(RE) VIEWING THE GOVERNMENT'S ROLE IN SUPPORTING THE GROWTH OF MARGINALISED WOMEN’S BUSINESSES: A CASE STUDY OF MINYORE BUSINESS WOMEN AT THE NAKURU RUBBISH DUMP IN KENYA.

BY

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A Dissertation submitted in partial fulfillment of the requirements for a Masters in Women’s Law, Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe

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Abstract
The objective of the study was to interrogate factors behind the marginalized Minyore women’s art work businesses remaining mere survival and not profitable. This is despite their products selling on international markets. Further to find ways to improve these women’s position in law and human rights,

The overarching women’s law methodology enabled me to understand the women’s lived realities and establish the gaps in law. Human rights was used to assess government’s support for the women, the Capabilities Approach enabled me to assess women’s capabilities and the real available opportunities for them to function humanly. The research based activism was used to research the women’s problems in real situations and solve their real problems and lastly grounded theory was used to triangulate data. The data collection tools used entailed individual interviews, focused group discussion and observation.

Findings indicated the failure by the Nakuru County Government to initiate affirmative action programs as envisaged by Article 56 of the constitution to support and realize marginalized people’s rights including the rights of the Minyore business women within Nakuru County in Kenya.

In conclusion, it is the responsibility of the county government of Nakuru to embrace affirmative action programs in relevant areas in order to support marginalized people and especially the marginalized Minyore business women in the county. This will enable their businesses to grow from mere survival to profitable ventures, bearing in mind that women are key to the economic development of the nation as provided by the country’s vision 2030
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Declaration
I ESTHER N. WANJALA do hereby declare and verify that this dissertation is my original work and that I have not submitted it anywhere else other than this current submission to the University of Zimbabwe.

SIGNATURE                        DATE

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Esther N. Wanjala.
Dedication
To my mother and father

I appreciate your prayers and inspiration which, contributed towards the achievement of what I desired in life.
Acknowledgements
I sincerely thank my supervisor, Professor Julie Stewart for her insights, her involvement with passion in this work from inception to conclusion. Her interest in my research area motivated me to carry on even, though initially I was not sure of the outcome of my research. Her inputs during our discussions and at the supervision time shaped the final outcome of this work.

My gratitude extends also to my lecturer in the Women, Commerce and Law course, Rosalie Katsande, your insights during the course enabled me to understand the position of women in commerce, thus a challenge to take up this research work. My lecturers in Women, Labour, Social Security and Law course Dr. Ngeyi Kanyongolo and comrade Gwisai Munyaradzi, thanks for enabling me appreciate the position of women’s work in society and how it is valued.

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Special thanks to my husband Jimmy for your patience and support throughout the course. Thanks, son Jerry for your endurance while I was absent from home when you needed me most. To my child minder, Immaculate Kofi from Zimbabwe, for being a mother to my baby Jadon while I was away in class or working late to achieve my dreams, not forgetting baby Jadon for your understanding, that although mum was around, but yet so far away, buried in books to achieve her goals in life. To my employer the County Government of Nakuru for allowing me time off to develop my career even though the circumstances at the time would not have warranted my absence from the organization. Thank you, Mr. Lou and Lesley for your input that contributed to shaping this work.

Lastly I appreciate God the Almighty for this far He has reached me.
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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BPFA</td>
<td>Beijing Platform for Action</td>
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<tr>
<td>CRA</td>
<td>Commission for Revenue Allocation</td>
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<tr>
<td>FBO</td>
<td>Faith Based Organization</td>
</tr>
<tr>
<td>ICT</td>
<td>Information Communication and Technology</td>
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<tr>
<td>IP</td>
<td>Intellectual Property</td>
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<tr>
<td>KEFAT</td>
<td>Kenya Federation of Alternative Trade</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MSE</td>
<td>Micro and small Enterprises</td>
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<td>NGOS</td>
<td>Non Governmental Organizations</td>
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<td>NPEP</td>
<td>The Kenya National Poverty Eradication Plan.</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights.</td>
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<td>SIDA</td>
<td>Swedish International Development Cooperation Agency</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for women</td>
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<tr>
<td>WEF</td>
<td>Women Enterprise Fund</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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<td>YEF</td>
<td>Youth Enterprise Fund</td>
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The County Government Act 2012
The marginalization policy 2013
The micro and small enterprises Act No. 55 of 2012
Social Assistance Act 2012
National Gender policy 2005
National Housing Policy 2004
National Poverty Eradication Plan (NPEP) 1999-2005
Vision 2030

International Instruments
African Charter on Human and Peoples’ Rights (Banjul Charter)
Beijing Declaration and Platform for Action of the Fourth World Conference on Women adopted in Beijing, China, 1995
Berne Convention 1886 for protection of literary and artistic works
Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

Declaration on the Right to Development
International Covenant on Economic, Social and Cultural Rights (ICESCR)
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
Universal Declaration on Human Rights (1948)
General comment No.12(1999), of the Committee on Economic, Social and Cultural Rights on the Right to food.

General Comment NO.3 (1990), of the Committee on Economic, Social and Cultural Rights on state parties obligations.

General Comment No.13 (1999), of the Committee on the Economic, Social and Cultural Rights on the, Right to Education

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Executive Summary
Marginalization is the process where persons or a group of persons are relegated to the edge of the society, usually due to discrimination or social inequalities. This limits their opportunities and survival means, leaving them to remain invisible and live impoverished lives. Women and girls are the most disadvantaged, they form the majority of the people with low literacy levels, socio-economic status, landless, living in informal settlements, are in the category of female headed households, they are also excluded from in decision making. Whatever activities that they engage in to emancipate themselves from poverty, are lowly, viewed and/or regarded, this perception consequently limits the support that their activities receive, thus impacting on their growth, leaving their activities as survival and prompting the poverty cycle to continue.

The above is a reflection of the Minyore business women (the subjects of the study) from the Nakuru rubbish dump in Kenya, living and earning their livelihoods from the dumpsite, by using garbage as a source of their food, source of assorted items for sale and raw materials for their art work like weaving among other pursuits. Many of these women are single, widowed, divorced, with low literacy levels and low socio-economic status. These women’s artwork sells on international markets, but due to their status, they lack information about markets and access to markets, among other issues, resulting in their business remaining at survival level for the last ten years that they have been in business. Consequently, their lives have remained impoverished.

This state of affairs exists despite the country having a new Constitution providing for the Rights of the marginalized people with regard to providing special opportunities in economic and social spheres among others, the rights of women to participate in economic spheres, in addition, the country has ratified, all the international instruments providing for the protection of the rights of the women and the realization of their socio-economic rights. Using the Women’s Law Approach as the overarching methodology, I was enabled to appreciate the marginalized women’s lived realities and their position in the economic sphere, and how their status impacted on the growth of their businesses. I understood, how poor implementation of the constitution and other related legislations, coupled with Human Rights instruments impacted negatively on the growth of the marginalized women’s businesses, thus perpetuating their marginalization hence the recurrent of the cycle of poverty in their lives.
The Human Rights approach assisted me to gauge the State’s obligation to realize the marginalized women’s socio-economic rights by acting as a benchmark. I learned that the state had failed in providing substantive rights to the women since no affirmative action programs were in place to support the Minyore women. The Grounded theory approach enabled me to collect and triangulate data as the various categories emerged from my study. While the Capabilities Approach helped me to appreciate the abilities that the marginalized Minyore women possessed even though their abilities were not facilitated by real opportunities to empower them, such as markets and access to markets (thus negatively impacting on their businesses and life in general), all these has been due to the State’s failure to honor its part of the obligation on the rights of these women.

Lastly Action-based Research Methodology enabled me to interact with the real situation of the Minyore business women at the dumpsite and I appreciated that their situations needed urgent solutions. This made me engage with various government officials, like the county trade official who took steps to visit the women to discover the best possible solutions for their situation.

Findings based on the women’s own voices and the responses from the key informants actually confirmed the lack of support of the marginalized women’s businesses, explaining the reason behind their businesses remaining at survival level despite the fact that their products were selling on international markets and that their lives remained impoverished, thus perpetuating their marginalization.

In conclusion, I advocate for marginalized women’s businesses to be regarded as profitable and not survival ventures and be granted the requisite support to enable them grow, hence realizing the marginalized women’s socio-economic rights which will liberate them and their families from poverty and as part of the bigger picture, contribute to the national economic development and also placing the country on the global map in terms of development and poverty reduction which is the agenda of the entire globe.

Various interventions are thus called for, the need for the enactment of a National and a County legislation and policy on marginalization to operationalize the Constitution on the rights of the marginalized. The state must honour its obligation based on international and regional instruments on the socio-economic rights of the women, their right to development
and economic empowerment which is a prerequisite for the realization of MDG 3 on gender equality and MDG1 poverty eradication.
CHAPTER ONE

1.0 INTRODUCTION

My choice of this research topic was inspired by the women’s law course, specifically the Women, Commerce and Law and the Women, Labour, Social Security and the Law courses. Furthermore the mini research that I conducted in the Women, Commerce and Law course at the Mbare Crafts Shop in Zimbabwe, enabled me to understand the position of women in commerce and the many factors at play, which determine, the growth or otherwise of their businesses. I understood the stagnation of women’s businesses despite the Laws, and Human Rights tools providing for the economic empowerment and development of the women in addition to the equality issues in the economic sphere.

Coincidentally while undertaking the Women, Commerce and Law Course, a feature appeared on the internet, in one of the Kenyan daily business newspaper, of 5th September, 2013, on the plight of the Minyore women, about their artistic works that sell on local and international markets, yet for over ten years, their lives had not improved, and they were still struggling to get the very basics of life, among them food and education for their children.

I was touched by the women’s story and being a resident of Nakuru,¹ I thought that taking up the research will enable me in my position in county government to influence change, in a way by at least bringing to light, the issues of these marginalized women.

My first encounter with the Minyore women group was when I visited the dumpsite for a mapping exercise to acquaint myself with the environment before I officially commenced my study. The visit was premised on my prior knowledge that the dumpsite was the women’s work station. Upon arrival I found a group of women and men (not members of Minyore group) working on the garbage site;² they introduced me to a lady who was a few meters away on the opposite side of the dump. I moved and met the lady to whom I introduced myself and explained the purpose of my visit being to meet the Minyore women group members and that I had seen their feature on the internet hence my visit.

¹ Being a Resident of Nakuru Where the Marginalized Minyore women are located, by virtue of my work as a legal officer at the Defunct Municipal Council of Nakuru now County Government of Nakuru
² After greetings and explaining the purpose of my visit, being to meet with the members of the Minyore women group, they quickly directed me to a lady who was a few meters away on the opposite side of the dump. I moved and met the lady to whom I introduced myself and explained the purpose of my visit being to meet the Minyore women group members and that I had seen their feature on the internet hence my visit.
wanted to buy her products, she therefore quickly informed me that I could not move freely on the dumpsite without the permission of their chair lady.

The, would be respondent, then offered to introduce me to the chairlady, but she first took me to her shack (house) to show me the products that she had made. I bought a few to create rapport. She, however, requested that, I hide whatever I had bought from her so that the chair person does not get to see them, since she would be angry I obliged, seeking not to create problems for her. Thus I learned that there could be existing issues of mistrust among the ladies. The lady later introduced me to the chair lady who seemed to be very busy\(^3\), she thus asked that I see her on another day I agreed to do so.

The first visit enabled me to appreciate (although with shock) that the Minyore business women actually live in shacks on the dumpsite, unlike my earlier assumption that the dumpsite was just their work station. Secondly, I was unable to comprehend how the women coped with the stench from garbage. From that moment I thought to myself what I could do in my capacity as a county legal officer to have the Minyore women’s issues attended to in whichever way to improve their social-economic status and least to raise awareness of their status within the relevant government offices, which journey I embarked on as will be explained later in this piece of work.

The second day of my visit at the dumpsite as requested by the chairlady was still not promising, since she was complaining about people who visit the dumpsite and exploit them in the name of the research. However, a few days later when I had visited the chief’s office\(^4\) to inform her that I was going to be conducting research in their area, I met with the chairperson (for the third time) she was attending a social welfare meeting, and after chatting with her, her perception really changed and she told me to start interviewing the women whenever I was ready. Since then my research process at the dumpsite was smooth, save for having to schedule my interviews, to fit in the women’s programs, since they had to get food and other items from the dumpsite before they allocate time for interviews.

\(^3\) With visitors who had brought them food and some clothing and after greeting and explaining the purpose of my visit she said that she was busy

\(^4\) My visit to the chief’s office was to inform her that I will be conducting a research in her jurisdiction and my hope was that the chief would assist me to reach out to the Minyore women group members since the chairlady had not been willing in my past two attempts to reach out to her. Fortunately I met her at the chief’s office and her perception changed, when she told me to start my interviews at any time that I was ready.
Figure 1: A photograph of the Giotto dumpsite in Nakuru Kenya with some respondents at work

Figure 2: A photograph of one of the respondents showing me the already collected and cleaned plastic bags for basket weaving
1.1 Background of the Research
Nakuru County is one of the forty seven counties in Kenya, and it is the fourth largest town situated approximately 200 km from the capital city of Nairobi. While the Nakuru dumpsite formally known as Giotto dumpsite, is located approximately 10 Km from the city centre at the out skirts of Nakuru town along the Kiamunyi –Ravine road. It is the main dumpsite within the Municipality serving approximately five hundred thousand people.

Before the Minyore women settled at the dumpsite, they were living at the neighboring London estate, but they used to visit, the dumpsite, to pick up food and assorted items for sale many of these women were married at the time. However, they relocated to the dumpsite, for various reasons, among them, the death of their husbands,\(^5\) desertion, drunkenness, and divorce; hence they could not raise\(^6\) the rents required leading to their eviction. Others were evicted from government forests. The first person pitched a shack at the dumpsite in 1993 and the dump being government land no rent is demanded for their habitation there.

Livelihoods for these women revolve around the dumpsite, before, after settling there and even to date they have continued to source food, and other assorted items for sale, and raw materials for weaving their baskets and other artistic works like bangles, purses among others. Their lives received a boost in the year 2001, when a Good Samaritan white lady from a catholic church,\(^7\) trained them on weaving baskets using plastic bags from garbage. They later continued trying out different things, including bangles making, necklaces from magazines and used cell phone air time scratch cards among other items to make products that sell on both local and international markets. Yet their lives have not improved despite the activities that they engage in, and the potential “big”\(^8\) markets that their products have.

\(^5\) They fit in the classification of the vulnerable people as categorized by the Kenyan economic blue print vision 2030, in which the vulnerable includes, widowers, widows and the poor of the poorest among others.
\(^6\) The vision 2030 blue print also recognizes that the vulnerable groups have high levels of poverty and various forms of deprivations.
\(^7\) The women were not sure where the white lady came from but they just said from the neighboring Catholic Church in Nakuru may be the catholic neighbouring the dumpsite.
\(^8\) My own opinion and judgment after visiting them and seeing what they make and hearing from them that indeed their products sell on international markets.
Figure 3: Ciondo basket made by Minyore women on the left and on the right baskets from special tape

Figure 4: Respondent displaying necklaces made from magazines on the left and purses from plastic bags on the right

9 The women respondent’s said the tape is normally used by the Country’s electricity company and they normally get them from garbage from the company or those who have money buy new tapes.
1.2 Statement of Problem

The Kenyan Vision 2030 policy paper for the country’s economic development blue print recognizes the critical role that women play in the socio-economic development of the nation, thus calling for an urgent need to remove all obstacles that hinder the women’s contribution to the national development.

Further the policy acknowledges that the capabilities of women have not been developed to their full potential due to limited access to capital, education, training and health care. The policy with respect to vulnerable groups acknowledges that they suffer multiple vulnerabilities and deprivations, and proposes a need to empower this group of people with the special needs to make them self-supporting.

Women’s disadvantaged status and vulnerabilities still exist in Kenya despite the country’s adoption of a new constitution in 2010, providing comprehensively for the protection of the rights of the women and marginalized people. Article 260 of the Kenyan constitution defines a marginalized group as one who, because of laws or practices before or after the effective date, were or are disadvantaged by discrimination on one or more ground in Article 27(4) the non discrimination clause on sex, marital status among other grounds. Whereas the Kenya Commission for Revenue Allocation (CRA) marginalization policy 2013 defines marginalization as a multifaceted condition in which a group, a community or area is excluded from active participation in economic, social and political affairs.\textsuperscript{10}

\textsuperscript{10} In the case of groups marginalized individuals do not usually have access to wide range of basic services such as food, water, health care, energy, education and security they also have limited political participation.
Further the Kenyan CRA marginalization policy provides that since it does not cater for all marginalized groups entailed in Article 56 of the Constitution, both the National and County Governments must institute affirmative action programs to enable these groups to progressive realization of their socio-economic rights as envisaged in the constitution.

It is on the back drop of the above that, this research sought to interrogate the reasons behind the under development of the women’s businesses, especially the marginalized Minyore business women at the Nakuru dumpsite who are engaged in craft work, sell their products on international markets, but remain poor and their businesses are only survival ventures. Secondly the research aims at finding ways to improve these women’s lives and businesses based on a human rights frame work and the country’s economic development policy vision 2030.

1.3 Objective of the Research
The main aim of this study was to find the reasons behind the marginalized Minyore women’s businesses remaining at survival level despite their products selling on international markets, and based on the findings to look for ways of improving the women’s businesses and status in law and Human Rights, in order for them firstly to realize their socio-economic status, secondly, their economic rights and empowerment as women and their emancipation from poverty and marginalized status.

1.4 Research Assumptions
1. Marginalised women’s businesses are perceived as mere subsistence/ survival activities and not profitable ventures; hence this hinders their growth.
2. Marginalised women lack knowledge on how to access social welfare assistance which can free their business profits.
   a. Social welfare cash assistance available to marginalised business women is inadequate to enable them to free their business profits.
3. That marginalised women lack skills on how to negotiate for better prices for their goods which can lead to increased profit.
   a. Marginalised business women do accept low prices for their products due to desperation.
4. Marginalised women lack knowledge on how to use ICT like cell phones for
networking for the development of their businesses.

5. Marginalised women lack knowledge on how to protect their businesses using intellectual property laws which are requisite in the development of their businesses.

6. Marginalised women’s lack of access to markets for their craft wares hampers the development of their businesses.

7. Marginalised women are unable to utilize laws, policies and relevant human rights instruments to develop their businesses for want of knowledge on the existence of these tools.

8. Marginalised women are excluded in decision making bodies like the chamber of commerce and the NGOs among others hence unable to advance their interests towards developing their businesses.

1.5 Research Questions

1. Are marginalized women’s businesses perceived as mere subsistence/survival activities and not for profit ventures hence hindering their growth?

2. Do marginalised women lack knowledge on how to access social welfare assistance which can free their business profits?
   a. Is Social welfare cash assistance available to marginalised business women adequate to enable free their business profits?

3. Do marginalised women lack skills on how to negotiate for better prices for their goods which can lead to increased profits?
   a. Do marginalised business women accept low prices for their products due to desperation?

4. Do marginalised women lack knowledge on how to use ICT like cell phones for networking for the development of their businesses?

5. Do marginalised women lack knowledge on how to protect their businesses using intellectual property laws which are requisite in the development of their businesses?

6. Does the marginalised women’s lack of access to markets for their craft wares hamper the development of their businesses?

7. Are marginalised women unable to utilize laws, policies and relevant human rights instruments to develop their businesses for want of knowledge on the existence of these tools?
8. Are marginalised women excluded in decision making bodies like the chamber of commerce and the NGOs among others hence unable to advance their interests towards developing their businesses?

1.6 Limitation of the study.
This study (re)viewed the government’s role in supporting marginalized women’s businesses at the Nakuru dumpsite, in Nakuru County in Kenya. As such, the findings of the study may not be generalized to all regions in Kenya or beyond. However the study provides a framework, of action based research for identifying and analyzing the specific needs of the various marginalized or socially excluded/ groups, their capabilities (if any) and how they can be nurtured to emancipate them from marginality.

The next chapter discusses marginalization and related concepts, the concept of capabilities and empowerment as it relates to marginalized business women. A framework of the laws and policies providing for the rights of the marginalized and women economic empowerment both at the international, regional and national level and an analysis of whether these frameworks are being utilized to protect the rights of marginalized people in Kenya and if not a suggestion of the interventions needed to get the systems or frameworks to respond to the rights of this group of people.
CHAPTER TWO

2.0 CONCEPTUAL FRAME WORK ON MARGINALITY, CAPABILITY, EMPOWEREMENT AND THE LEGAL FRAME WORK

2.1 Marginality
The concept of marginality has been described by Anderson & Larsen as follows:

Marginality is generally used to describe and analyze socio-cultural, political and economic spheres, where disadvantaged people struggle to gain access (societal and spatial) to resources, and full participation in social life (Anderson & Larsen 1998:242)

Further Sommers et al. (1999:7) emphasized that marginalized people are vulnerable to livelihood change as a result of their being socially, economically politically and legally ignored, excluded and neglected.

The international Geographical Union defined marginality as:

The temporary state of having been put aside of living in relative isolation, at the edge of a system (cultural, social, political or economic).....in mind, when one excludes certain domains or phenomena, from one are thinking because they do not correspond to the mainstream philosophy. (IGU 2003:2)

While social-economic marginality was defined by Sommer et al. (1999: 7) as:

A condition of socio-spatial structure and process in which components of the society and space in a territorial unit are observed to lag behind an expected level of performance in economic, political and social wellbeing compared with average conditions in the territory as a whole.

Marginality can be categorized as, societal\(^{11}\) or spatial\(^{12}\) marginality. Further marginality is a process that can be summed up as follows:

It is a process that evolves over time in various types and scales under socio-economic and geo-political environment thus reinforcing the state of marginality. Further the marginalized people are condemned for making their living in marginal environments, despite the fact that they are unlikely to have access to the resources needed to overcome restrictions imposed by marginal environments Kierby (2000).

\(^{11}\) Societal frameworks focuses on human dimensions such as religion, culture social structures, gender ethnicity class, hierarchy caste, economic and politics in connection with access to resources by individuals or groups. Emphasis should be on understanding of the underlying causes of exclusion, inequality social injustice and spatial segregation.

\(^{12}\) It is also referred to as geographical or physical marginality and it is primarily based on physical location and distance from centres of development.
According to (IGU 2003), marginality can be dynamic since each situation of marginality has the potential to be overcome. The results of marginality can even be beginnings of innovations and capabilities. Marginality can occur anywhere from the most isolated geographical settlements to the most highly metropolitan cities. However forms of marginalization vary in terms of type and scale, since marginality depends on the physical and social settings in which it is occurring. The Kenyan Constitution does not define marginality but a marginalized group is defined as:

A group of people who because of laws and practices before, on or after the effective date were or are disadvantaged by discrimination on one or more grounds in Article 27(4) (the non-discrimination clause).

However the Kenya CRA marginalization policy define marginalization as multifaceted conditions in which a group, a community or area is excluded from active participation in economic, social and political affairs.

Table 1: Main Components of Marginality

<table>
<thead>
<tr>
<th>Component of definition</th>
<th>Conception</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scale of investigation</td>
<td>Multi-scales (meaning marginality can vary in scales or magnitude); scale dependent (magnitude of marginality depends on scale or size).</td>
</tr>
<tr>
<td>Characteristic</td>
<td>Dynamic process often negative connotation, potentially frequently neglected</td>
</tr>
<tr>
<td>Spatial dimension</td>
<td>Remote in physical sense, poor infrastructure</td>
</tr>
<tr>
<td>Societal dimension</td>
<td>Outside the mainstream, invisible in official statistics and media representations</td>
</tr>
<tr>
<td>Overlapping dimension</td>
<td>At the edge of the system, excluded.</td>
</tr>
</tbody>
</table>


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13 Marginality in developed regions is more prevalent in the context of societal for example lack of care services, whereas both spatial and societal marginality are rampant in less developed regions due to differential access to resources, technology and communication and innovation among others.

14 The CRA policy further provides that marginalized groups are linked by particular characteristics that make them vulnerable to discrimination or social exclusion, as opposed to a marginalized community which is defined by a particular geographic location.
2.1.1 Societal Marginality
This type of marginalization depends on social conditions, and disparities that occur due to the exclusion from the “mainstream” Gurung and Kollmair (2005:12). This type of marginality is assessed in relation to the state of social, economic and political disparities between marginalized people and the mainstream and it is examined in relation to equitable and legitimate access to resources and decision making processes. However, caution should be taken not to ignore the fact that the marginalization process also exists among the marginalized groups, Dain (2003:22). Social marginality is based on underlying social conditions of people living poor livelihoods and who lack access to resources and opportunities and they are restricted in participating in decision making there is low sense of community and low self esteem.
Marginalized people are normally stigmatized, discriminated against, ignored and suppressed on the basis of race, gender, culture, religion, education economic status among others by the mainstream (Gurung and Kollmair 2005:12).

2.1.2 Spatial marginality and marginality overlap
This type of marginality is normally linked to geographical remoteness of an area from major economic centre’s (location), Brodwin (2001) marginal area is one that lies at the edge of a system, thus spatial marginalization indicates relative distance from economic and service centre’s, there are three types of spatial marginality. Minyore women suffer an overlap marginality both spatial(their location at the dumpsite) and societal marginalization since they suffer the effects of gender, since they have low literacy levels which might be attributed to early discrimination, practices that hindered their access to education as girls, which subsequently negatively impacted on their chances to get employment among others.

Marginality overlap entails an overlap of both social and spatial marginality and the boundary between the two is blurred Gurrung and Kollmair (2005:14). This type of marginality exists

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15 This refers to the areas that are difficult to reach (access), in the absence of appropriate infrastructure and this isolates them from the mainstream development.
16 **Macro-spatial marginality** which applies to regional disparities in living standards between communities in central locations of economic actions and those in remote areas with poor resource base. **Micro-spatial marginality** represents distressed localities within relatively small territories for example built up areas of cities. **In situ spatial marginality** refers to unequal development with very small geographical unit where poor and marginalized households and prosperous share neighborhoods and disparities in standards of living are evident.
in the context of urban slums of cities that are both developed and less developed, where geographical proximity to services might prove irrelevant.

2.2 Marginality and other Concepts

2.2.1 Relationship between Marginality and Vulnerability
Marginality is closely related to vulnerability of both people and environment. Vulnerability is more pronounced when spatial and societal marginality overlaps. Physical factors of vulnerability like transport, technology, among others, are less challenging compared to social factors of vulnerabilities like, gender, age, minority status among others and these social factors are more critical in making a country and a place more vulnerable regardless to marginality of spatial or societal setting Davis B. (2003).

Gender and age are important components in assessing vulnerability to marginality in both developed and less developed countries. Gender inequality is a constant challenge that underlies and affects employment and income potential for women and their ability to overcome limitations Mehta (1995). The Kenyan Vision 2030 policy paper defines vulnerable groups as those faced with multifaceted challenges, with experiences of high level of poverty and various forms of deprivation. The policy categorizes widows and the poorest of the poor among others as forming part of the vulnerable persons among which many of the Minyore elderly women fall. While the Kenya National Gender policy 2011 refers to vulnerabilities as economic or environmental risks that people face.

2.2.2 Relationship between marginality and poverty
Marginality and poverty are normally used as synonymous, since both describe a situation that people want to escape or turn into opportunities. Poverty means lack of access to the basic needs like shelter, food, clean water among others, and it represents a living condition of a day to day life with an uncertain future (UNDP 2001: 10). Therefore the issue of marginality always emerges whenever poverty is investigated and vice versa.

However, these two concepts are different in application although they may be similar in conception, because primarily marginality deals with the process of marginalization, whereas

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17 Poverty represents a state of economic, social and psychological deprivation occurring among people or countries lacking sufficient ownership, control or access to resources to maintain minimum acceptable standards.
poverty places more emphasis on measuring the situation in the light of inequality. When consideration is made of the type and scale the differences between the two concepts are clear, for example, an individual might be economically rich, physically well and psychologically strong; yet they could be socially marginalized based on social values and norms. Similarly poverty analysis is normally limited to absolute terms whereas marginality covers a wide spectrum.

2.2.3 Indicators of Marginality
The suggested indicators are not exhaustive, since they are on more general terms and there is need for specific indicators like the number of people who use cell phones in order to develop a detailed structure considering the wide spread “invisibility” of marginalized people in official statistics; suggested indicators are in the table below:

**Suggested indicators of marginality**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Societal</td>
<td>Child Labour, Gender Inequality, Social Exclusion, Human Rights Violations</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>Access to clean water, Distance to transportation, Bank, Communication</td>
</tr>
<tr>
<td>Health</td>
<td>Life Expectancy, Infant Mortality, Malnutrition</td>
</tr>
<tr>
<td>Education</td>
<td>Literacy rate, Gross Enrolment Ratio</td>
</tr>
<tr>
<td>Political</td>
<td>Participation in Elections, Corruption Index, Security Status, Violence, Crime</td>
</tr>
<tr>
<td>Economic</td>
<td>GDP Per Capita, Unemployment Rate.</td>
</tr>
<tr>
<td>Environmental</td>
<td>Environmental Pollution, Conditions of Natural Resources</td>
</tr>
<tr>
<td>Development index</td>
<td>Human Development Index (HDI), Gender related development index (GDI), Human Poverty Index (HPI).</td>
</tr>
</tbody>
</table>

*Source: Gurung G.S and Kollmair M. (2005)*
The Kenya CRA marginalization policy 2013 adopts the indicators of health, education, infrastructure and poverty to determine which areas and groups are marginalized, which indicators are related to the indicators cited in the table above. Marginality is a cross cutting issue and its aim is to examine the rationale behind spatial, economic social disparities among and between regions and people with a view of legitimating equality and social justice (Gurrung and Kollimair 2005:18).

The main obstacle for marginalized areas and people is the poor access to physical, social, infrastructure, information, technology and other basic services. Thus the urgent need to tackle marginality by exploring fully avenues to minimize social, economic, and political inequalities among people and between marginal regions. In this way marginalized people might be empowered to reverse disadvantage into potential by improving their livelihoods options and bargaining power and to promote cooperation and understanding and appreciation of differences.

**Conclusion**

In conclusion, marginalized Minyore business women are a disadvantaged group in relation to the mainstream society, as per the conceptions of marginality discussed above, they struggle to gain equitable access to resources relative to mainstream. These women suffer an overlap marginality both spatial (their location at the dumpsite) and societal marginalization since they suffer the effects of gender. This is because they have low literacy levels which might be attributed to early discrimination practices that hindered their access to education as girls, and which subsequently negatively impacted on their chances to get employment among other factors. Further actors in the government structures meant to support them, condemn them for living on the margins and being guided by wrong assumptions that the women are at the dumpsite by choice and that they make a lot of money.

However relying on the principle that marginality is dynamic and capable of being turned into an opportunity. The Minyore women’s state can be used to turn around their state since they have learned how to recycle garbage into art work selling on the international market and all they need is support for their businesses to grow.

**2.3 Capabilities and the Concept of Development**

The Kenyan National Gender policy 2011 defines capabilities as an access to or lack thereof to human capital such as education and health. Sen. A. (1999) describes capabilities as valued
goals that are feasible for an individual to pursue, thus more than just having the formal opportunity to pursue one’s chosen goals, it denotes feasible options. Consequently for Human Rights to be meaningful the state must take positive steps to remove the barriers and facilitate the exercise of rights. Since Sen.’s approach places high value on the individual’s ability to do and to be what she has reason to value, the state has a positive obligation to facilitate the ability of individuals to realize their own goals among other Human Rights values.

Approaches to international development need to be assessed on the ability to recognize women’s special problems and make necessary recommendations for their solutions. (Nussbaum 2000:222). Development refers to change which is a definite improvement; it is about continuity, equity and justice (Slim H. 1996). It is not a commodity to be measured, but a series of actions of transformation that enables people to take control of their own destinies and accomplish their full capability. It entails developing people’s confidence and skills necessary to achieve this goal. The process of development is about relationships for example the power relations and the gender relations at play. Thus a need to consider the impact gender on the power to control important decisions in one’s life, Fredman S.(2013:221)

Nussbaum stated that a link existed between gender justice and capabilities and referred to human capabilities as:

What people are actually able to do and to be in a way informed by an intuitive idea of life that is worthy of dignity of the human being.

Nussbaum further advocates for a “principle of each person’s capabilities” that entails pursuing capabilities for each and every person, treating them not just as mere tools of the ends of others. In addition, women should not be treated as supports of the ends of others, but an end in themselves. The approach makes a person a bearer of value and it aims at a society in which individuals are treated as worthy of regard and in which each has been put in a position to live really humanly.

The Declaration on the Right to Development emphasizes the importance of a human person being central to development and an active participant and beneficiary of development. In addition the United Nations Report on the Millennium Development Goals (2013), noted that millennium development goals have succeeded in placing people at the center of development, however marginalized groups continue to lag behind on virtually all goals. The
report’s projection for 2015 indicates that almost 1.3 billion people, will still live in extreme poverty. The report further recognized that women and girls are major drivers of development.

Traditional economic approaches to development do not concentrate on individual capabilities Nussbaum (2000: 223). This approach includes, the, resource based approaches. These approaches to development are limited; since they ignore the fact that individuals vary in their ability to convert resources into functions. Further they ignore social differences and how they are connected to social hierarchies. Thus operations based on an index of resources reinforce inequalities that relate to women’s problems. Therefore any approach that is to deal adequately with women’s problems must be able to tackle effectively the variations Nussbaum (2000).

Another approach based on the traditional development processes is the preference based approach, which also reinforces inequalities, for example women have especially been deprived of education and information which is a means sufficient to make preferences a reliable indicator of what public policy should be pursued Nussbaum (2000). Women might be under social pressure to say that they are satisfied with the way things are. Consequently looking at the women’s lives assists us to unearth the inequalities in the traditional approaches and the urgency of the women’s problems, may lead to a demand of a nontraditional approach to development. Accordingly, Nussbaum, suggests that the capabilities approach offers good guidance to governments in establishing basic constitutional principle, since the central question of capabilities is not how satisfied is this

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18 Which concentrate on the prosperity of a nation rather than an individual, thus ignoring the needs of women in the various social class. In addition this approach looks at distribution of wealth and income, unlike the capabilities approach that considers the various social needs of various classes using indicators of life expectancy, education opportunities and health care among others.

19 The differences may be physical for example a person with both limbs requiring few resources to make her mobile, unlike a paralyzed person who needs more resources for the same function.

20 An example, is if a nations need to bring all the citizens level at par then it means more resources will be expended on those who encounter obstacles from traditional hierarchies or prejudice, thus women literacy would prove more expensive than men’s in many parts of the world.

21 Although better than resource based approaches, because they look at people and assesses the role of resources as they figure in improving actual people’s lives, however the limitation is that the users of this approach simply assume without argument that the way to assess the role of resources in people’s live is to ask them about their satisfaction of their current preference ignoring the fact that preferences are constructed by economic and social conditions.

22 Women have been socialized to believe that a lower living standard is right and fit for them and that some great human good like education and political participation is not for them.
woman?, But what is she actually able to do and be? The approach questions not only about what resources are present, but how the resources go or do not go to work to enable the woman to function.

Nussbaum’s capabilities approach is twofold, firstly that there are certain functions that are particularly central in human life to the extent that their presence or absence determines either the presence or absence of human life. Secondly that it is important to do these functions in a truly human way not merely an animal way. Thus failure to develop human beings makes them operate at animal level especially if they are deprived of appropriate education and associations or networks among others. Nussbaum suggests central functional capabilities that will enable a person to live really humanly:

Since women are bound to lose if the good of a group is advanced due to hierarchies of power. This approach makes each person a bearer of value, by seeking capabilities for each person and not group, families or states despite their importance in promoting human capabilities. Thus the approach incorporates the idea of the basic minimum. Basing this on the sense of worth and dignity of basic human power, capabilities are claims to a chance for functioning and they give rise to correlated social and political duties.

Nussbaum suggests that there are three different types of capabilities, which include; basic capabilities - that are innate equipment of an individual that is necessary to develop more advanced capabilities. Secondly internal capabilities - referring to the state of a person herself, sufficient conditions for exercise of requisite functions and thirdly combined capabilities with suitable external conditions for the exercise of function. Nussbaum advocates this last type of capability to enable a person function effectively. The approach is against practices that deprive human beings of the opportunity to choose functions.

From a gender perspective, capability is related to care, proposing that care is provided in a way that capability of self-respect of the care givers many who are women should not be exploited, and discriminated against on account of performing those roles Nussbaum (2000). Whereas in relation to human rights, Nussbaum states that capabilities and human rights are

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23 Life ability to live and not die prematurely; Bodily health-which entails having adequate shelter; senses, imaginations, emotions and control over one’s environment just to name a few. Control over one’s environment entails politically ability to effectively participate in political processes that governs one’s life and Material ability to hold property.

24 Below which, a certain level of capability in each area a person has not been able to live truly humanly.
related, further that rights are combined capabilities and that they are capacities to function\textsuperscript{25}, Thus securing a person’s rights in any area puts them in a position of combined capabilities to function in that area. Capability thus gives a benchmark as to what is really needed to secure a right to someone.

An analysis of capabilities in relation to social economic rights can be based on traditional approaches to development, such as resource based approaches which reveal how they fail to bring differently situated people up to the same level of capability to function. Secondly, an analysis based on the utility or preference approaches reveal how deprived people may be satisfied with low living standards believing that, that is all they can hope to achieve. While an analysis based on the capabilities approach looks at how people are actually enabled to live; thus setting a rationale for spending unequal amounts of money on the disadvantaged or creating special programs to assist them to transits to full capacities.

Capabilities in relation to women’s development provide a framework that helps to unearth the inequalities of the other traditional approaches to development that have already been discussed above (Nussbaum. 2000). Capabilities thus looks at what women are actually able to do and to be despite the fact that the oppressed and uneducated women may say or think that some of these capabilities are not for them. This is premised on the fact that women all over the world have lacked support for central human function and the lack of support is to some extent caused by the fact that they are women. But women, like men and unlike rocks and dogs, have potentials (to self-actualize) to become capable of these human functions given adequate education and other support (Nussbaum 2000: 242). Thus defining rights based on combined capabilities means that people do not just have rights on paper but that they really have this when effective measures are to make their capabilities function, exist.

Thus for Kenya to achieve meaningful development it has to include the marginalized people like the Minyore business women in its development agenda, consider their capabilities, develop them and put measures in place to ensure they realize their rights to transform them from paper into reality. The state is obliged to take positive measures to develop the capacities of all persons to enable their participation in the development process and the marginalized Minyore women are no exception.

\textsuperscript{25} For example rights to politically participate among others.
2.4 Women’s economic empowerment and the place of the marginalized business women

Empowerment is not easy to define as observed by Rapport J. (1984), further; he noted that it is easy to define empowerment by its absence, rather than to define it in action as it takes on different form, in different people and contexts. Thus an understanding of empowerment varies with perspectives. The Kenyan Gender policy 2011 defines empowerment as:

The voice and decision making power in the household community and national level. It is a process through which people acquire knowledge, skills and attitudes to critically analyze the situation and take appropriate action to change the status quo of the under privileged and other marginalized groups.

Page (1999) attempts to define empowerment in general terms as follows:

Empowerment is a multi-dimensional social process that helps people gain control over their own lives. It is a process that fosters power (that is, the capacity to implement) in people, for use in their own lives, their communities, and in their society, by acting on issues that they define as important.

The three components suggested by Page (1999) are basic to any understanding of empowerment, in that empowerment is multi-dimensional, social and a process. It is multi-dimensional because it occurs in sociological, psychological, economic and other dimensions; it is a social process because it occurs in relationships to others and lastly it is a process because it is similar to a journey it develops as we work through it. Further she notes that while other aspects of empowerment may vary these three remain constant. Further based on this definition the individual and the community are fundamentally connected.

Other authors, who attempt to define empowerment in specific terms to development, refer to empowerment as:

The expansion of assets and capabilities of poor people to participate in, negotiate with, influence control and hold accountable institutions that affect their lives (Narayan D. 2002).

According to Narayan’s conception of empowerment it supports development through promotion of the poor people’s interests that entail, reducing inequality, by investing in the poor people’s capabilities, through education and access to basic healthcare as well as increasing their access to finance and markets. Poor people need to be participant initiators of development and not a problem. Empowerment approaches include activities that build up
people’s confidence, and the belief in them and respect their dignity. This definition relates to
the definition or the conception by Kenyan Gender policy 2011.

Empowerment is defined by the World Bank as the process of increasing the capacity of
individuals or groups to make choices and transform those choices into desired actions.
Therefore, women’s empowerment is multi-dimensional and includes expansion of freedom
and choice and action in social, economic and political spheres to the betterment of one’s life,
it also includes control over resources and decisions.

To be empowered you must first have been disempowered\(^{26}\) and empowerment cannot be
bestowed upon someone, but those who would be empowered must claim it Mosedale S. (2005) thus the importance of building capacities to give them a voice. Women’s
empowerment can be measured in various ways but in this work I adopt one of the modes used
by Clarus, A.L and Zahidi S.( 2005) namely economic participation, availability of economic
opportunity, political empowerment to participate in decision making and governance and
educational attainments which indicators have been adopted by the Kenya Vision 2030. The
policy aims at empowering women in these areas by increasing funds and training available to
women, and increase the women’s participation in decision making at all levels , the suggested
strategies to achieve these goals is through, gender mainstreaming  in government policies,
plans, budgets and programs and the adoption of affirmative action programs.

According to Mosedale (2005), empowerment derives from power which is the ability to make
a choice, thus it means those who have been deprived the power to make a choice acquire such
power. Further Devi B.P. (2012), states that empowerment contains power. Consequently,
empowerment is about power and about changing the balance of power. I thus proceed to
discuss the concept of power.

2.4.1 Power
Power is a relation among people, and in that relation are actors, who may include,
individuals, groups, roles, offices, governments, states or other human aggregates. If the
behavior of others is to be affected the means or instruments used are either threats or
promises Dahl R.A.(1957).Whereas Weber(1996) states that power is often related to our
ability to make others do what we want regardless of their own wishes or interests. Power is

\(^{26}\) The Kenya vision 2030 acknowledges women’s disempowerment at house hold, community and national
levels.
normally seen and understood differently by people who inhabit various positions in power situations Lukes (1994). Focusing on power in terms of control and domination limits the ability to understand and define empowerment (Page 1999).

However both Weber and Dahl above, state that power exists within the context of relationships between people or things it thus means that power does not exist in isolation nor is it inherent in individuals. Consequently, power and power relationships can change making empowerment possible and empowerment being a process of change becomes meaningful. Further feminists like Miller J. (1976) views as a shared process characterized by collaboration, sharing and mutuality. Power is also viewed as generative, integrative power and “power with” meaning that gaining power strengthens the power of others. Lastly Kreisberg S. (1992 sees power as the capacity to implement, which incorporates, domination, authority, influence and shared power or “power with”, thus this definition of power is the one that occurs in relationships thus giving us the possibility of empowerment.

Women’s economic empowerment on the other hand refers to the process which increases women’s real power over economic decisions that influences their lives and priorities in society. Thus for the disempowered Minyore business women to actively participate in development processes, they need to be empowered or enabled through support services. That will that ensure, they gain the requisite skills, access to economic opportunities and control over economic benefits that can be used to achieve positive change SIDA (2009).

As illustrated in the diagram in figure 6 below; to begin with, women need to access economic resources thus resources need to be available (in the case of the Minyore women), information, markets, among others and they need also to have skills to use the resources, thus they need requisite training to acquire skills to use resources effectively. Secondly, for women to be economically empowered they require access to economic opportunities, for example markets, since markets are crucial for any business to grow Redfern A.(2002), thus women must be assisted to realize these opportunities by removing the structural gender barriers in the market place SIDA( 2009).

Thirdly with the economic resources and right application skills, coupled with the availability of economic opportunities women, can reap the benefits of their activities, but to be fully empowered the women need to exercise control over their benefits arising from the economic
opportunities, so that they have the ability to make strategic choices, leading to positive changes.

**Figure 6: Illustration of the hierarchy of the Empowerment process**

![Diagram of Empowerment hierarchy]

Source: SIDA (2009).

Economic empowerment is thus a fundamental human right, social justice issue and also a poverty eradication strategy. Policies geared towards women’s economic empowerment work towards realization of the women’s rights. Women’s economic empowerment is a precondition for sustainable development.

### 2.5 Legislative and policy framework and interventions on Marginalization development and economic empowerment

Human Rights are collective, comprehensive and honest legal statements of what human beings require living fully human lives (OHCHR 2005). They are contained in Human rights instruments that prohibit discrimination on the basis of gender, but little is done to address the gendered nature of the social institutions and structures Fredman S. (2013: 217). Further, women’s ability to access socio-economic rights like housing, education and health care among others is also shaped by the gendered nature of social institutions. For instance,
women’s inequality on housing is exacerbated by their exclusion from policy development with respect to housing.

For rights to work for women and for them to deal with gender specific factors causing women’s disadvantage, they must be infused with substantive equality Fredman S. (2013: 223). Substantive equality as opposed to formal equality moves beyond the need for the male norms (or any dominant norms)\textsuperscript{27}, they are transformative in nature hence require social institutions to change, rather than expect individuals to conform. This type of equality does not aim at equal treatment where equal treatment leads to disadvantage; it may necessitate treating women differently in order to achieve equalities of outcomes. Substantive equality does not result in neutral outcomes; it is substantive in that it advances individuals, rather than formal in ensuring consistency.

Substantive equality has four main dimensions which entail; \textit{firstly a redistributive dimension} that aims at remedying disadvantage rather than achieving neutrality. Disadvantage is both material and social and gender based; disadvantage includes lack of empowerment of women within the context of family and social relations. It contemplates different treatment in order to redress the disadvantage. Meaning affirmative action programs to be implemented do not breach the equality principle as long as the aim is to redress discriminatory disadvantage.

\textit{Secondly the recognition dimension} which is based on the notion that identities are socially constructed. This dimension includes tackling stereotyping, humiliation and stigma among others on grounds of gender Fredman S. (2013: 226). Thus there is need for respect, recognition and dignity as terms of substantive equality.

\textit{Thirdly the transformative dimension} deals with differences and it views differences as not being the cause of the problem but the detriment attached to difference itself. It requires the accommodation of differences. Instead of requiring that women conform to male norms, it is the male norms, institutions and social structures that are required to transform.

\textit{Fourthly the Participatory dimension} attaches importance to women’s agency and voice. It requires that decision makers hear and respond to women’s voices, since these voices cannot be under estimated and it emphasizes a need to articulate women’s issues from a gender perspective to ensure that even the least vocal of them are heard.

\textsuperscript{27} Emphasis is mine.
Human Rights for marginalized people including the women in business are covered under various international human rights instruments, women specific instruments, regional human rights instruments and the national constitutional, legislative and policy documents, which adequately provides for the protection of marginalized women in business as discussed below;

2.5.1 International protection

Kenya is a signatory to the international and regional human rights instruments that protect and promote human rights, and the specific instruments providing for the protection of women, like CEDAW and the Women’s Protocol to the African Charter on the rights of women. These laws form part of the Kenyan law as per Article 2(5) and 2(6) of the constitution. At Article 21(4) the state has an obligation to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.

State’s obligation to protect marginalized women under distress is provided for under the Women’s Protocol to the African Charter at Article 24, where the state is required to ensure protection of the poor women and the women heads of families including women from marginalized population and groups, further to provide for an environment suitable for their condition and their special, physical, economic and social needs.

The right to a standard of living adequate for health and well being provided under Article 25 of the Universal Declaration of Human Rights (UDHR), Article 11 of the International Covenant of the Economic Social and Cultural Rights (ICESCR) protects the marginalized, since the state is required to take positive measures according to Article 2 of the ICESCR, to ensure people enjoy this right when they lack livelihood in circumstances beyond their control, and marginality are some of those conditions beyond peoples control.

The state has an obligation to facilitate women’s equal *access to markets and trade*, and in order for these rights to be enjoyed by marginalized business women, the temporary special measures envisaged by Article 4 of CEDAW and Article 2(d) of the women’s protocol to the African Charter needs to be implemented, For the case of marginalized business women, temporary special measures to enable access to markets may entail waiver of permit and license fee among others. Further at Article 13 of the Women’s Protocol to the African Charter, the state has an obligation to adopt measures to guarantee advancement of women in

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28 The general rules of international law shall form part of the law of Kenya.
29 Any treaty or convention ratified by Kenya shall form part of law of Kenya under the constitution.
economic activities. The state’s commitment to facilitate access to markets for women and especially the marginalized is provided for in the Beijing platform for Action (BPFA) at paragraph 166. Mandates for Realization of women’s economic empowerment will be in compliance with the MDG3, which is realization of gender equality and women empowerment.

The state’s obligation to support low income women, through the provision of business services like training, access to markets, information technology, falls under the women’s protocol to the African Charter at Article 19(d) on training, and the Beijing Platform for Action at paragraph 173. Protection of women’s business from unfair competition is provided under Article 27(2) of the UDHR and ICESCR at Article 15(3) providing for the protection of artistic productions.

The right of women to participate in the decision making processes is provided for under CEDAW Article 7, women’s protocol to the African Charter Article 9 (which provides for affirmative action to ensure women participate). The state’s commitment is also pegged on paragraph 190 of the Beijing platform of Action.

Women’s right to enjoy sustainable development is provided for under Article 19 of the women’s protocol to the African Charter. The state’s commitment to strengthen women capacity and commercial networks is provided for in the Beijing Platform for Action at paragraph 175. The Women’s protocol at Article 8 (a) (b) and (c) requires the state to facilitate women’s access to law by provision of legal aid services.

2.5.2 National Constitutional Protection

The Kenyan constitution does not define marginalization, but a marginalized group is defined under Article 260\textsuperscript{30}. While, Under Article10 (1) of the Constitution, the National Values and principles of governance binds all state organs, state officers, public officers and all persons whenever, they are applying or interpreting the constitution, enacts, applies or interprets any law or makes and implements public policy decisions are provided there under. At Article 10(2) (b) the national values and principles of governance include human dignity, equity, equity, equality and non–discrimination clause.

\textsuperscript{30} A marginalized group means a group of people who because of laws or practices before ,on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) the equality and non–discrimination clause.
social justice, inclusiveness, equality, human rights, non discrimination and protection of the marginalized.

Article 20(5) (b) The court while interpreting the Bill of Rights in applying any right under article 43(economic social Rights), and if the state claims that it does not have resources to implement the right, the court shall be guided by the principle, that in allocating resources the state gives priority to ensuring the widest possible enjoyment of the right having regard to prevailing circumstances including the vulnerability of particular groups or individuals. On the implementation of rights and fundamental freedoms at Article 21(3), an obligation is placed on all state organs and public officers to address the needs of vulnerable groups within society, including women, older members of society marginalized communities among others.

The states obligation to put in place affirmative action programs designed to ensure the rights of the marginalized groups is under Article 56, the special programs will ensure that the marginalized people, participate and are represented in governance and other spheres of life; are provided with special opportunities in educational and economic fields; are provided special opportunities for access to employment and to ensure they have reasonable access to water, health service and infrastructure among others. Under chapter 11 of the constitution on the objects and principles of devolved government at Article 174(e) one of the objects of devolution is to protect and promote the interests and rights of the marginalized communities. At Article 177(c) membership of the county Assembly shall include a number of members of marginalized groups prescribed by an Act of Parliament.

The general protection of the marginalized persons is covered in other clauses like in Article 27 the equality and non-discrimination clause, Article 35 access to information, Article 40 intellectual property rights, and Article 48 access to justice among others. There are other policies at the National level that provide for the protection of the rights of marginalized persons and they include; The Kenyan National Gender policy 2011 although not directly providing under its core functions the protection of marginalized groups, it defines vulnerability as economic or environmental risks that people face.

The Kenya Vision 2030 provides under its social pillar, provides for mainstreaming of gender equity in all aspects of Kenya, by making fundamental changes in key areas like, opportunity, empowerment, capabilities and vulnerabilities. It acknowledges the disadvantages that women
have suffered to access reproductive resources among others, and women’s disempowerment at house hold, community and national level, and the women under representation in the governance processes.

Further the policy paper acknowledges that the capabilities for women have not been developed to their full potential due to limited access to capital, education, training and health care. The policy proposes to increase funds and training available to women entrepreneurs and to increase women’s participation at all levels of government. The vision 2030 policy also defined vulnerability to include various groups, it acknowledged that these group of people face multiple challenges in their daily lives for example high levels of poverty. The policy suggested various strategies to address vulnerabilities among them, empowering people with special needs to be self-sustaining, and they would achieve this through adequate budgetary allocation.

The Kenya National Poverty Eradication Plan (NPEP) 1999-2015 provides for improved access to essential services, especially by low income households that lack basic services. The policy paper also promoted the inclusion of the marginalized groups in decision making through initiatives like setting up special funds among them the Women Development Fund(WDF) now Women Enterprise Fund(WEF) which is funded by the government through the spirit of Harambee (pulling together).

The Kenya Commission for Revenue Allocation Marginalization Policy 2013 acknowledges that marginalization issues in Kenya are many, but the promulgation of the Constitution in 2010 signaled a new era for marginalized groups to enjoy rights like other Kenyan’s. Unlike the Constitution, the policy defines marginalization as a multi faceted condition in which a group or a community or an area is excluded from participation in economic, social and political affairs. The policy thus recommends that both National and County Governments must institute affirmative Action programs to enable these marginalized groups within the counties to progressively realize their socio-economic as envisaged in the constitution.

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31 The Kenyan ministry of Gender Human Development Index (HDI) 2005 analysis revealed that women’s literacy levels were 59% as compared to the males at 64% the policy paper proposed to increase the literacy rate for both gender to 70% by 2030.

32 Widows, widowers the poorest of the poor among others .

33 This policy does not cover all marginalization issues envisaged under article 56 of the constitution, but relates to criteria for identifying marginal geographical areas like the arid areas in the country for purposes of distribution of the equalization funds for the development of infrastructure, water and health services in those areas.
Under Article 159 of the constitution, the Kenya National Human Rights and Equality Commission is established to promote respect for human rights and develop a culture of human rights in the Republic, to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated among other functions. At Article 59(3) every person has a right to complain to the commission alleging that their rights have been denied, violated or infringed on or threatened. At article 22(2) (b) complaints to the commission may be instituted by a person acting as a member of or in the interest of a group or class of persons or in Article 22(2) (c) by a person acting in the public interest, Article 22(2) (d) by a person acting in the interest of one or more of its members. Article 22(2) thus gives locus to other people to act on behalf of the marginalized people who may otherwise lack capacity to articulate their issues and pursue their rights.

2.5.3 States’ Obligations

2.5.3.1 The meaning of progressive realization of rights and its implications

The Kenyan constitution Article 21(2)\(^{34}\) adopts a progressive realization of the economic-social rights covered under article 43 (the economic and social rights). General comment No.3 of the Committee on Economic, Social and Cultural Rights obliges states, notwithstanding the level of national wealth to move as quickly as possible towards the realization of these rights\(^{35}\). Further the committee noted that steps towards that goal must be taken within reasonably short time after the covenants entry into force for a state party. Kenyan ratified the Covenant in 1972, thus the state’s failure to take those steps amount to violation. Progressive realization does not mean states can defer indefinitely efforts to ensure the realization these rights and any deferral would be inconsistent to international law. Further in implementing the socio-economic rights regard must be given to those vulnerable and disadvantaged and consequently least to achieve those rights\(^{36}\).

\(^{34}\) The state shall take legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the rights guaranteed under article 43.

\(^{35}\) The Limburg principle on the implementation of the ICESCR guideline 21, the states have obligation to begin immediately to take steps to fulfill their obligation, while in guideline 22. It was noted that some obligations like under art. 2 of the covenant require immediate implementation.

\(^{36}\) 1992 Danilo Turk, special Rapporteur of the sub-committee on prevention of Discrimination and protection of minorities (Now the sub-committee on the promotion and protection of Human Rights) on the realization of economic, social and cultural rights.
2.5.3.2 Obligation to Respect
The Maastricht Guidelines provides that the state’s obligation to respect entails abstinence from performing or tolerating any practice, policy or legal measure violating the integrity of the individuals and infringing upon their freedoms. For example states should not prohibit or hinder citizens from exercising their right to participate and their right to equality of treatment especially in the allocation of resources. Therefore, the exclusion of marginalized people in decision making and governance and the inadequate budgets for the disadvantaged is a lack of respect for their rights and a violation of their human rights by the state.

2.5.3.3 Obligation to protect
This obligation requires state parties to prevent violations of people’s rights by third parties (Maastricht guideline 6). The public authorities also have an obligation to guarantee access to legal remedies for any victims of infringement (including marginalized women). The state must also establish effective measures to protect persons from other forms of discrimination, harassment or withdrawal of services or other threats.

This obligation entails immediate steps to ensure violations of economic social cultural rights by the state and its agents are prevented, and to ensure violations by third parties are prevented and access to impartial legal remedies in cases of alleged violation by state or non-state actors. Consequently if the state fails to protect the marginalized Minyore women from exploitation by foreign buyers on the assumption that both parties have mutual benefits, ignoring the fact that unequal power relations exist between the parties, this amounts to the a violation by the state of the women’s Rights.

2.5.3.4 Obligation to promote
Human Rights promotion entails the obligation of creating awareness and imparting knowledge about human rights so that they can be better enjoyed (OHCHR 2005). The protection of rights depends on people knowing about the rights they have and about the mechanisms to enforce them and peoples knowledge to accept the obligation to uphold those rights. Human rights promotion empowers individuals and groups.

2.5.3.5 Obligation to fulfill
This obligation requires positive measures on the part of the state, where other measures have not succeeded in the full realization of rights (Maastricht guideline 6). The obligation include

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37 The Maastricht guidelines on Violations of Economic, Social and Cultural Rights (guideline 6)
issues like public expenditure, governmental regulation of the economy, provision of basic public service, infrastructure, and other redistributive measures. Under general comment No. 12 (right to food) and General comment No.13 (right to education), the committee declared that the duty to fulfill encompasses both the obligation to facilitate and obligation to provide. Facilitation entails positive measures to enable full enjoyment of the economic social cultural rights, by proactively engaging in activities to strengthen people’s access to and utilization of resources and means to ensure livelihoods including food security. Providing entails both direct and indirect state service when individuals or groups are unable for reasons beyond their control to realize themselves by the earnings at their disposal (like the case of the marginalized Minyore women). In General Comment No.14 the committee provides that the obligation to fulfill entails the obligation to promote.

2.6 Affirmative Action programs
Affirmative action is defined in the Kenyan Constitution\textsuperscript{38} to include measures designed to overcome or ameliorate an inequity or the systematic denial or infringement of a right or fundamental freedom. Whereas the Kenyan gender policy\textsuperscript{39} defines affirmative action as a policy or program of taking steps to increase the representation of certain groups seeking to redress discrimination or biases through active measures in education and empowerment.

In this piece of work affirmative action will be used as a yardstick to measure the realization of marginalized business women’s rights, since the realization of their rights in the constitution\textsuperscript{40} are pegged affirmative action programs by the government.

From the foregoing it is apparent that, marginalized people’s rights are adequately defined in international, regional and national laws and policies but, the problem lies with implementation as in the case of marginalized Minyore business women who have suffered and continue to suffer, due to failure of systems to implement or assist them in actualizing their rights.

\textsuperscript{38} Article 260 Of the Kenyan constitution.
\textsuperscript{39} The National gender policy 2011.
\textsuperscript{40} Article 56 of the Constitution of Kenya on the Rights of marginalized groups.
2.7 Feminist perspectives

2.7.1 Intersectionality
The marginalized Minyore business women are at the intersection of gender (being female), class (their low) socio-economic status, literacy levels, marital status, all these identities intersect, resulting in their impoverished lives. Consequences of marginalization are manifest in social exclusion which is a matrix of dominance Collins P. (1999). The combined forces of marginalization are the once oppressing the Minyore women, not a singular factor. To enable an understanding of the status of marginalized Minyore businesswomen there is need to place them at the center of the analysis to understand why they sit within the matrix of domination, which this research sought to establish.

Domination is normally faced with resistance and Collins states that resistance can only succeed if the oppressed set their own terms, by privileging the unique through advancing the agendas of the marginalized above the institutionalized dominant forms of knowledge. In the case of marginalized Minyore women, this means coming up with business support services that suit their state and not homogenizing them either just as any other business women, or marginalized business women but taking them as marginalized Minyore women with specific needs requiring specific interventions. These can only be achieved through consciousness raising of the individuals and the transformation of political and economic institutions which are ingredients of social change. Minyore women group need to be conscientized so that they fight for their rights.

2.7.2 Ethic of Care
This concept is advanced by Gilligan C. (2004), emphasizing, responsibility and interconnectedness with others. It emphasizes the importance of embracing a different voice or embracing differences rather than sideline them. It is premised on the fact that as human beings our lives are inherently relational. It emphasizes the importance of every voice being listened to carefully (in their own right and on their own terms and heard with respect). Further concerns about oppression and abandonment are build in the human life cycle given the differences in the power relations, thus care is an essential for human survival.

Minyore women status being marginalized, they are an abandoned and oppressed, they are treated as different in the society, living on the margins of the society, there are dominant voices which suppress, the voices of these women, therefore based on the ethic of care, these
women’s differences and specific needs ought to be respected and their voices as marginalized women heard respectfully and supported to grow their businesses.

Conclusion
Premised on the foregoing, it is apparent that marginality is a process that relegates people to the edge of the society, many a times due to the societal discriminatory systems, and women like the Minyore business group have exhibited the failure of the Kenyan government to address marginality despite a whole range of laws (both international and national) providing for the protection of the marginalized people. However, caution needs to be taken since the Law alone is not enough of an answer (Stewart J. 2011:36) other mechanisms embracing the principle of affirmative action programs in terms of resource allocation, participation of marginalized people in governance and training among others needs to be embraced in order to effectively realize marginalized people’s Rights in Kenya.
CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Understanding Marginalized Minyore Business Women’s Lived Realities
The study was anchored on a systematic theoretical set of methods that enabled me to assess the state of the, marginalized busi
ness women at the Nakuru rubbish dump in Kenya against, the support (if any) that they were receiving from the government to enable their businesses to grow from mere survival to profitable ventures, to enable their realization of socio-economic rights and emancipation from poverty. The Women’s law approach enabled me to take the Minyore women as the starting point, and to examine and understand their lived realities as marginalized people, relegated to the edge of the society, earning their livelihoods from garbage, as a source of food, assorted items for sale and raw materials for artistic work like weaving and beadwork.

This approach as advanced by, Bentzon et al (1998), as;

A woman centered legal discipline, which takes women’s actual lived experiences and life situations, based on sexuality, birth, care and domestic work as a starting point for the analysis of the position of women in law and society.

I chose this approach because it enabled me to recognize and “hear” the excluded voice of the marginalized women; this was as supported by, White B. A. (1999). Further, the approach being based on narrative technique, allowed the Minyore marginalized women to typically tell their story. While using the context analysis, supported by the women’s narratives, my consciousness was raised and I was able to grasp the reality of the marginalized women’s conditions from the “within perspective” and not from the “outside” this is as advocated by, MacKinnon C.A. (1982).

The approach enabled me to assess the various laws and human rights provisions as they define marginality and women’s rights as against the marginalized Minyore women’s status and living conditions at the dumpsite. In addition I was enabled by the approach to assess if
any gap existed between what the law provides for these group of women and what actually their status was on the ground.

Since this approach is anchored on the experiences of women to prove their real situation in law and society, I relied on empirical data collection methods in which, I derived knowledge from the women’s actual experiences, and from the women’s narratives, I determined what data to collect next Bentzon et al (1998: 18). Further, the information that I collected from the women, on their social-economic status, specifically their status as business women, and the challenges of poverty that they were facing despite their products selling international markets for the last ten years prompted me to interview, government officials from the departments of gender, trade and industry, social welfare and the area ward representative to establish the kind of support that they offered to the women to enable them realize their socio-economic rights, to enable their businesses to grow.

While interviewing the government officials like the ward representative and the county trade official, a category on considering tourist markets arose, which prompted me with the help of my supervisor to visit the Nakuru National Park, where I appreciated the prospects for the women to market at the park if proper arrangements were made.

Whereas interviewing the officials from the Social Welfare Department at the county level, revealed another category of the role of the Faith based organizations and how it impacted on the women’s businesses. Interviewing the Faith based organization which was said to be actively involved in supporting the women, I understood and appreciated, the unequal power relations between the marginalized Minyore women, and their inability to bargain for their stake at the faith based organization especially in terms of markets and access to markets, training among others.

Other categories that emerged were the misconception by some government officials that the women were at the dumpsite, by their own choice, and that they were making a lot of money. Further that no government support was being granted to the women and their businesses.

**3.2 Research Techniques**

Qualitative data collection techniques were employed, which included in depth interviews, focused group discussions, observations and interviews with key informants. These techniques
were utilized as tools to assist me in answering my research questions, testing my assumptions as to the reasons behind the marginalized Minyore women’s businesses remaining at a survival level only despite their products selling on international markets, and what the government support if any that was in place to aid these women.

A total of 27 respondents were interviewed, in depth individual interviews and two group discussions, 15 women members of the Minyore women, 2 men at the dumpsite and 10 key informants. The choice of the respondents was based on the nature of the activities and their knowledge in the field of study.

Individual interviews worked in my case because of the nature of the work that the Minyore business women are engaged in, the method was flexible, since it enabled me to schedule interviews at the women’s convenience and availability after they had attended the dumpsite and collected food and other assorted items for sale or as raw materials for their art work, then did they create time for the interview.

This method enabled me to learn about group exploitation issues, where some respondents were complaining about the exploitation by the chair lady who uses the women to solicit for help/aid but the benefit does not trickle down to the women. These issues could not be freely ventilated in group discussion probably due to power relation issues and fear of being victimized, evidenced by the two focused group discussions where no respondent was bold to raise this issue.

Focused group discussions did not work well, based on the one held before my supervisor came, it was not fruitful, because the women were not concentrating, they were restless and at some point they started walking out to go to the garbage trucks. They were also not contributing to the discussion freely; only the chairlady kept talking and even after making a special request that each respondent contributes, they each repeated what the chairlady had said on the challenge of markets. I, however, learned that I needed to have scheduled my interviews early in the morning before the trucks start bringing garbage. Thus my subsequent group interview when my supervisor came was scheduled early enough and surprisingly this time all the women came, and they stayed to the end. Although initially they were not participating other than the chairlady, I intervened by appreciating her contributions and explained the importance of each member contributing, that is how I got every woman
respondent present to speak their own mind and this opened up the discussions which was initially not forthcoming. Further the women respondent participation also improved when the chairlady left the room to answer a phone call.

Table 3: Focused Group Discussions

<table>
<thead>
<tr>
<th>Focused discussions</th>
<th>Group</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First FGD.</td>
<td>9</td>
<td>0</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Repeat FGD</td>
<td>15</td>
<td>0</td>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

On the other hand, observation coupled with casual talk techniques with the women before the chairlady who was attending a meeting came to grant me permission to interview the women, were handy. I got the opportunity to move inside the dumpsite, where the trucks were offloading the garbage and the women were busy sorting the garbage. I had a chance to see in the process of sorting garbage and picking food a woman picking food from the garbage and eating immediately.

This technique also enabled me learn that they were special types of plastics that the women use for weaving because on this particular day they were picking fewer plastic bags and when I asked my contact person that I met on the day of mapping, she said that the plastics that the particular truck had delivered were not used in weaving.

Conversation techniques were the mode that the interviews took, coupled with unstructured questions, whereby the answers from the questions determined the direction the interview took (Bentzon et al 1998) this created a relaxed mood, and some nuances emerged. Basically these data collection techniques were crucial especially when interviewing the general respondents at the dumpsite who included 15 women who are the members of the Minyore women self help group and 2 men both from the same family one who is a husband to one elderly lady and the other male respondent is a son to the elderly lady as provided in the table below.
Table 4: General Respondents

<table>
<thead>
<tr>
<th>Age (Years)</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>20-29</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>30-39</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>40-49</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>50-59</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Over 60</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Totals</td>
<td>15</td>
<td>2</td>
<td>17</td>
</tr>
</tbody>
</table>

3.3 Assessing the Government’s Support

In order for me to assess the government’s support in relation to its obligations to the marginalized Minyore business women under the frame work of Human Rights, I sought to interview key informants who were officials from various government ministries, namely Gender, Social Welfare department at the county (formerly municipal council), County Trade officer (formerly at the national government), the ward representative. Other key informants who were interviewed did not come from the government but from a faith based organization.

I chose the Human Rights approach, because, it is premised on human rights instruments, that are a universal legal framework, offering protection to all individuals and groups, against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity (OHCHR 1958). These rights are enshrined in the various treaties and regional instruments, national constitutions and other laws that formally protect basic human rights and freedoms.

The state bears the primary obligation (OHCHR 1958) on the rights of individuals and groups since the rights and the state obligations correlate. Thus states and other duty bearers are responsible not to infringe or compromise the fundamental freedoms and rights of people and to take action to realize the rights. In the field, I sought to understand the status of the states obligation in promoting Minyore women’s businesses and improvement of their socio-economic status, by looking at what institutional, and policy frameworks were in place for the marginalized, business women and /or marginalized people in general to support and ensure the enjoyment of these rights. I used this approach to assess the states obligation in terms of provision, basically looking at the allocation of appropriate public resources to meet the needs of marginalized people, but more specifically the needs of the marginalized,
Minyore business women at the Nakuru dumpsite, for example, budgetary allocations for training and capacity building activities.

Kenya enacted a new constitution in 2010, providing for the rights of the marginalized and vulnerable people in the society, including the protection and provision of special opportunities in education, and economic spheres. Article 10(2) (b), Article 56) provides for affirmative action programmes; ensuring access to water, sanitation and infrastructure. These rights in my opinion, could be interpreted as falling under the ambit of socio-economic rights, thus an argument that they will be progressively realized, more so, because currently there is no specific policy either at the national or county levels to provide for the rights of the marginalized people. However, I argue that based on the states obligation to satisfy “the minimum essential level” on the right to food, housing, education and health, the state should immediately realize these rights for the marginalized Minyore women and their families since they are living on the margins of the society with no basic needs including food.

At Article 21(3) of the Kenya constitution places a duty on all state organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, and persons with disability, members of marginalized communities among others, in which the article’s description fits the marginalized Minyore business women in Nakuru Kenya. The country is also a signatory to various international and Regional Human Rights instruments, and which laws form part of the Kenyan legislation under the constitution upon ratification, customary international law also forms part of the Kenyan Law.

The use of this approach as a methodological tool enabled me to analyze, the Minyore women’s social and economic problems, and how they are enabled and recognized as person(s) and rights holders under the framework of standards, and principles, duties and obligations (Bartlett K.1998:2).

The Approach enabled me to assess whether marginalized Minyore business women’s rights had been adequately defined in the constitution, the various human rights instruments both international and regional, the women specific instruments like, CEDAW and the Women’s Protocol to the African Charter all which are part of the Kenyan Law. Further through defining human rights as combined capabilities Nussbaum M.C. (2000), I assessed whether Minyore
marginalized women’s rights were substantially and effectively being realized in order to give them capability to function in their businesses.

Literature on the research area and Human Rights was consulted to facilitate this approach, internet materials, the library (the e-resources) materials contributed immensely to my work in this area. To bring this to fruition, I interviewed 10 key informants, 8 from relevant government ministries of gender, trade, social welfare and the ward representative and two respondents from a faith based organization.

Table 5: Interviews with Key informants

<table>
<thead>
<tr>
<th>Interviewees</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ward Representative</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Department of gender officers</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>County socio welfare</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>department officers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County trade officer</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Philadelphia FBO</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
</tbody>
</table>

The key informants were selected based on their knowledge in the field of study and their knowledge about the Minyore women’s activities. However, getting hold of them was a challenge due to their busy schedule. They, however managed to set time aside for interviews, and the information provided was an eye opener to what marginalization is and what it means to be socially excluded.

I used the human rights approach to assess the government official’s position on why the Minyore women were at the dumpsite and to find out whose responsibility from their perspective it was to ensure the realization of these women’s rights. Further to assess from the governments officials perspectives what needed to be done to ensure the Minyore women’s rights.
3.4 Assessing women’s capabilities

I used the capabilities approach advanced by Martha Nussbaum, who emphasizes assessing the ability of an individual and the real available opportunities to transform their capability into function. The approach further emphasizes the need of various actors to conduct a needs assessment before coming up with any programs in order to benefit the intended people.

This approach as a tool in my research enabled me to appreciate the capabilities that the Minyore women had, which entailed their creative skills, that used to create or engage in art work that enabled them earn a living. Further, using the approach I assessed how the women’s capability was being supported to fully function to enable them to live really humanly (Nussbaum M. 2000). I further used this approach to assess the availability of real opportunities like markets, information, and training, among others to make the women’s capabilities function.

The approach further enabled me to assess whether government programs like the Women Enterprise Fund (WEF) were really benefitting the marginalized Minyore business women. In addition to assessing whether the government and the Philadelphia faith based organization do conduct a needs assessment before coming up any programs support of the women in order to ensure that the women really benefit.

3.5 Action Based Research

This is a methodological research approach for solving social problems (Obrien R.O. 1998). It is sometimes referred to or known by other names like, participatory research, collaborative inquiry, emancipatory research, action learning among others. It entails “learning by doing”. Where a researcher identifies a problem and does something to solve the problem, it assesses how successful the efforts have been and if not satisfied tries again. It is therefore different from common problem-solving activities that all people engage in every day. It is defined by (Gilmore T. et. al (1986:161) cited in Obrien as follows;

“Action research ….aims to contribute both to the practical concerns of people in an immediate problematic situation and to further the goals of social science simultaneously. Thus there is a dual commitment in action research to study a system and concurrently to collaborate with members of the system in changing it in what is together regarded as a desirable direction. Accomplishing this twin goal requires the active collaboration of researcher and client and thus it stresses the importance of co-learning as a primary aspect of the research process.”
It has a social dimension since the research takes place in the real-world situations and aims to solve real problems (O’Brien R.O. 1998). It is chosen when circumstances require the involvement of the people in the research or change must take place quickly or holistically. The current research has traits of radical feminist action research rooted in Marxian dialectical materialism, which strongly advocates for emancipation and the overcoming of the power imbalances, it strives for social transformation via an advocacy process to strengthen peripheral groups in society.

This approach enabled me to understand the real situation on the ground about the marginalized Minyore women. It also enabled me to involve the various government offices in searching for solutions to the marginalized Minyore business women’s plights. Being a government official myself, my role was key in ensuring that the marginalized Minyore women are assisted to live dignified lives by voicing their concerns to other relevant government offices.

**Conclusion**

The approaches and techniques employed in the data collection were helpful and they enabled me to collect information that answered my research questions, in addition they were crucial in enabling corroboration and/or verification of data from the various sources.

The next chapter discusses findings and how the various human rights provisions relate to the findings.
CHAPTER FOUR

4.0 RESEARCH FINDINGS

4.1 Markets and access to Markets
Small enterprises survive and grow by selling their products and services (Redfern A.2002), thus we find an urgent need to enhance their marketing opportunities. Market access entails the ability to gain, control, and maintain entry into exchange relations. (Ribot J.C.2003:156).

Women’s voices on the issue of marketing opportunities were as follows:

When our products are done we keep them in our houses, and if people are interested, our chairlady asks us to place them at her house which we use as a market place, we just sell our products from the dumpsite.

Whereas another young respondent said:

I cannot say market is good because, between July and now we are in October we have not received any customer, we need to get markets out of this locality.

The foregoing clearly indicates how the lack of marketing opportunities for the marginalized women hampers the growth of their business. It is also apparent that government support is needed in facilitating Minyore business women’s access to markets and marketing opportunities to enable them grow their businesses and realize their socio-economic rights. The state’s duties on this issue emanate from article 56 of the constitution requiring the state to put in place affirmative action programs to ensure specialized economic activities for marginalized people and these could entail marketing opportunities for their products. Further, the Beijing Platform for Action at paragraph 166 sets out the state’s mandate to facilitate women’s access to markets and marketing opportunities.

4.2 Need for Protection from Unfair trade practices
Fair trade refers to any trade that seeks to provide sustainable and equitable market opportunities for marginalized or disadvantaged producers (Redfern A.2002), its aim is to tackle poverty through trade and basically it protects the poor from exploitation. Its primary goal is the provision of market opportunities and developing markets in the developed countries for products for poor producers in developing countries. It is a tool that contributes
to broader developments today by focusing on the provision of markets and facilitating access to markets.

From a gender perspective, fair trade concentrate more on women since they are the pillars of sustainable development and the largest number of people living in extreme poverty. Secondly, women are more involved in the craft business, because the businesses is flexible, it has shown some records of success in the world in improving women’s lives and those of their families and communities, (Redfern A. 2002).

Field findings revealed that Minyore women were being exploited because of their desperate state:

White clients do come and buy at low prices so that they can ressale on international markets at high prices.

Another respondent said the following:

I do not mind selling my products at a lower price to a person who later ressale’s at huge price because I need money.

The women’s sentiments were echoed by some key informants who said the following:

Issues of exploitation and fair trade do not matter so much because the foreign customers, who purchase from the women, purchase in bulk and since the women need money they are better off selling at a smaller price than stay with their baskets/products with no markets.

While another government official had the following to say:

I think the whites or the foreign buyers exploit the women, but it is two way since some of the whites pick some of the women’s children and sponsor them in their education.

There is an urgent need to embrace fair trade as a tool in marketing that will support the Minyore women whose products are already selling on international markets, so that they reap the benefits of their work. The government needs to link the Minyore women with Kenya Federation of Alternative Trade (KEFAT)\textsuperscript{41}, which deals with fair trade issues in Kenya.

\textsuperscript{41} KEFAT was established in 2003 with the aim of improving livelihoods and well being of marginalized Kenya producers through innovative approaches, market access on fair trade terms and speaking on greater justice in the world among others. It serves interest groups dealing in craft and food production from all over the country.
4.3 Protection from unfair competition using intellectual property laws

The United States Chamber of Commerce noted that dozens of businesses across the globe rely on the adequate enforcement of their patents, trademarks and copyrights and economies. From the producers’ perspective, protection is critical to foster innovation, since failure to protect ideas, will result into businesses and individuals not fully benefiting from their inventions and will discourage research and development (WTO). Voices from the field on the use of IP laws for protection business protection from competition were as below.

From a discussion with young women respondents from the dumpsite they said the following:

“We are not aware we are supposed to register trademarks.”

While an official from the gender department said the following:

On the issue of registering trademarks or community marks, we had not thought about it but we could start thinking along that line, the challenge is that we do not have that knowledge.

Another official from the county trade office said the following when he visited the women at the dumpsite:

It is important for the women to brand their business and register trademarks and our ministry can assist the women in that area. We also have a project called one village one product (OVOP), designed for regional development and Nakuru is among them, the project is to assist the local communities in exploitation of local resources and then we assist them get both local and international markets, it is a poverty eradication program. Using these programs we will capacity build the women on what they produce best, and cultivate it into a nationally and even globally accepted one. I thus promise to work with the Minyore women to assist them grow their business since they have good products.

From the foregoing it is apparent that the marginalized women and even the government officials apart from the officer from the ministry of trade lacked knowledge on how to use intellectual property rights to protect the women’s businesses from competition. Subsequently, there was no way they could utilize it as a tool to develop their businesses unless they were supported by the relevant government departments dealing with IP issues. This right is provided for under the constitution at article 40(5) where the state commits itself to support, promote and protect the intellectual property rights of the Kenyan people (including the marginalized Minyore women).
4.4 Use of Information Communication Technology (ICT) - cell phones in promoting their businesses

Cellular phones have gone from being a luxury to a business necessity in the business world (Forneris J. Undated). Cell phones allow a person to perform duties or jobs whenever and wherever they are, and they therefore ease accessibility which can contribute to the growth of businesses. Secondly, since they enable flexibility a business person is enabled to multi task, it enables a person to be in contact with clients across the globe, they also enable in advertisement and marketing.

Many of the women respondents interviewed said they do not use mobile phones in any way to do their business apart from their chairlady who said the following on the use of mobile phones:

I have the contacts of buyers (tourists) when they stay for a long time without coming, I am the one who contacts them, since I have their contacts and since we rely on tourists, the political instability and lack of security greatly affects our businesses negatively.

Whereas voices from the gender department on the issue of use of ICT and advertisement were as follows:

On the issue of advertising and selling on line we are required to advise the women to start using this option.

The foregoing apparently shows that, ICT and cell phones are not being utilized, to facilitate business activities of the marginalized women, despite the apparent advantages from the various literatures citing the great potential of ICT in growing a business. This in violation of the women’s rights as provided under the Women’s Protocol to the African Charter at article 12(2)(b) providing for the promotion of women’s (including marginalized) education and training at all levels and in all disciplines, particularly in the fields of science and technology. Further the country’s commitments to the Beijing platform of action at paragraph 173, lays out a commitment of the state to provide information technology especially to low income women.

4.5 Protection of the law

Law is a medium through which society attains its goals Skelly J. (1970: 427) it refers to:
The means by which society changes its goals when political and social realities decree change. It is what officials do about disputes or about anything else with a certain regularity which makes a prediction of what they and other officials would do tomorrow.

Poor or marginalized people are usually less familiar with the intricacies of the law yet they have desperate need for legal counsel (representation) e.g. a tenant evicted without a court order or a welfare recipient whose benefits are sharply reduced (denied completely) among other cases, all these may lack ideas of what their rights are, what they are entitled to or what remedies are even potentially open for them (Skelly J.1970: 429).

However, law can contribute to improving the lives of the poor, by creating an enabling environment for economic growth e.g. through the efficient allocation of resources and secondly by defining rights and duties through creating legal institutions and processes of law that contribute to the shaping and distribution of power, wealth and income within society either by reinforcing or reducing the inequality (Cotula L. 2005).

Access for the poor to institutions of enforcement are crucial, thus a need exists to consider the economic, geographical, linguistic aspects of access to courts and other institutions. Availability of judicial review for government decisions and legal aid in non-criminal cases is crucial. Therefore access to justice solely depends on informed citizens to enable the seizing of the opportunity offered by the legal system (Cotula L. 2005).

Voices from the field (a respondent from a faith based organization working with the Minyore women) indicated an existing information gap and lack of support mechanisms in the area of law as captured below:

I don’t know whether it is women human rights, for the women like Minyore to be supported by the government to realize their rights, and I don’t know how far someone can go to demand for their rights, and as far as I am concerned we receive no support from the government, other than the support on paper in terms of supporting our policies not in practical terms. We have sought for support but the response is normally that since we are a private entity our request cannot be approved.

The above indicates the government’s failure in supporting marginalized Minyore business women to utilize law as a tool to pursue the realization of the socio-economic rights.


4.6 Training

Training entails building the marginalized women’s capacities; however women fail to develop their capacities fully due to their limited access to training opportunities (Kenya vision 2030: 233). The Beijing Platform for Action at paragraph 173 reinforces the importance of the states to commitment to train women especially those with low income, this is a business service.

Voices in the field expressed lack of support for the women’s business, meaning that even training was not offered to the marginalized business women. For instance a 75 year old respondent had the following to say on her status, that of her business and her life at the dumpsite:

I was the first person to settle at the dumpsite after being evicted from a government forest 13 years ago, the dumpsite is my main source of raw materials for weaving, life problems pushed me to live on the dumpsite, It takes me approximately 13 days to collect, clean the raw materials, dry them for a day (but it depends with the weather condition), then design and weave one basket. When I have finished weaving I keep the products in my house waiting for the day our chairlady will call me to display at her house if visitors are expected, since we use her house as a market place, we just sell our products from the dumpsite. We do not receive any support from the government and we have a bad life.

One of the youngest respondent aged 23 years said the following in the focused group discussion:

We are talented but due to lack of support we stay silent on our talents/skills

While a 34 year old respondent had the following to say on the need for support for their businesses:

We need support to relocate from the dumpsite, and we do not need to do what our mothers are doing, we need training and if possible jobs that the government was promising the youth.

Voices from key informants corroborated women’s sentiments with regard to the support that the government gave to the marginalized women to ensure that their businesses grew. One key informant from the county social welfare department (formerly the municipal council of Nakuru said that:

Generally the county government and the former municipal council does very little in supporting the Minyore women, I know an NGO/FBO called Philadelphia is the one actively involved in supporting these
women, however, during the trade fairs held within Nakuru, we normally give women free stands (which assertion the Minyore women refuted), to exhibit their products so that they can market and sell them. The main challenge is that the budgetary allocation for the department has never been realized and human resource is also a challenge, since the staffs available are, elderly hence unable to run around, financial resources and transport logistics are other challenges that we face.

Responses from the gender department on the issue of support were as follow:

The women need to approach the gender department if they want help, we however assist women by giving them grants, organize trainings, our main challenge is lack of capacity in terms of human resources, however we train women on quality.

4.7 Provision of the basic services.
As acknowledged by the Kenyan vision 2030, vulnerable people experience various forms of deprivations and they need to be empowered with special needs to make them self-supporting. Further The Kenyan National Plan of poverty Eradication1999-2015 provides for a need for improved access to essential services by low income households that lack basic services. These rights are also enshrined in the Kenyan constitution at Article 56 that requires marginalized people to be enabled to access water, health services among others, while at Article 43 of the Constitution the socio-economic Rights include right to access adequate shelter and food among other rights. An example of voices from the field on the urgent need for shelter was as captured below:

We stay in chemicals from the waste, we need to relocate, some of us who get pregnant give birth to children with eye problems, and even staying here in these shacks is risky because sometimes, chemicals from the garbage explode, sometimes at night and the fire spreads and guts down our shacks and there being no water, putting out the fire is difficult, TB infection is also high among us because of the conditions that we live in, also during rainy seasons we experience problems because our houses are normally collapse.

While another young lady respondent said the following;

We really need to move out of this place, I normally weave purses, but one night over a year ago one of my fingers was bitten by something I did not see and the finger has not healed to date, weaving might be a problem in future and even at the moment I cannot weave much because of the pains.

There is also need for social protection for the women since research shows that it is a tool to fight poverty Miller C. (2007). The key goal of social welfare is to improve the well being of
those at the bottom of the income distribution Kenworthy L. (1998). In sub-Saharan Africa poor families struggle to meet basic needs Miller C. (2007: 20), these vulnerable populations face a social protection vacuum, when both the formal social protection mechanisms and the informal mechanisms including, relying on family relations to provide support in times of need fail to provide the safety nets that the vulnerable people need to survive. On social welfare programs:

I am aware of the government bursaries, but the amount given is very little, further I have never qualified for the school fees bursary since I started applying for the same, so I struggle to pay my son’s secondary school fees.

According to government official on the issue of support mechanisms for these women:

At the moment there are no support services to help the women at the Giotto dumpsite but currently we are organizing to ensure that they benefit from the women and the youth enterprise funds.

4.8 Lack of Agency or a “voice”

Having a voice and the ability to participate in decision making are components of empowerment. If a person lacks these elements in any area of their lives they are disempowered. Respondent’s voices in the field revealed the state of the disempowered Minyore women whose decisions were being influenced by their powerful chairlady and the Philadelphia Faith-based Organization, and these two agents were also speaking for the women. This state revealed the state power imbalances which resulted into exploitation of the already marginalized women as was stated by Dain S. (2003). The voices from the respondents on the power issues were as below:

The chairlady exploits us she uses us to source for money but when she gets the money we at the dumpsite do not benefit, for example when training or business opportunities arise, she colludes with the well to do women at the neighboring London estate who benefit from those opportunities, an example is the community tank which she influenced for it to be built at her door step, it is meant to serve the whole community but when we ask for water she abuses us, when a good Samaritan comes and offers to refill the water tank, the chairlady lies to them that the tank serves the whole community when the reality is that most of us buy water, she uses the water alone and for her family.
4.9 Emerging Issues
The European Commission (2009) defined an emerging issue as one that has very recently been identified and to which available data is limited for any risk assessment. Other scholars describe the same as an issue, ripe for exploration, relates to an area of study that was not specifically addresses at a concluded study.\(^{42}\)

Various issues emerged from the field study which needs further interrogation with regard to the issues of marginalized women in business. They entail the development of the women and realization of the economic rights and support services to ensure they are emancipated from poverty. The issues are as follows,

The Geographical location of the marginalized Minyore business at the Nakuru rubbish site disadvantages their businesses, since people or potential clients might be put off from visiting and buying products from the dumpsite, either due to security issues on health issues among others. Secondly, their location hampers the growth of their businesses for instance due to lack of infrastructure like roads, water electricity among others in that even if any support is given to them for example machines that use electricity for making beads (as suggested by the Department of Trade) they might not utilize them unless relocated. Alternatively the lack of the electricity may lead to their exclusion from benefitting from the government project (OVOP) of getting the equipment for trade. More so being at the dumpsite makes them invisible since people will not be able to know where they are.

Intra group exploitation and lack of trust among group members emerged from the field study and bearing in mind that many government programs in support of women prefer supporting groups; this might work against the women, limit their benefits from government programs. There is thus a need for the women to be trained on group dynamics and on the importance of working as a group to enable lobbying and demanding for services from the government, in line with the famous slogan that “unity is strength”.

Privatization and/or relocation of the dumpsite which has been a source of livelihoods for the marginalized Minyore women need to be carefully considered, since failure to take care of their interests in this process could marginalize them further. There is thus a need to involve
them in this process to ensure that their interests are adequately covered and that if their only source of livelihood is taken away an appropriate alternative is availed to them.

**Conclusion**
The field findings apparently revealed the County Government of Nakuru’s failure to ensure the realization of marginalized Minyore women’s socio-economic Rights. Through their failure to put in place affirmative action programs as required by the constitution in Article 56 as discussed in chapter two. The programs are to ensure the women’s access to special opportunities in economic activities, which include facilitation to access marketing opportunities, training to built their capacities, use of intellectual property to protect their businesses from illegal competition, use of cell phones to network to grow their businesses, use of law to secure their rights in court and the provision of basic social services to enable them live humanly lives. The County Government of Nakuru needs to be proactive to realize marginalized people’s Rights in the county and especially the marginalized Minyore business women’s socio-economic Rights to enable them to be self supporting and be emancipated from poverty.
CHAPTER FIVE

5.0 CONCLUSIONS AND INTERVENTIONS

5.1 CONCLUSIONS

Law is a necessary but somewhat limited instrument for social change (Delport E 2011:152). Administrative, judicial, policy, economic and educational measures and other steps are required of governments to ensure the realization of citizens rights (OHCHR 2005:9). Delport also suggests other strategies like, activism, awareness-raising, political commitment as well as sufficient budgetary allocation are needed to effectively improve women’s lives in developing countries.

The Kenyan constitution expressly provides for the protection of the rights of marginalized and vulnerable groups. It provides that special measures be put in place by the government to ensure marginalized groups realize their rights as discussed earlier in the text. The country is also a signatory to international and regional instruments providing for the protection of human rights and women specific rights.

However, the study revealed that the marginalized women do not enjoy these rights at all in their capacities as human beings and through their businesses to enable dignified lives and growth respectively. Consequently they continue to live on the margins of the society with no support at all. Thus the Kenyan government has failed or neglected to move with urgency to redress the plight of the marginalized people especially the Minyore business women to ensure they realize their socio-economic rights. Further the constitution envisaged that the marginalized people lack ability to compete on same level with the other able people thus providing for measures of affirmative action for them.

Field findings revealed that there is a lack of information on both side the government and the women on how to handle marginalization. Limited resources both on the government side like human resource, transport among others and on the women side like, information, markets, law and basic necessities contributed to social and economic exclusions.

From the above and the various discussions on the state obligations, both levels of government, the county and national governments are jointly and severally responsible to
ensure the realization marginalized business women’s have basic social services to live dignified lives, and support to ensure they realize their women human rights in the economic sphere. This is premised on the principle of cooperation between the two levels of government (article 6 of the constitution) Non-state actors are also responsible where applicable (OHCHR 2005).

Below is a discussion of the various interventions as they relate to the conclusions.

5.2 INTERVENTIONS

5.2.1 Challenges in Implementation of Marginalized Minyore Business women’s Rights

The primary responsibility is upon the County Government of Nakuru to ensure realization of the Marginalized people’s rights. These women face marginality overlap, as discussed in chapter two, and they suffer high vulnerability. The County Government needs to respect, protect, promote and fulfill, the marginalized Minyore women’s Rights, especially through legislative and policy and other measures including setting of standards to achieve program realization Ghai C.J. (2013). To effectively address the women’s needs, I consider their needs, their capabilities, and the interventions required.

i. Marketing opportunities

Despite their talents, they have erratic markets; they rely on tourists who come once in a while. Due to their geographical location at the dumpsite, they do not get markets because, not many people will visit the dumpsite to buy from the women. Secondly being at the dumpsite, they are invisible and no one will ever know that they exist due actors in the government systems and structures in place that have turned a blind eye on these women despite knowledge of their plight and their livelihood at the dumpsite. Thirdly the women have a naïve belief that markets will locate them at the dumpsite by visiting tourists. Fourthly they have a misconception that clients will be brought to them, since at one point there was a person who used to source markets for them, but he disappeared. They need to be assisted to get markets to enable their businesses to grow.

The County Government needs to operationalize the provisions of the County Government Act section 97 which provides for the integration of marginalized people and in section 97(d) there is need to put in place special measures of affirmative action for the marginalized people
to enjoy equal rights with the rest of the population. This is in line with the Marginalization policy 2013 issued by the Commission For Revenue Allocation (CRA), directing both national and county governments to institute affirmative action programs targeting marginalized groups within counties to enable them to realize their socio-economic rights as enshrined in the constitution. I suggest affirmative action measures relating to marketing opportunities as follows:

✓ Allocation of appropriate market space for the women
✓ Waiver of the Licensing and permit fee
✓ Linking the women to the Nakuru National park where they can be able to tap on the tourist market.
✓ Link the women to the Kenya Federation of Alternative Trade (KEFAT) a body responsible with fare trade issues, to assist the women benefit from the fair trade tool on international markets.
✓ Allocate the women stands at the trade fares within the county and also, network them with other counties to enable them display their products the trade fares of the sister counties.

ii. Training, use of Cell-phones and access to information for their businesses
Many of the women are in possession of a cell phone, but they do not have knowledge on how to use the gadget for networking and advertising of their businesses. This was evident when I visited, them at the dumpsite, they never bothered to ask for my contacts or request me to source for markets for them, I am the one who offered to give them my contacts.

Premised on section 97 of the County Government Act the county needs to institute affirmative action programs to ensure, that marginalized people are trained and equipped with relevant capacities, in their field of trade to enable them function effectively in their trade, areas that need training would be on confidence building, pricing, business management skills among others.

iii. Protection of their business from competition
The women are creative but due to their low literacy levels compounded with their lack of resources, results in their failure to use IP protection. The failure results into exploitation by people who come and trick them to teach them how to make products similar to theirs then they go and start competing with the women’s products, the results being a flooded market.
The women need protection of the intellectual property laws for their business to be protected from illegal competition.

The world trade organization (WTO) acknowledges the importance of using IP to protect, ideas and knowledge as an important part of trade, and creators have been given the right to prevent others from using their inventions, and to use the right to negotiate, payments in return for the others using their creation and/or intellectual property rights.

However, many small businesses are disadvantaged for lack of information, expertise, or resources necessary to prevent the theft of their ideas and products. Further small scale businesses do not have a level of access or resources such as specialized legal counsel that may be available to larger companies. Thus the county government in its obligation to promote trading activities should facilitate the use of intellectual property by its citizens especially the disadvantaged so that they protect their activities from exploitative completion.

iv. **Need protection of the Courts to safeguard their rights**

The state’s failure to ensure the realization of the women’s rights was exhibited by the social welfare department which is ignorant of the women’s rights and it operates on wrong assumptions that the women are at the dumpsite by “choice”. Secondly, the gender department which thinks the women ought to approach the department if they need help, when in the first place the women in their state lack knowledge of the existence of this department. In addition the women need assistance in the form of legal aid services to assist them use the courts to compel the government to meet it obligation for the women,

Through the spirit of cooperation and consultation vide article 6 of the constitution the county needs to liaise with national government to ensure that legal aid programs are rooted out in the county to support the marginalized citizens who need protection from the courts. Courts are a national function under schedule four of the Constitution.

v. **Provision of basic minimum services.**

The women lack basic social services like water, shelter, food, health, education for their children and they live in an un conducive environment among others. They need the basic minimums to be able to function humanly. According to the Kenya marginalization policy 2013, these group of people have insufficient basic social services and physical infrastructure
like water, food, health care, basic education, basic shelter among others. The Kenyan constitution and the County Government Act require counties to mandatorily have development plans that give percentage of households with access to basic services Ghai C.J. (2013).

The Public Finance Management Act 2012 (PFM), at section 107 provides that 30% of the county’s revenue is to be expended on development projects. Further in section 116 of the PFM Act mandates the county government to establish other County Funds, thus I argue that a fund can be established to address marginalized people’s issues within the county based on affirmative action principles of equality.

vi. Participation in Governance.
The women are isolated or ignored in decision making processes hence decisions that are reached in their absence do not reflect and address their situations. This is despite the fact that those decisions affect them in one way or another. Since no one advances the women’s specific agendas like on the need for affirmative action programs for the women. The failure to advance the marginalized women’s specific agendas by those in power is due to competing interests.

Section 97(g) of the County Government Act places a duty on the county to ensure effective participation of marginalized people in decision making. While section 100 of the Act provides that the county will establish civic education programs, section119, the county establishes citizen service centers with appropriate ICT. While in section 87 marginalized citizens have a right to access relevant information which will enable them to participate effectively. Ghai Y.P. (2013) noted that effective citizen participation is one which ensures that everyone has a chance to be involved if they are willing. What the county government needs to do to ensure effective citizen participation is spelled out in section 91 of the County Government Act as follows:

- Information communication technology based platforms
- Town hall meetings;
- Budget preparation and validation fora;
- Notice boards: announcing jobs, appointments, procurement, a Wards and other important announcements of public interest;
- Development project sites;
- Avenues for the participation of peoples’ representatives including but not limited to members of the national Assembly and Senate; or
Establishment of citizen fora at county and decentralized units.

vii. **Need power and/or empowerment**
Basing on the Kenyan National gender policy which defines empowerment as the voice and decision making power in the household, communities and national level. Marginalized people need to be empowered to be able to exercise their own agency in order to avoid exploitations that occur from those who speak for them. The women although living on the margins of society, they have potential, they have formed themselves in a self help group which is a form of informal social security for them since the state has failed to extent protection to them.

Secondly, women have acquired skills on how to make art work which sells on international market. They are resilient despite many of them living on the dumpsite for over ten years; they strive to engage in economic activities without any form of support given their state.

Thirdly that although the women have developed a dependency syndrome where they have only one dominant person who exercises agency and speaks for them, and due to power relations the dominant agent exploits them, but if the women are empowered through training they have potential to be their own agents and voice their own concerns without passing through another person.

viii. **Need for a marginalization policy and legislation at the county level**
This will assist to operationalize the various provisions of the constitution and the county government Act and other relevant legislation providing for marginalized people, developing a policy and legislation will enable a clear articulation of the issues of the marginalized people who have remained invisible for a long time due to structural and systems of their oppression.

The marginalization policy and legislation, is necessary to establish a body to coordinate marginalized people’s issues and the body should incorporate a majority of marginalized people whose membership needs to be rotational, so that all the groups are represented.

5.3 Plan of Action
Marginalization is a crosscutting issue just like gender, it will thus call for a multi-sectoral approach from stakeholders namely, government members, NGO, civil society, faith based organizations, private sectors and the development partners who are required to participate to
ensure the implementation of the plan of action in order to eliminate marginality which greatly affects women.

Implementation of the Plan of Action (POA) on marginalization will be based on the human rights framework already discussed in this piece work. Marginalization being a crosscutting issue I recommend that it be at the centre of all strategic development planning, in addition, the implementation should embrace at its core the best practice or principle of affirmative action which is at the core of realizing the rights of the marginalized people as envisaged in the constitution.

5.3.1 Establish structures and frameworks to deal with marginality.
✓ Establishment of institutional structures with a clear mandate and terms of reference with qualified personnel.
✓ The structures should be backed by adequate budgetary allocations
✓ Need for sector reform, with systematic interventions to address marginalization in various sectoral issues.

5.3.2 Capability building
✓ Meant for institutional strengthen and implementation of programs that mainstream marginalization
✓ Embracing a perspective that incorporates marginalized peoples issues at the operational structures.
✓ Development of policy statements that link marginality to the ministries core functions, purpose and values

5.3.3 Lobbying and advocacy
✓ To enable enactment of marginality related laws and policies
✓ Lobby to enable resource mobilization

5.3.4 Profile marginalized people within the county.
✓ Lobby the Kenya Bureau of statistics to provide an up to date data on marginalized people within the county
✓ Research and information dissemination
5.3.5 Partnership and network
✓ To assist in realizing marginalized people’s rights.
<table>
<thead>
<tr>
<th>Aim</th>
<th>Performance indicator</th>
<th>Responsibility</th>
<th>Monitoring and Evaluation</th>
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<tr>
<td>Improved access to economic opportunities</td>
<td>Number of marginalized people accessing economic opportunities -Special opportunities created for the marginalized</td>
<td>County Executive Member In charge of Trade</td>
<td>Annual report to the County Assembly</td>
</tr>
<tr>
<td>Training</td>
<td>Number of marginalized people trained. -Budgetary allocation for training marginalized people in their respective fields</td>
<td>The County Executive Member In charge of Education</td>
<td>Annual report to the County Assembly</td>
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<tr>
<td>Participation in Governance</td>
<td>Percentage of marginalized people in the county assembly and other decision making bodies</td>
<td>The Governor’s office and the county secretary’s office.</td>
<td>Annual report to the county assembly</td>
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<tr>
<td>Adequate budget allocation</td>
<td>Percentage of the budgetary allocation for the marginalized.</td>
<td>County Executive Member in charge of Finance and Economic Planning.</td>
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<tr>
<td>Protection of marginalized peoples businesses using intellectual property.</td>
<td>Policies for protection of IP</td>
<td>County Executive Member In charge of Trade.</td>
<td>Annual Report to the County Assembly.</td>
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<tr>
<td>Promotion of the use of ICT</td>
<td>Number on marginalized people reached out to via cell phone and other ICT platforms.</td>
<td>County Executive Member In charge of ICT.</td>
<td>Annual Report to the County Assembly.</td>
</tr>
<tr>
<td>Provision of basic services to marginalized people</td>
<td>Number of marginalized people’s households accessing essential services</td>
<td>County Executive Member In charge of Social welfare.</td>
<td>Annual report to the County Assembly.</td>
</tr>
</tbody>
</table>
The above proposed plan of Action for the implementation and ensuring realization of the rights of the marginalized people in Nakuru County and more specifically the marginalized women is anchored in the Constitution as discussed below:

Chapter eleven of the Constitution provides for devolution of services to forty seven counties within Kenya. At Article 174 of the constitution protection of the rights of the marginalized people within the County is one of the objects of devolution. In article 183 of the Constitution implementation of County functions is a mandate of the County Executive Committee and section 30 and 34 of the County Government Act 2012. For instance in section 30(j) of the County Government Act the Governor is supposed to submit an annual report to the County Assembly on the implementation status of policies and legislation within the county. While in section 34 of the County Government the County Executive committee is mandated to exercise authority in the well being of the people.

At section 34(d) the County Executive Committee is supposed to protect and promote the rights of the marginalized people in the implementation of its functions. While in section 34(e) the mandate to promote gender equality is provided for. At section 34(h) the County Executive is to ensure the equitable sharing of available resources within the county. At section 36(2) the County Executive Committee has power to determine its own program of Actions.

It is on the basis of the above framework that the proposed plan of action will be implemented at the County Government of Nakuru to ensure realization of marginalized people’s rights but especially the subjects of this study the marginalized Minyore business women to ensure realization of their socio-economic rights. This will call upon respective County Executive Members like the one in charge of trade, to ensure improved access to economic resources, the County Executive Member in charge of Education to handle issues of training, the Governor’s office to tackle issues of participation of marginalized people in governance, the County Executive Member in charge of ICT to ensure use of cell phones by marginalized people to advance their businesses, the County Executive Member in charge of social services to ensure that marginalized people access basic social services in the county to enable them live humanly and lastly the County Executive Member in charge of Finance and Planning to ensure adequate budgetary allocation.
Realization of marginalized people’s rights within the county will result into an equitable county thus transforming into an equitable nation.

The above thus entails a multi-sectoral approach and embracing affirmative action as envisaged at Article 56 of the constitution and section 97 of the county government act.
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UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14


