and Tanzania are in different stages of establishing Human Rights institutions. Therefore, The Centre will act as a reference point that will also assist those willing to undertake research on Human Rights. The Centre shall establish a well resourced Resource Centre with material from eminent Human Rights authors and scholars. Indeed, this is a major gap that needs to be exploited.

The Centre shall also craft itself as a premier and leading knowledge driven institution where all interventions and commentaries shall as much as possible be based on and supported by research findings or factual positions. Thus, The Centre shall seek to be innovative, undertake cutting edge research and produce a bi-annual report or score card on the state and status of implementation of economic, social and cultural rights in East Africa that will in future be an authoritative and must

have reference material in so far as assessing the realisation of economic, social and cultural rights is concerned.

4.2.3 Enforcement and Advocacy programme

Since the collapse of the Public Law Institute that was a registered NGO in Kenya, there has not been any organisation that has consistently filed Public Interest Cases in the Courts in Kenya and beyond in the interest of the public. The interest and skill levels for lawyers in identifying and litigating public interest cases have since waned. This is therefore a major gap. The Centre shall therefore take up Public Interest or Strategic cases to the High Court or Constitutional Court with a view to enforcing the realization of Human Rights of Kenyan citizens. These will be representative cases which are symptomatic of a problem that is facing the society and whose ruling will go a long way in protecting the Kenyan citizens. But it must be pointed out that under very exceptional circumstances, The Centre will provide legal aid to clients with a very strong case. It is envisaged that the cases shall be referred to the institution from other organisations or through soliciting from possible would be clients. The cases shall be undertaken purely on *Pro Bono* basis without consideration as to the financial position of the client. Note that the organisation shall not be seeking enhance access to justice to the indigent but to enhance access to Human Rights, particularly economic, social and cultural rights. The Centre will also capacitate lawyers to identify these cases.

It is envisaged that The Centre shall be a leading Human Rights institution in Africa that will advise and contribute to the development of Human Rights within the continent by working closely with the African Union together with its various organs and also in East Africa by working with the East African Community and its various organs.

4.3 Outreach Department

4.3.1 Training and Capacity Building Programme

As already noted, there is only one academic institution in East Africa that has been established to train and capacity build on Human Rights knowledge for lawyers and other practitioners. The Centre shall therefore seek to work with the various institutions to establish an accredited training programme for persons who desire to undertake short Human Rights training courses. The Centre shall also undertake holistic trainings and capacity building for different target groups on various Human Rights instruments and thematic areas including civil and political rights, economic, social and cultural rights and group rights together with develop skills in strategic and public interest litigation but with a special bias to economic and social rights. This will entail the organising of trainings that will take the form of 2-4 week training sessions that will bring together leading experts as facilitators on various topics. The Centre will also develop training manuals, simplified versions and people friendly versions of various treaties translated in local languages.

The Centre will seek to collaborate with the University of Nairobi, the Kenya School of Law and the Law Society of Kenya in Kenya; Makerere University and the Uganda Law Society in Uganda; and the University of Dar es Salaam, Faculty of Law, the Law School of Tanzania, the Tanganyika Law Society and Zanzibar Law Society in Tanzania to provide courses that are recognised by and

accredited to the aforesaid institutions. It is envisaged that The Centre shall commence by inviting participants from the mentioned countries to participate in its trainings for the first few months before setting up offices in those countries.

4.3.2 Internship and Exchange Programme

The Centre will establish and run an internship and exchange programme whose purpose shall be to train young and upcoming Human Rights practitioners on Human Rights, especially on implementation of economic, social and cultural rights. The interns may include students from international institutions, academic institutions or just those seeking experience in Human Rights.

4.3.3 Fellowship Programme

In order to enhance the capacity of The Centre and also to increase the quality of engagement and increase the dialogue among seasoned professionals in Human Rights discourse, The Centre shall seek to establish a fellowship programme whose aim shall be to encourage fellows to utilise The Centre to undertake scholarly research, provide a forum for one to enhance their knowledge and understanding of Human Rights, among other things.

4.3.4 Networking

The sponsor of this initiative proposes to establish The East African ECOSOC Rights Network (EARN-ECOSOC). This is a network that will bring together NGOs within the East African region that work around issues of economic, social and cultural rights to share experiences and jurisprudence in this area. The objective of the network shall be to coordinate the East African ECOSOC Rights Network (EARN-ECOSOC); enhance the capacity of members on economic and social rights; and undertake joint advocacy on key issues and finally to provide a platform to enhance the capacity of members on economic, social and cultural rights. As already noted, this shall also contribute to enhance the research and scholastic standards of Human Rights within the region.

4.4 Proposed Staffing

4.4.1 Regional Director

There shall be a Regional Director of The EACHRights Trust who shall coordinate all the National Offices. He/she shall hold a Masters Degree in Management, International Human Rights Law or any other related and relevant field of study with substantial experience in Human Rights.

4.4.2 National Director

The National Director of The EACHRights Trust shall be at least a holder of a Masters Degree in International Human Rights Law or any other related and relevant field of study with substantial experience in Human Rights. The role of the National Executive Director shall be to mobilise funds and enhance the institutions image. He/she shall be directly receiving reports from the Director of Programmes and Director of Finance and Administration.

4.5 Programmes

4.5.1 Deputy Director

There shall be a Deputy Director who shall be answerable to the National Director and whose role shall be to mobilise funds and coordinate all the institution's programmes at the national level.

4.5.2 Programme Director

There shall be 2 departments which shall be headed by departmental heads and shall be referred to as Programme Directors. They shall preferably be holders of Masters Degrees in Human Rights Law, Development Studies or Economics. Their role will be to mobilise funds and ensure their respective programmes run efficiently through regular monitoring.

4.5.3 Programme Manager

The various Programmes shall be headed by Programme Manager who shall be answerable to the Programme Directors. The Programme Managers must be Law or Social Science graduates from recognised Universities. They shall be encouraged to pursue a Masters degree. Their role shall be to implement the programme activities diligently and furnish reports.

4.5.4 Programme Officers

The Programme Officers will be University graduates with a relevant first degrees and a desire to pursue a career in Human Rights. Their role shall be to assist the Programme Managers.

4.6 Finance and Administration

4.6.1 Director of Finance and Administration

There shall be a Director of Finance and Administration who shall be a Bachelor of Commerce graduate with a CPA (K) qualifications. He/she shall be answerable to the National Executive Director and the Regional Executive Director.

5. PART V: LOOKING BEYOND

5.1 Proposed Expansion Programme

It is hoped and envisaged that The Centre will be an immense success. It is hoped that this success will lead to a demand for replication in and expansion into the other East African countries. Therefore it is envisaged that The Centre shall first commence by inviting participants from those other countries to the trainings for the first few months. This expansion shall be a well and cautiously controlled expansion programme that will see The Centre set up offices in the other East African countries and if possible move into the wider Eastern Africa region. To achieve this, The

Centre will ensure that it establishes and institutionalises in Kenya first then thereafter in collaboration with Human Rights lawyers that are citizens and residents in those countries will first of all register and then thereafter seek to develop country specific programmes in these other countries and consequently be able to collectively establish jurisprudence within the East Africa region thereby improve and standardise Human Rights implementation. It is hoped that the registration in Tanzania and Uganda shall be done in February and July 2011 respectively thereafter the process of the development of programmes shall commence.

6. PART VI: GUIDING PRINCIPLES

The Centre shall be run strictly and exclusively on principles of utmost professionalism, good corporate governance and transformational leadership and there shall be no compromise whatsoever on the same. The Centre shall espouse gender equality and equity in its work. It shall be non partisan and people focussed. These shall be the running call and mantra.

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