

**ADDRESSING THE CHALLENGES OF STATELESS MINORITY
GROUPS: CASE STUDY OF THE NUBIANS IN KIBERA**

MONICA WAHURA MURAGURI

089246

**A RESEARCH PROJECT SUBMITTED TO THE LAW SCHOOL
FACULTY IN STRATHMORE UNIVERSITY FOR THE PARTIAL
FULLFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A
DEGREE IN LAW**

MARCH 2020

DECLARATION

Declaration by the Student

This dissertation project is my original work and has not been presented for a degree or Master Thesis program in any other University or Academic Institution.

Signature:.....

Date.....

Monica Wahura Muraguri

LLB/089246

Declaration by the Supervisor

This dissertation project has been submitted for examination with approval of Ms.Claire Adionyi as the University supervisor.

Signature:.....

Date.....

Ms.Claire Adionyi

Strathmore Law School Faculty

DEDICATION

I dedicate this project to the numerous persons within Kenya that are still in a stateless state .I hope my findings and recommendations will play a part in bettering their current living status. I further dedicate the project to my Mother for her encouragement and prayers and to my friends who offered me moral support throughout my academic journey.

ACKNOWLEDGEMENT

I would like to thank God for giving me life ,grace ,strength, time and ability in pursuit of my Bachelors of Laws degree .I am grateful to all the lecturers within the Strathmore Law school faculty for their immense and valuable support .Special thanks to my supervisor ,Ms.Claire Adionyi for her excellent guidance and support throughout the research work .I also want to acknowledge my fellow colleagues who supported me by giving me valuable insights during our peer to peer review of each other's work .

TABLE OF CONTENTS

DECLARATION	a
DEDICATION	b
ACKNOWLEDGEMENT	c
TABLE OF CONTENTS	d
LIST OF ABBREVIATIONS	f
TABLE OF CASES	g
ABSTRACT	h
CHAPTER 1: INTRODUCTION	9
1.1.Case Study Background	9
1.2.Statement of Problem.....	10
1.3.Statement of Objectives	10
1.4.Hypothesis.....	10
1.5.Research questions.....	11
1.6.Justification/ Significance of the Study.....	11
1.7 Research Gap.....	11
1.8 Limitations of study	11
1.9. Chapter Breakdown	12
1.10. Timeline/Duration.....	12
CHAPTER 2: LITERATURE REVIEW	13
2.0 Introduction	13
2.1 Statelessness - Specific Protection under Municipal and International Law.....	13
2.1.1 Development of Minority law in Europe	14
2.1.2 Cross- pollination of jurisprudence.....	17
2.2 Theoretical Framework	18
2.2.1 Will Theory of Rights	18
2.2.2 Human Needs Theory	19
2.3 Research Design &Methodology.....	20
2.4.Data Collection Methods and Instruments	20
CHAPTER 3: TOPICS RELATING TO THE RESEARCH QUESTIONS	21
3.0 Introduction	21
3.1International Laws on Minorities.....	21
3.2. National Perspectives on Minority Rights.....	23
3.2.1Challenges Facing Nubians in Kibera.....	25
3.3. Affirmative action by Nubians pushing for equal treatment in Kenya	27
CHAPTER 4: DISCUSSION OF THE RESEARCH FINDINGS	28
4.0 Introduction	28
4.1 Analysis.....	28

4.1.1 Discrimination as a challenge facing Nubians	28
4.1.2 International laws and Land Ownership Problems	29
4.1.3 Ethnicity as a cause of conflict due lack of recognition by national law	30
4.1.4 Affirmative action in fighting for well being	32
4.2. Chapter summary and conclusion.....	33
CHAPTER 5: CONCLUSIONS ANDRECOMMENDATIONS.....	34
5.1 Conclusion.....	34
5.2 Recommendations.....	35
BIBLIOGRAPHY	37

LIST OF ABBREVIATIONS

UNHCR	United Nations High Commissioner for Refugees
OSCE	Organisation for Security and Co-operation in Europe
ODIHR	Office for Democratic Institutions and Human Rights
UN	United Nations
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KNCHR	The Kenyan National Commission on Human Rights
IHRDA	Institute for Human Rights and Development in Africa
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
UDHR	Universal Declaration of Human Rights
KNHCR	Kenya National Commission on Human Rights

TABLE OF CASES

- ✓ Gypsies in Europe
- ✓ Ogiek community in Kenya
- ✓ Endorois people of Kenya

ABSTRACT

The focus on the study of minorities has been driven by both international and national desire to create peace and stability for all. Currently, the major problem is how to best extend protection towards this group at both national and international law levels. While many agree that there is a need to protect minority groups from discrimination as well as preventing the infringement of basic human rights, there is a clear dearth in terms of measures in place that will protect and extend to the group fundamental equal rights. Thus, the problem at hand is that Kenya does not have sufficient legal avenues to address the challenges facing minorities and protect the rights of its stateless minorities. This research, therefore, attempts to understand the existing laws in force aimed at protecting minorities and their implementation while paying particular focus to the plight of the Nubians in Kenya. It is the documented view that Kenya's legal system has for a long time been unsuccessful in addressing minority rights concerns. This research recognises that there are international legal frameworks that have been effective in providing a voice for minority groups. International laws and declarations on minority protection, as ratified by Kenya, have therefore become important. There is a palpable need for harmonisation on the national and international domains to widen the scope on the protection of minorities. This paper investigates whether there are sufficient and effective laws with regard to the legal protection of Nubians as well as other stateless minorities in Kenya. Furthermore, the study also attempts to discuss the existing laws and propose ways in which the laws can borrow from international laws to safeguard and promote the protection of stateless minorities.

CHAPTER 1: INTRODUCTION

1.1. Case Study Background

Kenya is characterised by great ethnic and religious diversity. Even so, the Kenyan Government does not recognise the Nubian ethnic minority. Nubians share a kinship with Sudan, a community beyond the Kenyan Borders.¹ For this reason, the group often believes their loyalty is questioned in Kenya and they are not fully accepted as citizens.² They live in enclaves of their own separate from other Kenyans with different values and patterns of existence.³

During the colonial period, Nubians were assigned land in Kibera and the first batch of Sudanese veterans settled on the land in 1911.⁴ Their clear history with the land they were assigned is seen in that the name 'Kibera', which originates from a Sudanese Arabic word meaning forest.⁵ In 1939, during the aftermath of World War II, the Nubians requested the British colonial government to repatriate them back to Sudan but their request was denied.⁶ Upon independence, the Nubian population in Kibera believed that they did not have any assurances on the land they lived on in Kibera.⁷ This was proved right as the Nubians were given housing concessions by the Government and most of the land was partitioned out to the other ethnic communities that were in the area.⁸

Kenyan Nubians were denied the right to own land and any land they built their property on was considered state property.⁹ Over the last four decades, the Kenyan Government has not adequately addressed the Nubian situation; case in point is the official government documents of the last colonial census where Nubians were classified as 'others'.¹⁰ Their

¹'Nubian Community in Kenya v. Kenya' Justice Initiative, 6 July 2011 <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya>, on 4 August 2019.

²Makoloo MO, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', Minority Rights Group International and Centre for Minority Rights Development, 2005, 16.

³ Parsons T, 'Kibera is our blood: The Sudanese military legacy in Nairobi's Kibera location 1902-1968', 30 *The International Journal of African Historical Studies* 1, 1997, 88.

⁴ Parsons, 'Kibera is our blood,' 88.

⁵Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 17.

⁶Adam HA, 'The Nubians and Statelessness: History in Defining Modern Lives', 1-4.

⁷Adam, 'The Nubians and Statelessness: History in Defining Modern Lives', 3.

⁸Makoloo 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 16.

⁹Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity,' 18.

¹⁰Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity,' 18.

position as a stateless community presents a dilemma as it has long hindered their means of livelihood as a community as well as other benefits accrued by the majority of communities in Kenya.¹¹

1.2. Statement of Problem

Minority rights issues are taking centre stage in current world conflicts.¹² In Kenya, the stateless minority, Nubians, face a number of challenges that the common citizen does not experience. Nubians' lack of land ownership rights over their ancestral home in Kibera, the reluctance of the Kenyan government to recognize the community as citizens, and the tiresome vetting processes required before acquiring their national identification are some of major reasons for structural violence among the community.¹³ The minority group struggles to receive their legal title as citizens locking them out of basic freedoms and rights such as the right to ownership of property, and political participation.¹⁴

The problem at hand is that Kenya does not have sufficient avenues to address challenges concerning its stateless minorities, Nubians. Therefore, this study seeks to find relevant and actionable solutions capable of addressing the challenges of Nubian minorities in Kenya as well as contribute to the existing body of literature on stateless minorities.

1.3. Statement of Objectives

1. To document the development of international law and the establishment of human rights instruments to reduce the plight of stateless minorities;
2. To examine the national laws that are touching on stateless persons in Kenya and the challenges facing Nubians in Kenya.
3. To evaluate and analyse the progress made by Nubians towards redress of their plight.

1.4. Hypothesis

This dissertation aims to test the following hypothesis:

1. That the legal system in Kenya does not adequately address minority rights protection issues;

¹¹Makoloo, *Kenya: Minorities, Indigenous People and Ethnic Diversity*, 16.

¹²Mbaria J, *Meet the Nubians, Kenya's Fifth –Generation "foreigners"* The East Africa, 2002, 24.

¹³Mbaria J, *Meet the Nubians, Kenya's Fifth –Generation "foreigners"* 24.

¹⁴Open society of Kenya. Open Society Justice Initiative, 17 May 2010.

<https://www.justiceinitiative.org/uploads/66fcd2c5-e02a-4485-963b-ef5b71c23b52/ali-communication-20100517.pdf>. On 4 August 2019

2. That the Kenyan Government has been responsible for the inherited Nubian problem;
3. That the Kenyan Government has outwardly expressed her reluctance to settle minority concerns of Nubians in Kenya.

1.5. Research questions

- a. What are the international laws and human rights instruments currently in place to reduce the plight of minority groups?
- b. What are the national laws touching on stateless persons in Kenya and what challenges are facing Nubians?
- c. What progress have Nubians made towards the redress of their plight?

1.6. Justification/ Significance of the Study

This study sheds light on the need for the Kenyan Government and key policy makers to consider laws and policies that address the plight of stateless minorities and especially groups that are considered structurally discriminated in Kenya. In addition, this study aims to take part in the formation of a platform to inform future research in conflict prevention among minority groups. This research, therefore aims to address the call for protection tools in national laws that will accommodate and protect Nubians and other stateless minorities.

1.7 Research Gap

Previous studies reviewed acknowledge the problematic nature of statelessness as it results in the infringement of the rights of minorities. There have been several attempts to address this issue by the UN and EU through treaties and international conventions. Kenya has also made strides by making legislative changes especially in the 2010 Constitutional reforms to ensure the minority rights protection of some stateless groups. Even so, the Nubian minority group in Kenya still struggles to attain the citizenship status that grants them the full enjoyment of these rights. The objective of this study is to mitigate this gap by analysing the rights of Nubians in Kenya and the possibility of cross-pollination of jurisprudence as a solution to the issue under study.

1.8 Limitations of study

1. Outdated data.

This research relies on published data. A substantial amount of the information found online is outdated and may not reflect the current happenings but can be used to analyse historical patterns, identify trends and predict future developments.

2. Limited amount of literature

Limited amount of literature focused on Nubian minority case studies in Kenya. In some cases, the publisher does not give out complete and reliable details in one source.

1.9. Chapter Breakdown

CHAPTER 1: INTRODUCTION OF THE STUDY

Chapter one as already covered above will be seen to touch on the following: background, problem statement, objectives, research questions, and hypothesis, and justification of the study.

CHAPTER 2: LITERATURE REVIEW

This chapter reviews the stateless gypsies group in Europe. Their history, the development in legislation throughout Europe and the cross-pollination of jurisprudence, are also analysed as a method of improving legislation on minority rights. The chapter also covers the theoretical framework and the research methodology.

CHAPTER 3: TOPICS RELATING TO THE RESEARCH QUESTIONS

This chapter involves the scrutiny of Municipal and International laws, touching on stateless persons in Kenya. The chapter also covers the current challenges facing Nubians in Kenya and the steps taken by Nubians to resolve them.

CHAPTER 4: DISCUSSION OF THE RESEARCH FINDINGS

This chapter discusses the findings of the research by analysing the information collected from secondary resources to find common themes, patterns and trends that enable the development of appropriate measures to address the challenges facing Nubians in Kenya.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

This chapter gives recommendation towards the betterment of stateless minorities and also looks at the various developments in legislation that currently recognize the plight of minority groups in Kenya.

1.10. Timeline/Duration

This research is aimed at taking one year.

CHAPTER 2: LITERATURE REVIEW

2.0 Introduction

International laws on minorities are important in understanding the history of minority rights protection laws. This section examines literature on the legislative development of minority law in Europe with a focus on the gypsies, the specific protections of minorities under municipal and international law, the theoretical framework, research methodology, and the data collection methods and instruments.

2.1 Statelessness - Specific Protection under Municipal and International Law

Citizenship is a fundamental element for security, identity, and a sense of belonging.¹⁵Nationals of a country are entitled to protection by the state and the right to enjoy fundamental civil rights such as the use of public services, participation in the electoral process, access to job opportunities, and the right to seek redress within the judicial system.¹⁶However, according to UNHCR, thousands of minorities across the globe are deprived of their citizenship and neglected by public laws.¹⁷

One of such minorities affected by statelessness is the gypsy group in Europe; also known as the Roma or the Romani group.¹⁸ Legislation targeting stateless persons has effectively become an alternative pathway to admission of certain minorities who would otherwise be excluded from citizenship.¹⁹ Most European countries borrow the concepts of human dignity and personal rights from each other to form the basis of new legal systems. Organisations including the Organization for Security and Co-operation in Europe (OSCE), the Office for Democratic Institutions and Human Rights (ODIHR) and the United Nations Refugee Agency work in harmony to also assist governments especially in Eastern and South Eastern

¹⁵Richard D, *legal storytelling for oppositionists and others: A plea for narrative, in critical race theory: the cutting edge*, ed. Richard Delgado. Philadelphia, Temple University Press, 1995, 307.

¹⁶Richard, *legal storytelling for oppositionists and others*, 305.

¹⁷<https://www.unhcr.org/3eb7ba7d4.pdf> on 9 August 2019

¹⁸Kostka J, 'The Migrating Poor: Romanian Roma under Social Authoritarianism in Poland' in Magazzini T and Piemontese S (Eds) *Constructing Roma Migrants. International Migration, Integration and Social Cohesion Research Series*. Springer, Cham 2019, 324.

¹⁹Gayin E, 'The concept of minority in international law: a critical study of the vital elements' Published LLM thesis, University of Lapland, Rovaniemi 2001, 77.

Europe to develop legislation that facilitates the gypsies to acquire personal documentation that secures their rights.²⁰

Gypsies are often seen as outsiders within legal and social borders with identifiable cultural traits that are not recognized within state laws to accord them citizenship. According to Richard Delgado, the dominant group in a country will enforce their power over minorities through what he calls normativity in legal thought.²¹ As a result, the marginalized group end up lacking any real political power and will be discriminated against in their country.

Through anti- gypsy laws in Europe, scholars were able to trace the movement of the ethnic minority.²²The drafting of legislation against the gypsies in Europe led to severe ethnic biases with a majority of the gypsies being regarded as criminals; they were segregated and killed during the holocaust by the Nazis.²³ The outset of the development of the legal security of marginalised groups in Europe is very strongly associated with the concepts of safeguarding territorial borders.²⁴Consequently, the protection of various minority groups became a prevalent characteristic of European government legislation in the19th century and has extended to other geographical areas.²⁵

2.1.1 Development of Minority law in Europe

International bodies noted the need to protect the rights of minority groups by the end of World War I. However, the actual humanitarian concerns and discussion about human rights began at the end of World War II.²⁶Gayin observes that it was appropriate for international instruments to ensure security for minorities against the abuse of authority by the states but the measures were insufficient.²⁷. In addition, the freedoms embodied in international treaties on human rights were often marked by an individualistic vocation, which can hardly react to

²⁰Canada: Immigration and Refugee Board of Canada, Romania: Treatment of Roma and state protection available to them' 1 September 2000,<https://www.refworld.org/docid/3df4be9b10.html> on 6 July 2019.

²¹Richard D, *legal storytelling for oppositionists and others*, 305.

²²Kostka J, 'The Migrating Poor: Romanian Roma under Social Authoritarianism in Poland, 324.

²³Kostka, *The Migrating Poor: Romanian Roma under Social Authoritarianism in Poland*, 354.

²⁴Milano F, *Unlawful territorial situations in international law*, MartinusNijhoff Publishers, Leiden/Boston, 2006, 67.

²⁵Thio L, *Managing the Babel: the International Legal Protection of Minorities in the Twentieth Century*, MartinusNijhoff Publishers, Boston 2005, 22.

²⁶Gayin E, 'The concept of minority in international law, 77.

²⁷Jovanovich M, 'Are there universal collective rights?' *Human Rights Review*, 4, 2010, 17-44.

group requirements.²⁸ Nonetheless, in the last few decades, international and national laws are increasingly developing laws that capture the uniqueness of different minority groups.²⁹ Europe is a significant contributor to the contemporary-legal system, which has provoked the incremental accumulation of human rights principles along with advancement of rights of minorities.³⁰ The legal formation of the freedoms of minorities in Europe has been both individually and collectively established.³¹ According to the UN, the minority rights systems were centred on bilateral treaties that, mainly of a collective nature, controlled the existence and rights of minorities.³²

The Constitutional modelling of the European endorsement of gypsies' can be described according to the doctrinal systematisation of four ideal quintessential designs found through a relative assessment of European legally recognised diverse groups.³³ The four designs include-repressive domestic models, liberal religious systems insensitive to diversity, promotional structures and multinational equality structures.³⁴ These legislative methods have lately been restructured, more specifically in the case of gypsies on the grounds of the ratification of the Framework Convention for the Protection of National Minorities (FCNM).³⁵

The Council of Europe (CoE) has 47 members and out of this, 39 members have endorsed the FCNM treaty to legally acknowledge gypsies as a minority by state law.³⁶ The emphasis above on the varying legislative formulations to minority rights originates from the argument

²⁸Gayin E, 'The concept of minority in international law, 78

²⁹UNGA, declaration of innate freedom and equality, UN A/Res/217 (10 December 1948).

³⁰Palici E, *Concepts about minorities*, Torino publishers, Giappichelli, 1999, 5.

³¹Palici, *Concepts about minorities*, 5.

³²Nowak M, *Introduction to the human rights regime*, MartinusNijhoff Publishers, Leiden 2003, 84.

³³ Marko J, 'Equality and Difference: Political and Legal Aspects of Ethnic Group Relations,' in James D (eds) *Vienna International Encounter of Some Current Issues Regarding the Situation of National Minorities* Strasbourg, Arlington, 1997, 37

³⁴Marko, 'Equality and Difference: Political and Legal Aspects of Ethnic Group Relations,'37.

³⁵ Marko, 'Equality and Difference: Political and Legal Aspects of Ethnic Group Relations,'37.

³⁶Henrard C, 'Devising an adequate system of minority protection.' *Journal of Individual Human Rights, MinorityRights*(2010),24

http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf on 6 August 2019

of non- discrimination for many CoE members. Lim contends that the concept of non-discrimination is not enough to protect minority rights and freedoms.³⁷

Overall, while the treatment of gypsies is substantially diverse over the expanse of mainland of Europe, diving and analysing the region according to the four main cardinals (East, West, North, and South) gives a precise image.³⁸ Some may contend that there is more formal acknowledgment of Roma minority in Eastern rather than Western Europe.³⁹ Western Europe has a history of fewer acceptances of non- territorial groups especially concerning the Roma, despite their more noticeable presence.⁴⁰

Countries in the Balkan area, Eastern Europe, Baltic area and the Scandinavian area legally recognise gypsies as a national minority.⁴¹ Macedonia is the only country among the CoE to take legislative measure to ensure that the Constitution recognises gypsies as citizens of the nation.⁴² According to article 16 of the Macedonian Constitution, all those residing within the country's borders, the Albanians, Serbs, Gypsies, Vlach and others that share the country's history and showing appreciation for their predecessors for the efforts and devotion they made for their motherlands will enjoy the rights as citizens.⁴³

The government ensures that all people are protected regardless of their cultural linguistic or religious differences and every individual is granted the right to participate in the public sphere.⁴⁴ The FCNM advisory committee reports that Macedonia set a *de jure* for other European countries to follow for protecting and advocating for minority rights.⁴⁵ The country sets a great example in legal recognition of minority rights and the implementation of the FCNM laws.

³⁷ Lim J, 'Immigration, Asylum, and Citizenship: A More Holistic Approach', 101 *California law review*, (2013), 43.

³⁸ Lim, 'Immigration, Asylum, and Citizenship: A More Holistic Approach,' 43.

³⁹ Pogonyi S, Kovács M, and Kortvelyesi, Z. 'The Politics of External Kin-State Citizenship in East Central Europe,' in Fiesolan B, (eds) *EUDO Citizenship Observatory Comparative Reports*, European University Institute, 2010, 6.

⁴⁰ Pogonyi S, Kovács M, and Kortvelyesi, Z. 'The Politics of External Kin-State Citizenship in East Central,' 6.

⁴¹ Lim, 'Immigration, Asylum, and Citizenship: A More Holistic Approach', 43.

⁴² Lim, 'Immigration, Asylum, and Citizenship: A More Holistic Approach,' 43.

⁴³ 'European commission for democracy through law, Venice Commission,' 9 march 2002 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-RA\(2001\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-RA(2001)001-e) on 4 August 2019

⁴⁴ Skaric S, 'Ohrid Agreement and Minority Communities in Macedonia' in Ebert F, *Basic Prospects of Multiculturalism in Western Balkan States*, Belgrade Ethnicity Research Center Stiftung, 2004, 101.

⁴⁵ Skaric, 'Ohrid Agreement and Minority Communities in Macedonia,' 101.

2.1.2 Cross- pollination of jurisprudence

Currently, several other countries borrow concepts from the Macedonian model as well as other international instruments of human dignity and individual rights for minorities. Russia for instance, imports concepts from Macedonia and have a legacy in acknowledging that the most effective measure to combat and reduce statelessness is removing the limitations of this group of people in terms of getting access to the procedures of acquiring Russian citizenship.⁴⁶ Serbia is also utilizing recommendations from UNHCR to make legal and administrative reforms on legislation. The country recognizes all ethnic communities as citizens of the country under Article 2 of the Law of protection of Rights and freedoms of national minorities.⁴⁷ As a result, 800,000 stateless persons (Gypsies included) have received citizenship.⁴⁸ The stateless determination procedure from Serbia was introduced to Moldova with over 800 people acceding to the system and obtaining a legal status due to guarantees in Article 1 of the National Minority Acts.⁴⁹ This allowed parents and children to get documentation for their children.

UNHCR suggests that to comprehensively safeguard and advocate for Gypsies rights, a nation must consider the best domestic legal practices and adapt recommendations from international instruments while considering the particular distinguishing characteristics of Gypsies relative to the dominant group in the country.⁵⁰ Creating the domestic legal provisions allows the minority group to develop its own cultural identity and enjoy other brackets of political, social, economic and cultural rights as citizens of the nation.

Legal historians advocate for analysing past cases of cross-pollination of jurisprudence as a means of developing ideas for the future legislation reforms through the use of foreign systems.⁵¹ For instance, an examination of the legal instrument utilized by Russia may help explain why the nation's model guarantees a stronger level of national and cultural autonomy

⁴⁶ Memo S, 'The legal status of Roma in Europe: between national minority and transnational people' Unpublished LLM thesis, University of Trento, 2012,44.

⁴⁷ Article 4 (11) of Law on Protection of Rights and Freedom of National Minorities, 27 February 2002.

⁴⁸ Section 15, Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations (Act no 382 of 2001).

⁴⁹ Section 15, Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations (Act no 382 of 2001).

⁵⁰ Memo, 'The legal status of Roma in Europe: between national minority and transnational people,' 44.

⁵¹ Amarante EL, 'On the Migration of Constitutional Ideas', *Connecticut Law Review*, 37, 2005, 907.

for minorities. Moreover, Russia has endorsed the two UN human rights covenants: ICCPR and ICESCR in developing the Constitutional provisions on human rights.⁵²

From the concepts presented above, it is clear that the migration of successful Constitutional ideals from foreign sources can help a country in creating liberal solutions. Primarily, Constitutional jurisprudence is a product of globalization and is increasingly becoming a tool for better judgment.⁵³

2.2 Theoretical Framework

2.2.1 Will Theory of Rights

The will theory propounded by Herbert Hart maintains that the most basic rights are freedom and liberty.⁵⁴ The philosopher argues that rights give the right holder the capacity to claim their breached rights or to waive them.⁵⁵ Going by Hart's logic, an individual's right to well-being and political participation are derived from the equal right to freedom and liberty.⁵⁶ It advances that human being's rights are reducible not just to the right to equal freedom and liberty but also security from violence and the essential needs for survival.⁵⁷ Philosopher Alan Gewirth also develops upon Shue and Hart's argument by advancing that an individual can justify their claim for human rights through logical purposive agency.⁵⁸ He argues that individuals can rationalize their claim to a right based on the general expectation of the behaviour of others. For instance, Gewirth contends that the right to life is absolute and cannot be disregarded in any situation.⁵⁹

With reference to the subject matter at hand, minorities, like all other citizens, are entitled to the rights that protect their well-being, security, subsistence, freedom, and human dignity. If such rights are breached, minorities can justify their claim to these rights by legal means, through international bodies, or other third party agents.

⁵²Tushnet M, 'Comparative Constitutional Law', in Reimann and Zimmermann R(eds.), *Constitutional law and Structure*, The Oxford Handbook of Comparative Law, 2008, 1226-1257.

⁵³Amarante, 'On the Migration of Constitutional Ideas', p. 907

⁵⁴Waldron J, *Theories of Rights*, Oxford, Oxford University Press, 1984, p. 77

⁵⁵Waldron, *Theories of Rights*, p. 77

⁵⁶Shue, H, *The rational of human rights*, New York, 1996, 61.

⁵⁷Shue, *The rational of human Rights*, 61.

⁵⁸Gewirth A, *Reason and morality*, Chicago, Chicago University Press, 1997

⁵⁹Gewirth, *Reason and Morality*, Chicago, Chicago University Press, 1997

2.2.2 Human Needs Theory

John Burton's theory of Basic Needs propounds that; an individual being the basic unit of consideration is thus seen to be the major actor and contributor to making up social structures, and through the process of reciprocity, the individual is expected to pursue their own needs.⁶⁰ Burton draws attention to the struggle that individual experiences as he seeks for control, identity and security in the society. As individuals struggle for these needs, they pursue these needs as individuals first, and later as group members, a common attribute experienced among stateless groups.⁶¹

Burton, opines that there is difference between values, needs and interests with values being acquired along the life as the individual experiences satisfaction from his or her needs.⁶² Interests are related to one's environment, customs and belief in communities.⁶³ On the other hand, needs to him, are related to growth and development while interests relate to the cultural, socio- economic and political aspirations of people in a social system.⁶⁴ Needs are individual- based, thus are negotiable according to the individual. On the contrary, interests are not negotiable since they are group-based.⁶⁵ This is what defines a community desire to be granted their rights to nationality as common among stateless groups.⁶⁶

The notion of the basic needs theory implies that the presence of stateless persons in a country can provide grounds for conflict. More to this, disputes are related to interests such as the need to own property among the stateless persons, as such granting of their deserved rights of nationality reduces conflicts associated with statelessness.⁶⁷

The idea of human rights and basic human needs are closely connected. The lack of those needs among stateless persons only shows human rights violation. Attempts to provide a solution towards statelessness are borne with the recognition that granting citizenship will not only grant stateless persons their rights but will also fulfil their needs as exemplified in the hierarchy of needs theory.

⁶⁰ Burton J, *Human needs theory: Conflict Resolution and Prevention*, 1990, 36-37.

⁶¹ Fisher RJ, 'Generic principles for resolving intergroup conflict', 50 *Journal of Social Issues*, 1, 1994, 47-66.

⁶² Burton, *Human needs theory: Conflict Resolution and Prevention*, 36.

⁶³ Burton, *Human needs theory: Conflict Resolution and Prevention*, 37.

⁶⁴ Burton, *Human needs theory: Conflict Resolution and Prevention*, 37.

⁶⁵ Burton, *Human needs theory: Conflict Resolution and Prevention* 37.

⁶⁶ Salla ME, 'Conflict Resolution, Genetics, and Alchemy-The Evolution of Conflict Transmutation', 3 *The Online Journal of Peace and Conflict Resolution*, 3, 2000.

⁶⁷ Salla, 'Conflict Resolution, Genetics, and Alchemy-The Evolution of Conflict Transmutation'.

2.3 Research Design &Methodology

An exploratory research model is the research design used in this study to collect secondary data. This research method is highly flexible and often leads to the development of essential knowledge values and the solution to key issues.⁶⁸The research utilizes the exploratory approach, which provides insights into the general nature of the problem to determine the reforms addressing the challenges of stateless minority groups. This design also enables the measurement, classification, analysis, comparison and interpretation of data. The model aims at acquiring valuable information about the existing problem and drawing reasonable general findings from the facts discussed wherever appropriate.⁶⁹

2.4. Data Collection Methods and Instruments

The researcher relies on secondary data in the collection of data for this study. Secondary data was collected from the library sources such as private sector reports on Nubians in Kenya, JSTOR, Strathmore University library sources, newspaper, journals and books. Secondary data was obtained through content analysis of published private sector journals, which captured the Nubian issue in Kenya. Content analysis was effective in developing rich, contextual intellectual information that was easily disseminated and applied to my research on Nubians as a minority group. This method was also important to the researcher as it helped in the diagnosis of the problem, discovering new ideas, screening alternatives, isolating key variables and the relationships for further examination.

⁶⁸Cresswell J and Clark L, *Designing and Conducting mixed method research* 2ed, Sage, Thousand Oaks 2011

⁶⁹Yin K, *Case study research: Design and methods* 4ed, Sage, Thousand Oaks, 2009.

CHAPTER 3: TOPICS RELATING TO THE RESEARCH QUESTIONS

3.0 Introduction

This chapter examines the international legal instruments that form the basis of minorities' laws across the globe and the specific principles that lead to legally binding human rights treaties. The chapter also examines the national perspective on minorities to understand the implication of international laws on decisions regarding national minorities. The section also covers the various challenges that Nubians currently face in Kenya and the affirmative action by Nubians pushing for equal treatment in Kenya.

3.1 International Laws on Minorities

Under the new world system, since the UDHR, the focus shifted from the rights of minorities to the individual rights with a key focus on non-discrimination aspect.⁷⁰ The UDHR is the foundation of several legally binding human treaties across the globe. The document adopted by the UN in 1948 addresses injustices and human oppression among different social groups.⁷¹ Conversely, in Europe, the bilateral and domestic laws provide a guide to the rights of minority groups such as the liberty to own land and participate in electoral processes. The European Convention on Human Rights (ECHR) included 'association with a national minority' in Article 14 to prohibit discrimination.⁷²

Today, international organisations have a vital role to play in shaping state-minority relationship policy models. Article 27 of the International Covenant on Civil and Political rights (ICCPR) continues to function as the minimum global standard treaty. It states as follows:

*Under those Nations where indigenous, social or minority languages exist, individuals belonging to such minorities shall not be denied the right to celebrate their own culture, proclaim and exercise their own religion or use their own dialect in the society with other members of their community.*⁷³

⁷⁰Thomberry P, 'An Unfinished Story of Minority Rights' In Biro A and Kovacs P (eds) *Diversity in Action, Local Public Management of Multiethnic Communities in Central and Eastern Europe*, 48.

⁷¹'The Foundation of International Human Rights Law' UN, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> on 20 July 2019

⁷²Thomberry P, 'An Unfinished Story of Minority Rights', 48.

⁷³Mullerson R, 'Minorities in Eastern Europe and the former USSR: Problems, tendencies and protection', 56 *The Modern Law Review* 6,1993, 795.

This was a pronouncement on the rights of persons belonging to any religious, linguistic, cultural or ethnic minority.⁷⁴This is particularly important as it ascertains ethnic diversity and equal status of the minority group to the dominant group.

Minority rights issues vary in their capacity and intensity in each country. A minority issue in one country cannot be used as a comparison to another issue in another country. However, with the United Nations adoption of Article 27 and even more recently the UN General Assembly law that was passed, it gives minorities a framework for their grievances to be addressed from an international perspective.⁷⁵On a national level, the challenge is that minorities through their social and cultural aspect can challenge the laws of the land, resources of the state, claim participation in decision-making yet there are no national laws that have been put in place that can appreciate the ethnic dimensions shared by minorities.⁷⁶A case in point is the European Union (EU) laws, which did not have an instrument for accommodating minority rights but instead recovered the cultural and educational aspect reflected in Article 22 of the European Charter on the Fundamental Freedoms.⁷⁷

According to the African Charter on Human and People's Rights, Kenya became a party to the ratification of the Charter on 23 January 1981.⁷⁸This Charter has been an important international law that safeguards the protection of minorities in Africa. The African Charter forbids discrimination under Articles (2) and (3) respectively as follows:

*Each person should have the capacity to enjoy their legal privileges regardless of their, ethnicity, gender, language, religion, political ideologies, cultural identity, wealth, individual opinions, and social origins.*⁷⁹

*Every person is equal under the law; every person has the right to equal Constitutional protection.*⁸⁰

Article 19 further stipulates that all individuals should be accorded equal respect; treatment and equal rights and nothing can vindicate the domination of one group over another.⁸¹This

⁷⁴Rousseau JJ, 'The Social Contract' 12.

⁷⁴ Article 56, Constitution of Kenya (2010)

⁷⁵Article 2, ACHPR, 23January 1981

⁷⁶Thomberry P, 'An Unfinished Story of Minority Rights', 51.

⁷⁷Thomberry P, 'An Unfinished Story of Minority Rights', 51.

⁷⁸ Article 2, ACHPR, 23 January 1981

⁷⁹Article 2, ACHPR, 23 January 1981

⁸⁰ Article 3, ACHPR, 23 January 1981

Charter has been effective in the protection of minorities who through the national laws of their countries were unable to seek protection and recognition. The African Charter supersedes the national laws of African States as this is a more superior and authoritative body that has the power to address issues to do with human rights and minority concerns from an international law perspective.⁸² Kenya is among the 54 member states of the African Union to ratify the African charter and is bound to the ruling offered in the African charter.⁸³ A good example is the Ogiek community who were granted their recognition, protection, and ownership of ancestral land in Baringo as part of The African Commission Verdict that urged Kenya to implement the rights of groups as guaranteed in the African Charter.⁸⁴

3.2. National Perspectives on Minority Rights

The principle on protection of minorities as ratified by the Universal Declaration of Human Rights (UDHR) is seen as an effective way for states to apply laws on minorities on a domestic level.⁸⁵ However, cases such as the Rwanda and Yugoslavia's genocide prove that application of these principles is a challenge for many states.⁸⁶ Article 1 of the UDHR indicates that nations need to take statutory steps to safeguard the culture and identity of minorities within their regions.⁸⁷ The script is non-binding and even though it conditions nations to adopt such laws, the declaration does not specify how countries should implement minority's concerns.⁸⁸

The international laws set parameters on how to make decisions regarding national minorities and how to implement laws that protect minority groups, but the definition of indigenous groups is autonomous and thus may not be unanimous across all countries.⁸⁹ Kenya has been

⁸¹ Article 19, ACHPR, 23 January 1981

⁸² *Nubian Community in Kenya v The State of Kenya*, 2010 eKRL

⁸³ OHCHR <https://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf> on 9 August 2019

⁸⁴ African Commission (on behalf of Ogiek) v Kenya, Nigeria, ACmHPRComm 7/12, 5/17 Activity Report (2017), 358

⁸⁵ Report of the Commission of Human Security', ILC 1st Report, 2003, UN Doc A/2/5.

⁸⁶ Staub E, 'Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation', 21 *Political Psychology*, 2, 2000, 367.

⁸⁷ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, OHCHR

<http://www2.ohchr.org/english/law/minorities.html> on 9 August 2019

⁸⁸ Unit Report of the Commission of Human Security', ILC 1st Report, 2003, UN Doc A/2/5.

⁸⁹ OHCHR <https://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf> on 9 August 2019

able to achieve some of the principles under the declaration to protect minorities residing in its territories. Kenya tried to develop statutory and legislative structures for protection of minorities in the first Constitution of 1963 by borrowing essentials from the UDHR declaration.⁹⁰ Under Article 70, the Constitution acknowledged the rights of every individual regardless of their race, tribe, sex, origin, residence, colour, sex, and religion.⁹¹ Under Article 74, the Constitution spelled out non-discrimination and equal rights for citizens. Aigelgel argues that the Constitution was insufficient for the protection of minorities since it only defined general rights of citizens and the general protection from discrimination of all citizens.⁹² In essence, minorities were seen as part of the collective nation and not as a unique group and therefore such laws did not guarantee the specific protection of minorities.

The 2010 Constitution provides a premise to protect minorities because it mentions the specific aspects of human rights that must be protected in chapter 4, clause 3 of Article 19 of the bill of rights.⁹³ Although the Constitution does not directly mention minorities, it gives precedence to equal rights, non-discrimination, equal representation and political freedom of all citizens.

The Constitution of Kenya, 2010, defines minorities as a vulnerable group, marginalised group or community.⁹⁴ They must be disadvantaged under the Constitution; feel discriminated against because of their inferiority in number; they must lack access to vital resources; and they can be nomadic or experience very little social and political integration in their region of residence.⁹⁵ With reference to Article 56, it is provided that the governing authority should set up specific measures and corroborative actions to ensure that the marginalised groups are indeed able to participate in all spheres of their life including governance.⁹⁶

⁹⁰ The Constitution of Kenya, 1963 (repealed), (the National Council for Law Reporting: Nairobi) *Revised Edition* 2009, 40.

⁹¹ The Constitution of Kenya, 1963 (repealed), (the National Council for Law Reporting: Nairobi) *Revised Edition* 2009, 40.

⁹² Aigelgel K. 'Rights of Minorities: A Case Study of Nubians in Kenya' Published LLM Thesis, University of Nairobi, 2011.

⁹³ The Constitution of Kenya, 2010, (the National Council for Law Reporting: Nairobi), 2010.

⁹⁴ Ghai J, Sing'Oei K, and Wanyoike W, Taking diversity seriously: minorities and political participation in Kenya <https://www.refworld.org/pdfid/528496974.pdf> on 20 August 2019

⁹⁵ Ghai J, Sing'Oei K, and Wanyoike W, 'Taking diversity seriously: minorities and political participation in Kenya' <https://www.refworld.org/pdfid/528496974.pdf> on 20 August 2019

⁹⁶ Article 56, Constitution of Kenya (2010).

In reference to Kofi Annan's report, human security implies protecting the basic fundamental freedoms, protecting people from critical and persistent threats. It also means strengthening their will power by creating systems that will give them a proper survival livelihood and dignity as a people belonging to a community.⁹⁷This in essence should form the acknowledgement of Nubians by the Kenyan Government.

3.2.1 Challenges Facing Nubians in Kibera

Most scholars agree that inequalities and discrimination can lead to poverty and political marginalization. In the studies by Makoloo and Aigelgel, both authors found that rights of indigenous groups in Kenya and across the world are often not respected and this brings many challenges.⁹⁸Both authors also found that they are also not included in development and planning processes and the states lack official and unofficial data of minority groups and this keeps them hidden from the public eye and their problems remain unresolved.⁹⁹ Ethnic discrimination characterizes Kenya's political and economic scenery. Such marginalization is the breeding ground for hostility and a contributing factor to post- election violence.¹⁰⁰

The plight of Nubians in Kenya began during independence and continued even after independence.¹⁰¹ After independence, the ruling government strongly referred to Nubians as 'aliens' in the country, using this notion to forcibly displace them from their land in Kibera.¹⁰² In the Moi era, the government would further marginalise the community and even declare that any Nubians that arrived after 1945 were non- citizens.¹⁰³Such marginalisation also led other communities surrounding Kibera to discriminate and dispute over property owned by Nubians.¹⁰⁴The independence government and successive governments failed to

⁹⁷'The Foundation of International Human Rights Law' *UN*, 1 May 2003 <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> on 20 July 2019

⁹⁸Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity,' 16., 32. And Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya.'

⁹⁹Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity,' 7.

¹⁰⁰Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity,' 4.

¹⁰¹Open society of Kenya. Open Society Justice Initiative, 17 May 2010. <https://www.justiceinitiative.org/uploads/66fcd2c5-e02a-4485-963b-ef5b71c23b52/ali-communication-20100517.pdf>. On 4 August 2019

¹⁰²Aigelgel. 'Rights of Minorities: A Case Study of Nubians in Kenya,' 34.

¹⁰³Aigelgel. 'Rights of Minorities: A Case Study of Nubians in Kenya,' 34.

¹⁰⁴Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya', 34.

recognise the Nubian issue.¹⁰⁵ The British colonial government had allocated about 5 acres of land to each Nubian family.¹⁰⁶ This land was snatched to build municipal housing and the families relocated to smaller parcels in Kibera.¹⁰⁷ Some of the areas forcibly taken include the now Jamhuri estate, Ajani estate and the property where Moi Girls Secondary School now stands.¹⁰⁸ Subsequently, the economic situation of Nubians deteriorated with most of them resorting to building low-income shacks.¹⁰⁹ Reports by international organisations such as the UN indicate that almost 60% of Nubian population live in poverty, have poor living condition, lack a basic income and lack basic human rights.¹¹⁰ They also report that without recognition by law, Nubians are still vulnerable to evictions and must live cautiously.¹¹¹ The open society justice initiative affirms that in accordance to law, all citizens born after 1963 on Kenyan soil have the right to citizenship.¹¹² Furthermore, the society also records that for Nubians to gain the national ID a Nubian must provide supporting documents such as the parent's or grand-parent's identifications documents, present themselves to a vetting committee and swear an affidavit in the magistrate court.¹¹³ The open society justice initiative further argues that the national ID is an essential document to acquire services such as education, business loans, healthcare facilities, travel, voting exercises and employment opportunities.¹¹⁴ A report done by KNHCR corroborates statements by the open society justice initiative by finding that the background checking process for Nubians seeking to be

¹⁰⁵ Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya', 17

¹⁰⁶ Open Society Justice Initiative. *The Nubian Community in Kenya v The State of Kenya*, Communications 317/06, 7 May 2010, 46

¹⁰⁷ Open Society Justice Initiative, 46

¹⁰⁸ Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya', 65

¹⁰⁹ April Zhu: 'A home to call your own – even if it is a slum' *The New Humanitarian* 14 December 2017 <https://www.thenewhumanitarian.org/feature/2017/12/14/home-call-your-own-even-if-it-slum> on 2 August 2019.

¹¹⁰ 'The Foundation of International Human Rights Law' *UN*, 1 May 2003 <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> on 20 July 2019

¹¹¹ 'The Foundation of International Human Rights Law.' 2019

¹¹² Open Society Justice Initiative, 47.

¹¹³ Open Society Justice Initiative, 47.

¹¹⁴ Open Society Justice Initiative, 47.

issued with identity documents is highly strenuous and time consuming.¹¹⁵ This means that the hundreds of Nubians lacking these documents cannot gain access to crucial opportunities.

3.3. Affirmative action by Nubians pushing for equal treatment in Kenya

Even with the challenges that Nubians have been facing, the group has taken independent action to get equal treatment in Kenya. During the formation of the first government of Kenya, Nubians tried to get recognition as the 23rd community in Kenya in the first Constitution to gain citizenship and land rights.¹¹⁶ This was their first failed attempt to gain equal treatment in Kenya. Subsequently, the government went on to grab prime land to create metropolitan estates with no reimbursement for land taken away from them.¹¹⁷ The Nubian council of elders has tried in all administrative regimes since Kenyatta, to Moi and Mwai Kibaki to get recognition for their land rights.¹¹⁸ These efforts were futile.

The current president, Uhuru Kenyatta in June of 2017 issued over 2.8 million title deeds for 288 acres of land in Kibera.¹¹⁹ The issuing of title deeds was the community's first major recognition by a ruling government and the head of state promised to work together with the community to develop the land in Kibera and the public utilities in the area. While this is yet to come to fruition, such a move was important in the decades spent fighting for land rights. Sheikh Issa Abdulfaraj, chair of the Kenya Nubian Council of Elders, highlights that Nubians are fighting for infrastructural development, establishment of permanent residence and most importantly, the acknowledgment of Kibera as ancestral land for the Nubians.

¹¹⁵Kenya National Commission on Human Rights, *An Identity Crisis: A Study on the Issuance of National Identity Cards* (2007).

¹¹⁶Aigelgel K. 'Rights of Minorities: A Case Study of Nubians in Kenya'

¹¹⁷James Mwangi, 'Kijiji slum fire was land grabbing ploy residents' Standard digital, 2 February 2018 https://www.standardmedia.co.ke/article/2001268214/kijiji-slum-fire-was-land-grabbing-ploy-residents?fb_comment_id=1840015776039694_1846151895426082 on August 1 2019.

¹¹⁸James Mwangi, 'Kijiji slum fire was land grabbing ploy residents' Standard digital, 2 February 2018 https://www.standardmedia.co.ke/article/2001268214/kijiji-slum-fire-was-land-grabbing-ploy-residents?fb_comment_id=1840015776039694_1846151895426082 on August 1 2019.

¹¹⁹James Mwangi, 'Kijiji slum fire was land grabbing ploy residents' Standard digital, 2 February 2018 https://www.standardmedia.co.ke/article/2001268214/kijiji-slum-fire-was-land-grabbing-ploy-residents?fb_comment_id=1840015776039694_1846151895426082 on August 1 2019.

CHAPTER 4: DISCUSSION OF THE RESEARCH FINDINGS

4.0 Introduction

The main task of this secondary research was to analyse, understand the current state of the Nubian minority in Kenya, and make contextual theoretical points that can contribute to the relevant professional bodies. All the exploratory results are presented and discussed in detail in this chapter. In analysing the body of secondary literature, four themes emerged and are highlighted in this section.

4.1 Analysis

4.1.1 Discrimination as a challenge facing Nubians

This study finds that living in the slums is hard and it is even harder for Nubians in Kibera slum. Aigelgel in his studies found that Nubians have been struggling to acquire Citizenship ever since independence.¹²⁰ The qualitative data in the research by Aigelgel and Makoloo contained transcripts of interviews from young people, the elderly and some institutions that fight for Nubian rights. In the research by Aigelgel, the author found that obtaining the ID is a hurdle for most Nubians. One is subjected to a rigorous, humiliating, and time-consuming process that the average Kenyans do not undergo and, in some cases, the ID is not issued at the end of it all.¹²¹

A similar research by Makoloo in 2005 also found that the elderly have a particularly had time in gaining their identity cards and they have to endure lengthy bureaucratic battles that are sometimes futile.¹²² In the same study, the youth articulated their struggle to obtain jobs, access certain buildings, open banks accounts, access loans and academic institutions, due to the lack of an ID.¹²³ This study shows a prevalence of discrimination that prevents many patriotic Kenyans from engaging in their democratic rights. In most of the cases studied, the Nubian community expressed that their lack of citizenship has left them vulnerable to economic and political subjugation. The Open Society Foundation (OSF) for years has campaigned against the discrimination and for the minority group to gain the basic human rights.¹²⁴

¹²⁰Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya'

¹²¹Aigelgel, 'Rights of Minorities: A Case Study of Nubians in Kenya'

¹²²Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 24.

¹²³Makoloo MO, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 24.

¹²⁴<https://www.justiceinitiative.org/uploads/66fcd2c5-e02a-4485-963b-ef5b71c23b52/ali-communication-20100517.pdf>. On August 22, 2019.

KNCHR describes the predicament of the Nubians as “institutional discrimination”.¹²⁵IHRDA working with local community leaders have presented cases to the ACERWC arguing that the Kenyan Government violates the rights of Nubian children by failing to fulfil the minimum conduct of non- discrimination of children in Article 3 of the African Children’s Charter.¹²⁶

4.1.2 International laws and Land Ownership Problems

This research finds that Nubians are a good example of the correlation between exclusion and demarcation of minority communities in Kenya. Nubians’ claim over citizenship and access to ancestral land can be seen as a structural issue that the Government has failed to address on various counts.¹²⁷According to the Open Society of Kenya, the government has on various counts failed to recognize their written plea for citizenship.¹²⁸In their report, the Nubian community as a whole presented their case in front of three successive governments, none of which has been able to address our concerns for land ownership of Kibera and representation as the 43rdethnic community in Kenya.

It is due to such efforts, that a majority of the authors reviewed in this research believe that Nubians feel that the government has intentionally refused to recognize the community with an aim of completely decapitating their rights and needs as Kenyan citizens.¹²⁹ To that effect, cases of land ownership have also been taken to other African courts that have more effective Legal systems: A case in point is the case on the Endorois people of Kenya presented to the African Commission on Human and Peoples’ Rights.¹³⁰ The win was of significant implication for international jurisprudence since the Commission provided recommendations to the Kenyan government to extend individual rights and ownership rights to the Endorois indigenous group.¹³¹Based on the international laws governing protection of minorities, this research finds that the Kenyan Government has in many ways failed to recognize Nubian ethnicity. However, milestone documents such as the UDHR have demonstrated the ability to

¹²⁵ “Statelessness of minority groups in Kenya” <https://www.knchr.org/> On August 22, 2019.

¹²⁶Article 3(22), African Charter on the Rights and Welfare of the Child, 1990.

¹²⁷Thomberry P, ‘An Unfinished Story of Minority Rights’, 48.

¹²⁸<https://www.justiceinitiative.org/uploads/66fcd2c5-e02a-4485-963b-ef5b71c23b52/ali-communication-20100517.pdf>. On August 22, 2019.

¹²⁹Makoloo, ‘Kenya: Minorities, Indigenous People and Ethnic Diversity.’

¹³⁰ Lynch G, ‘Becoming indigenous in the pursuit of justice: ACHPR and the Endorois’ 111 *African Affairs*, 442, 2011, 24-45.

¹³¹ Lynch, ‘Becoming indigenous in the pursuit of justice: ACHPR and the Endorois’ 45.

guide nations in ways of addressing injustices and oppression among minority groups. The document is the foundation for bilateral and domestic laws in Europe that acknowledge the liberty and right of minorities to own land.¹³²In Kenya, the lack of recognition has led to many Nubians feeling disloyal and disinterested in the way the government has handled their grievances.¹³³

According to Article 3 (1) of the African Charter, all persons are supposed to be treated equally in line with the laws of a state.¹³⁴ This inquiry uncovers the continuous violence experienced by Nubians and orchestrated by the successive Kenyan governments. Dating as far back as the post-independence period, land was forcefully grabbed from Nubian families by the then Kenyatta administration who were making room for the growth of estates in Nairobi.¹³⁵

The ethnicity of Nubians can be seen as an important trait of what they consider their sense of belonging and loyalty to society.¹³⁶Without this ethnicity or recognition by the public, the Nubian community stands a risk of tailing back from society completely and being regarded as a non-existing ethnic community. It appears that the government continues to deny them recognition and in return, the community continues to face marginalisation as an ethnic community.¹³⁷ This has the capabilities of leading to an outburst of violence if the community is haggard into it.¹³⁸

4.1.3 Ethnicity as a cause of conflict due lack of recognition by national law

Ethnic identity emerges as an important phenomenon that can be used to understand the extent to which social conflict and marginalization of Nubians had been contributed to ethnicity. According to Horowitz, ethnic identity by its nature creates a feeling of loyalty,

¹³²'The Foundation of International Human Rights Law' UN, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> on 20 July 2019

¹³³ 'Statelessness of minority groups in Kenya' <https://www.knchr.org/> On August 22, 2019

¹³⁴ Article 3 (1), African Charter on Human and People Rights (1981)

¹³⁵Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 74.

¹³⁶ Hansen B, 'Pre-colonial immigrants and colonial servants. Nubians in Uganda Revisited.'90, *African Affairs* 361, 991, 559-580.

¹³⁷Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019

¹³⁸Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019

interest, and diminishes fear of extinction.¹³⁹ One of the vital findings of this research is that Nubians feel a sense of belonging in Kenya because the British colonial masters brought their fore fathers here but they call this home since their families have been born and bred in Kenya.¹⁴⁰ Nevertheless, their ethnicity has been used to classify them as others.¹⁴¹

They are not being recognised as a Kenyan ethnic community because their origin lies in Sudan and that even though they qualify for citizenship by way of naturalisation.¹⁴² As previously stated, Nubians have on different occasions felt that the government does not acknowledge the existence of the minority group. Ali argues that the exclusion and denial of rights may lead to violence and radicalisation of a marginalised group.¹⁴³ Therefore, if the Nubians feel like they are being treated as second-class citizens, then this violation may play with their psychological state or their physical state.¹⁴⁴ As with the current situation, there is an outburst of Nubian generations who feel that they have to fight for their rights as Kenyan citizens and their rights to their ancestral land of Kibera.¹⁴⁵ Although the Nubians may cling to their sense of belonging and ethnicity, they may have higher chances of radicalisation.¹⁴⁶

Looking at the national law perspective, the Constitution of Kenya has failed to recognise the group as a minority group despite their presence of rich culture and ethnic beliefs.¹⁴⁷ Based on the national laws of Kenya, the Constitution may constitute that every Kenyan deserves equal rights and representation however; the Constitution does not have any provisions for

¹³⁹ Open Society Justice Initiative. *The Nubian Community in Kenya v. The State of Kenya*, 2010, 55-60.

¹⁴⁰ Open Society Justice Initiative, 60

¹⁴¹ Abdul, Xena. 'Kenyan Nubians: The Forgotten People. Analysis and Debates for Freedom and Justice,' Pambazuka News, 30 March 2011. <https://www.pambazuka.org/governance/kenyan-nubians-forgotten-people>. On 22 August 2019.

¹⁴² Abdul, Xena. 'Kenyan Nubians: The Forgotten People. Analysis and Debates for Freedom and Justice,' Pambazuka news 30 March 2011. <https://www.pambazuka.org/governance/kenyan-nubians-forgotten-people>. On 22 August 2019.

¹⁴³ Al M, 'Back to the future? The rise of a "stateless" Middle East.' *Middle East Insights*, 2015.

¹⁴⁴ 'Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019

¹⁴⁵ 'Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019.

¹⁴⁷ Thomberry P, 'An Unfinished Story of Minority Rights', 51, "The Union shall respect cultural, religious and linguistic diversity"

protection of marginalized groups such as the Nubians.¹⁴⁸This can in many ways be blamed on the government's reluctance to give minorities recognition; thus, forming a foundation for structural violence.¹⁴⁹

A main feature of most enquiries shows that Nubians are fighting for representation and identity as a rich cultural community.¹⁵⁰The ongoing infringements of their cultural and ethnic convictions continue to influence and inhibit psychological perceptions of the remainder of the population and particularly of the state.¹⁵¹Even as the Nubian community continues to grow, they seem to be living in a state of defensiveness where they are consciously defending their identity and culture, which is excluded from the rest of the population.¹⁵²Based on the information obtained, the failure of the government to extend an easy flowing process of getting national documentations such as National identification cards (ID), passport, and birth certificate has affected the perception of the community against the general population.¹⁵³Moreover, as already articulated, the subjective and tiresome vetting processes can be viewed as forms of structural violence against the group.

4.1.4 Affirmative action in fighting for well being

Other than discrimination, land ownership problems, and conflict, another important theme that emerges is wellbeing. As already established, Nubians have been fighting for their claim to Kibera, their ancestral home. The group lives in poverty; they lack proper access to housing, education, and health facilities.¹⁵⁴The government has denied them access to build permanent housing on grounds that they do not own the land. In an article by business daily, the Vice Chairman of the Nubian Council of elders stated that other communities were

¹⁴⁸The Constitution of Kenya, 1963 (repealed), (the National Council for Law Reporting: Nairobi) *Revised Edition*, 2009.

¹⁴⁹Makoloo, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 84.

¹⁵⁰Adam, 'The Nubians and Statelessness: History in Defining Modern Lives', 4.

¹⁵¹'Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019

¹⁵²'Nubian Community in Kenya v. Kenya' <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> on 4 August 2019

¹⁵³Makoloo MO, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 74.

¹⁵⁴Kebaso, George. 'Nubians Oppose Upgrading of the Kibera Slums.' Business Daily, 28 September 2009. <https://www.businessdailyafrica.com/corporate/539550-664794-6k4oy0z/index.html> On 4 August 2019.

putting up permanent structures in Kibera yet Nubians are denied this liberty.¹⁵⁵ Kibera is well known as one of the largest slums in Africa and its original owners are being swallowed up by other communities who are seen to receive more favours from politicians who seek political representation.¹⁵⁶ The country is still slow on reviewing laws that improve minority rights protection.

Regardless, Nubians have indeed taken action to resolve their predicament through negotiations with the government and court battles through various organisations. Most of the attempts were futile especially in situations where land was taken away from Nubian families.¹⁵⁷ However, in 2017 the Nubian community was able to receive title deeds for 288 acres of land in Kibera from the current president, Uhuru Kenyatta.¹⁵⁸

4.2. Chapter summary and conclusion

From the analysis of the information collected, it is clear that statelessness contributes to various challenges for the Nubian minority of Kenya. The archived literature reviewed provided rich information, which offered insights into a vulnerable population that has been neglected for generations in their ancestral home. From the findings, the prominent themes that emerged are discrimination, land ownership problems, ethnicity as a cause of conflict and wellbeing.

This research found that lack of IDs prevents Nubians from getting jobs, accessing certain buildings, opening bank accounts, gaining access to loans, access to academic institutions and participating in electoral processes. Nubians' statelessness has also denied them access to their ancestral land and the government has made little efforts to address the situation on various accounts. Moreover, even though Nubians feel a sense of belonging in Kenya, they are treated as foreigners in their own land and these may increase their chances of radicalization and violence. Lastly, due to their minority status in the slums of Kibera, a majority of Nubians live in poverty, lack access to proper education, health and housing.

¹⁵⁵Kebaso, George. 'Nubians Oppose Upgrading of the Kibera Slums.' Business Daily, 28 September 2009. <https://www.businessdailyafrica.com/corporate/539550-664794-6k4oy0z/index.html> On 4 August 2019

¹⁵⁶Kebaso, George. 'Nubians Oppose Upgrading of the Kibera Slums.' Business Daily, 28 September 2009. <https://www.businessdailyafrica.com/corporate/539550-664794-6k4oy0z/index.html> On 4 August 2019.

¹⁵⁷Aigelgel K. 'Rights of Minorities: A Case Study of Nubians in Kenya' 34

¹⁵⁸ 'President Uhuru Kenyatta issues title deed to Kibera Nubians' Nation Digital, 2 June 2017 <https://www.nation.co.ke/news/Uhuru-issues-title-deed-to-Kibera-Nubians/1056-3953204-9jfwvk/index.html> on 2 August 2019.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

As a minority group in Kenya, Nubians can easily be classified and characterized by their religion, social and economic organizations. Threats of violence against Nubians by other ethnic communities and the government can be considered as violent actions. This has taken a toll on the minority group's perception and response to the psychological and physical association. Minority groups do experience identity, ethnicity, and cultural association issues. As a result, the marginalized group end up lacking any real political, economic, and social power and experience discrimination in their country.

From the first objective of international laws on minorities, the study found that international organizations have played a vital role in shaping state-minority relationship policy models. The UDHR, for instance, has been the foundation of several legally binding treaties across the globe. In areas such as Europe, the bilateral and domestic laws have provided a guide to the rights of minority groups such as the liberty to own land and participate in electoral processes. In Africa, the African Charter on Human and People's Rights has also provided models that have been emulated across other countries in Africa. The African Charter on Human and People's rights granted communities such as the Ogiek community their recognition, protection, and ownership of ancestral land in Baringo because of the International law verdict.

On the second objective, which is the national perspective on minorities, the study found that the principles on the protection of minorities as ratified by the UNDR have been an effective way for states to apply laws on minorities at a domestic level. Nevertheless, the application of the principles proves challenging because the situation of minorities differs from state to state. The challenge facing the current government's perception of Nubians is that the minority group is not recognized under law. The question here is on whether the Kenyan Government is doing this on the grounds of ignorance or just reluctance to accept this minority group. The Kenyan Government's inability to address Nubian grievances has brought about more issues that will need to be effectively addressed. Although Kenya has been able to borrow some essential legislative structures from international law that acknowledges the equal rights of citizens this research has determined that the Constitution is insufficient for the specific protection of the Nubian minority group.

On the third objective, which is challenges facing Nubians, this study found that the minority group experienced a lot of inequalities and discrimination that have led to poverty and

political marginalization. Historical injustices, have denied the group access to property rights to land and legal structures. The Nubians have also faced various threats from actors. These threats have taken the following forms: Threats from the Government; Threats from major ethnic communities who deny them recognition; Threats of denial of their citizenship and threats of losing their ancestral land of Kibera. The failure of the Kenyan Government to address their concerns and grievances has posed a threat to eruption of conflict as Nubians can be triggered into violent actions. Based on Galtung's findings on structural violence, when there is a trigger effect on the group, this can easily erupt into violent and destructive actions by the group.¹⁵⁹

Lastly, this research found that Nubians have found solidarity to seek redress for their grievances through their local leaders, and legal platforms, and international bodies. The lack of basic needs and resources has led to Nubians always searching for equitable sources that can help address their concerns as a minority group. At present, Nubian youths understand the capacity to which their ethnic community is marginalized and experiencing violations of their basic freedom rights.

The Nubian issue, in particular, will require prominence as the inhibition of these forms of structural violence can eventually lead to an outburst of violent actions by the Nubian community. Acknowledging the minorities under law and borrowing from successful international legal principles will be a step in the right direction in the protection of the rights of Nubians.

5.2 Recommendations

Learning from past grievances of minorities across the world, it is important to identify and address the grievances of minorities before minorities are triggered into violent actions. Kenya has to identify and understand minorities within its territory as a first step in solving grievances then incorporate principles from international laws on minority protection. In the case of Nubians, their defensive violent tactics during the elections of 2007 can be attributed to their counteraction to the oppression and threats of violence used by other ethnic communities living in Kibera. A build-up of Nubian grievances is still ongoing and this does pose a big threat to the security and protection of Nubians.

The way forward for Nubians is for the Government of Kenya to set laws in motion that would provide a solution to the Nubian issue and provide a protection mechanism for minority groups as a whole. International laws could provide some credibility in the

¹⁵⁹Galtung J, 'Culture of Violence', 27 *Journal of Peace Research*, 3, 1990, 102

protection of minorities but the challenge has been that state sovereignty and national minorities are usually solely under state jurisdiction therefore international law cannot interfere with that. A valid case in point, the African Charter has played a vital role in addressing minority concerns in the African context. A good example was the settlement of the Ogiek minority community in Baringo.¹⁶⁰ However, it is important to criticize the legal regimes that are in place for minority protection within the country.

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was ratified in 1992 also, includes recommendations on how to resolve minority issues.¹⁶¹ The UN Declaration on minorities addresses both the collective and the individual rights of minorities. It is seen as a more grounded non-treaty in that, in the preamble it inspires nations to actively preserve equal rights and minority culture and inspires new awareness of minority rights in international arena. However, the recommendations given are only to be used on an international law perspective and therefore some of the grievances that can be experienced by minorities on a national level, cannot be easily addressed. The other challenge posed with this international law is that there is no legal backing as to how states are going to be monitored on their effectiveness of protecting minorities. Nevertheless, UNHCR suggests that nations address injustices and oppression among minority groups by first considering the best legal practices and adapting recommendations from international instruments while considering the particular distinguishing characteristics of a minority relative to the dominant groups in the country.¹⁶²

Undoubtedly, Nubians still face outright discrimination and violations of their rights in open discrimination by the national legal systems. Kenya has failed to preserve and offer equal opportunities to minorities. A comparison of state laws versus international laws on grounds of which law will take precedence over the other when addressing national minority concerns is one that remains a debate. Kenya can continue to borrow from international human rights principles to develop and implement legislative, administrative, and judicial practices that guarantee the execution of rights of the minority groups on a rational and meaningful basis.

¹⁶⁰ Makoloo MO, 'Kenya: Minorities, Indigenous People and Ethnic Diversity', 24.

¹⁶¹ Mullerson, 'Minorities in Eastern Europe and the former USSR: Problems, tendencies and protection', 104.

¹⁶² Memo S, 'The legal status of Roma in Europe: between national minority and transnational people' Unpublished LLM thesis, University of Trento, 2012,44.

BIBLIOGRAPHY

Legislation, Acts of Parliament

Article 56, Constitution of Kenya (2010)

Section 15, Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations (Act no 382 of 2001)

UN General Assembly

UNGA, declaration of innate freedom and equality, UN A/Res/217 (10 December 1948).

International Instruments

Article 2, ACHPR, 23 January 1981

Article 3 (1), African Charter on Human and People Rights (1981)

Article 3(22), African Charter on the Rights and Welfare of the Child, 1990.

Article 4 (11) of Law on Protection of Rights and Freedom of National Minorities, 27 February 2002.

Kenyan Case Law

Nubian Community in Kenya v The State of Kenya, 2010 eKRL

African Commission On Human And Peoples' Rights

African Commission (on behalf of Ogiek) v Kenya, Nigeria, ACmHPR Comm 7/12, 5/17 Activity Report (2017).

Other UN Documents

Report of the Commission of Human Security', ILC 1st Report, 2003, UN Doc A/2/5.

Book Chapters

Kostka J, 'The Migrating Poor: Romanian Roma under Social Authoritarianism in Poland' in Magazzini T and Piemontese S (Eds) *Constructing Roma Migrants. International Migration, Integration and Social Cohesion Research Series*. Springer, Cham 2019.

Marko J, 'Equality and Difference: Political and Legal Aspects of Ethnic Group Relations,' in James D (Eds) *Vienna International Encounter of Some Current*

Issues Regarding the Situation of National Minorities Strasbourg, Arlington, 1997.

Pogonyi S, Kovács M, and Kortvelyesi, Z. 'The Politics of External Kin-State Citizenship in East Central Europe,' in Fiesolan B, (eds) *EUDO Citizenship Observatory Comparative Reports*, European University Institute, 2010.

Skaric S, 'Ohrid Agreement and Minority Communities in Macedonia' in Ebert F, *Basic Prospects of Multiculturalism in Western Balkan States*, Belgrade Ethnicity Research Center Stiftung, 2004.

Thomberry P, 'An Unfinished Story of Minority Rights' in Biro A and Kovacs P (eds) *Diversity in Action, Local Public Management of Multiethnic Communities in Central and Eastern Europe*.

Tushnet M, 'Comparative Constitutional Law', in Reimann M and Zimmermann R(eds.), *Constitutional law and Structure*, The Oxford Handbook of Comparative Law, 2008.

Books

Burton J, *Human needs theory: Conflict Resolution and Prevention*, 1990.

Cresswell J and Clark L, *Designing and Conducting mixed method research* 2ed, Sage, Thousand Oaks 2011

Gewirth A, *Reason and morality*, Chicago, Chicago University Press, 1997.

Nowak M, *Introduction to the human rights regime*, MartinusNijhoff Publishers, Leiden 2003, 84.

Palici E, *Concepts about minorities*, Torino publishers, Giappichelli, 1999.

Richard D, *legal storytelling for oppositionists and others:A plea for narrative, in critical*

race theory: the cutting edge, ed. Richard Delgado. Philadelphia, Temple University Press, 1995.

Thio L, *Managing the Babel: the International Legal Protection of Minorities in the Twentieth Century*, Martinus

Nijhoff Publishers, Boston 2005.

Waldron J, *Theories of Rights*, Oxford, Oxford University Press, 1984.

Yin K, *Case study research: Design and methods* 4ed, Sage, Thousand Oaks, 2009.

Journals

- Amarante EL, 'On the Migration of Constitutional Ideas', *Connecticut Law Review*, 37, 2005, 907.
- Fisher RJ, 'Generic principles for resolving intergroup conflict', 50 *Journal of Social Issues*, 1, 1994, 47-66.
- Hansen B, 'Pre-colonial immigrants and colonial servants. Nubians in Uganda Revisited.' 90, *African Affairs* 361, 991, 559-580.
- Jovanovich M, 'Are there universal collective rights?' *Human Rights Review*, 4, 2010, 17-44.
- Lim J, 'Immigration, Asylum, and Citizenship: A More Holistic Approach', 101 *California law review*, (2013).
- Lynch G, 'Becoming indigenous in the pursuit of justice: ACHPR and the Endorois' 111 *African Affairs*, 442, 2011.
- Mullerson R, 'Minorities in Eastern Europe and the former USSR: Problems, tendencies and protection', 56 *The Modern Law Review* 6, 1993.
- Parsons T, 'Kibra is our blood: The Sudanese military legacy in Nairobi's Kibera location 1902-1968', 30 *The International Journal of African Historical Studies* 1, 1997, 88.
- Staub E, 'Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation', 21 *Political Psychology*, 2, 2000.
- Walker JD, 'Statelessness: Violation or Conduit for Violation of Human Rights?', 3 *Human Rights Quarterly*, 1, 1981.

Online Journal

- Henrard C, 'Devising an adequate system of minority protection.' *Journal of Individual Human Rights, Minority Rights* (2010), 24
http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf

Self-published articles

- Aigelgel K. 'Rights of Minorities: A Case Study of Nubians in Kenya' Published LLM Thesis, University of Nairobi, 2011.

Adam HA, *'The Nubians and Statelessness: History in Defining Modern Lives.'*

Makoloo MO, *'Kenya: Minorities, Indigenous People and Ethnic Diversity'*, Minority Rights Group International and Centre for Minority Rights Development, 2005.

Newspapers

Abdul, Xena. 'Kenyan Nubians: The Forgotten People. Analysis and Debates for Freedom and Justice,' Pambazuka news 30 March 2011. <https://www.pambazuka.org/governance/kenyan-nubians-forgotten-people>

April Zhu: 'A home to call your own – even if it is a slum' *The New Humanitarian*, 14 December 2017 <https://www.thenewhumanitarian.org/feature/2017/12/14/home-call-your-own-even-if-it-slum> on 2 August 2019.

Kebaso George. 'Nubians Oppose Upgrading of the Kibera Slums.' *Business Daily*, 28 September 2009. <https://www.businessdailyafrica.com/corporate/539550-664794-6k4oy0z/index.html>

James Mwangi, 'Kijiji slum fire was land grabbing ploy residents' *Standard digital*, 2 February 2018 https://www.standardmedia.co.ke/article/2001268214/kijiji-slum-fire-was-land-grabbing-ploy-residents?fb_comment_id=1840015776039694_1846151895426082 on August 1 2019.

Mbaria J, *'Meet the Nubians, Kenya's Fifth –Generation "foreigners"'* *The East Africa*, 2002.

'President Uhuru Kenyatta issues title deed to Kibra Nubians' *Nation Digital*, 2 June 2017 <https://www.nation.co.ke/news/Uhuru-issues-title-deed-to-Kibra-Nubians/1056-3953204-9jfwvk/index.html> on 2 August 2019.

Dissertations

Gayin E, 'The concept of minority in international law: a critical study of the vital elements' Published LLM thesis, University of Lapland, Rovaniemi 2001.

Memo S, 'The legal status of Roma in Europe: between national minority and transnational people' Unpublished LLM thesis, University of Trento, 2012

Institutional Authors

The Constitution of Kenya, 1963 (repealed), (the National Council for Law Reporting: Nairobi) *Revised Edition* 2009.

The Constitution of Kenya, 2010, (the National Council for Law Reporting: Nairobi), 2010.

Kenya National Commission on Human Rights, '*An Identity Crisis: A Study on the Issuance of National Identity Cards* (2007)

Other internet sources

'Canada: Immigration and Refugee Board of Canada, Romania: Treatment of Roma and state protection available to them' 1 September 2000, <https://www.refworld.org/docid/3df4be9b10.html>

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, OHCHR <http://www2.ohchr.org/english/law/minorities.html> on 9 August 2019.

European commission for democracy through law, Venice Commission, 9 march 2002 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-RA\(2001\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-RA(2001)001-e)

Ghai J, Sing'Oei K, and Wanyoike W, Taking diversity seriously: minorities and political participation in Kenya <https://www.refworld.org/pdfid/528496974.pdf> <https://www.unhcr.org/3eb7ba7d4.pdf>

'Nubian Community in Kenya v. Kenya' Justice Initiative,' 6 July 2011 <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya>

OHCHR <https://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf>

Open society of Kenya. Open Society Justice Initiative, 17 May 2010. <https://www.justiceinitiative.org/uploads/66fcd2c5-e02a-4485-963b-ef5b71c23b52/ali-communication-20100517.pdf>.

'Statelessness of minority groups in Kenya' <https://www.knchr.org/>

'The Foundation of International Human Rights Law' UN, 1 May 2003, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>