



FEDERATION OF WOMEN LAWYERS (FIDA KENYA)

KENYA'S COUNTRY PERSPECTIVE ON ADVANCING GENDER EQUALITY

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ABOUT KENYA

The Republic of Kenya is a country in East Africa. Lying along the Indian Ocean to its southeast and at the equator, Kenya is bordered by Somalia to the northeast, Ethiopia to the north, Sudan to the northwest, Uganda to the west and Tanzania to the south. Lake Victoria is to the southwest and is shared between Kenya, Uganda and Tanzania. Kenya has numerous wildlife reserves, containing thousands of animal species. The capital city is Nairobi. Kenya's area is 580,000 km² with a population of nearly 39 million which is diverse: more than 40 different ethnic groups are present. The country is named after Mount Kenya, a significant landmark and second among Africa's highest mountain peaks.

ABOUT FIDA KENYA

The Federation of Women Lawyers – Kenya (FIDA Kenya) was established in 1985 after the 3rd UN Conference on Women which was held in Nairobi with the aim of improving the legal status of women in Kenya, increase access to justice for women and enhance public awareness on women's rights. FIDA Kenya is a non-governmental, non partisan, independent, non-profit making, membership organization. Since FIDA Kenya was established, it has grown in membership to 600 women lawyers driven by a vision of a society that is free from all forms of discrimination against women. The organization's mission is to ensure that women are free from all forms of injustices based on gender, sex, class, ethnic origin, physical disability and religious beliefs. This year marks FIDA Kenya's 25th Anniversary!

INTRODUCTION

Reference to gender connotes the social construction of the gender roles and relations between men and women that is dynamic and changes over space and time. This reference also includes the state of being male or female, distinguishable by the

physical, biological and sexual characteristics by which members of society are identifiable. The causality of gender considerations in the differentiation of individual and societal interactions is evident in the cultural, political and economic relations.

At the individual level, the differentiations are very pronounced on the basis of opportunities and constraints based on sex category and the resultant consequences. The social roles of men and women have been different in all known human societies. The differentiation has been primarily on the basis of division of labor, which has predisposed men to access and control valuable resources in their societies, which has in turn made it difficult for men and women to share power, privilege and status on the basis of equality.

The relevance of Kenya's gender perspective is premised on the fact that Kenya's international and national obligations have at their core gender equality in all spheres of public and private life. Yet the realization or vindication of these obligations in Kenya as in the rest of the third world continues to be undermined by poverty. Poverty in most instances is caused by lack of basic social services, opportunities for employment and markets, ethnicity and concentration of assets in the hands of a few individuals. Women and girls are especially disadvantaged because of discrimination, cultural marginalization and violence, access to education and credit. Unless checked, these obstacles will continue to negatively affect generations to come.

The Government of Kenya officially acknowledges the importance of gender equality in Development. At the national level, the case for gender equality has been strengthened over the years by international and national policy discourse, research and advocacy. In the current long term development blue print, Kenya Vision 2030¹, gender imbalance is viewed as one of the key developmental challenges facing the country. The vision for the gender, youth and vulnerable groups sector is that 'men and women enjoy a high quality of life and equal opportunities'². Various strategies, programmes and projects in the area of equal opportunity and empowerment, have been proposed to ensure that both men and women benefit equally from the available resources.

KENYAN WOMEN IN POLITICS AND DECISION MAKING

Gender inequality continues to pervade many aspects of the Kenyan society; politics is the arena in which it remains perhaps most pronounced. Achieving men's and women's equality in the political realm is a goal towards which Kenyan women have moved with considerable difficulty over the past few decades though women have made measurable strides in that direction. On the repeal of Section 2A of the Lancaster Constitution in 1992, Kenyan women enthusiastically and aggressively participated in national party politics.

Like women in many other parts of the world, Kenyan women have had difficulty penetrating the patriarchal decision-making structures and processes of the state and

¹ GOK (2007)

² Ibid ...113

political parties. Despite these difficulties, women of many ethnic and religious backgrounds have employed informal as well as formal channels of political expression in dealing with the successive states and governments, sometimes with mixed results.

Kenyan women's struggle for political participation has been constrained by many factors, some gender specific and some related to the peculiarities of politics in Kenya. Kenyan women participating in politics between 1963 -2010 when Kenya adopted a new constitution were required to be members of a registered political party and to be citizens eligible to vote and contest political office.

All women of 18 years and above have been eligible to vote and contest for elective political positions since 1963, when Kenya attained independence. The awareness of Kenyan women about this right has grown since independence. Despite this growing awareness of 'political rights', Kenyan women have faced gender-role stereo types, male resistance to women's participation, limited resources with which to participate and political structures and processes that impede women's political activity. As a result of the many constraints, there has been a paucity of women in decision making positions within national parties and the Kenyan parliament.

The paucity of women candidates may also be due to a combination of structural and situational difficulties they face: women's multiple social roles that consume all their time and energy; inadequate monetary capital to invest in election campaigns; low level of interest in politics at national level; lack of support from interest groups.

It is important that participation of women in politics and public decision making is viewed as critical to the actualization of sex equality because women must command real political power if their concern is to be prioritized and meaningfully included in the national agenda. Deliberate moves can be undertaken to ensure that women are well represented in the government by appointing women to top leadership positions. Women being the majority of voters can, if properly mobilized, vote in candidates who are sensitive to their needs.

Kenyan women are reported to comprise between 52 percent and 60 percent of the country's registered voters and consistently have a higher voter turnout than men; but they are represented in very limited numbers as elected officials. From the time of independence in 1963 to 1969, no women were elected to parliament. Between 1969 and 1974, women constituted less than 1 percent of the elected members of parliament. In 1979, five women were elected and one woman was nominated as members of parliament. While in 1983, only two women were elected and one was nominated; the same situation repeated itself between 1988 and 1992, when women represented only 3 percent of all parliamentarians. In the multiparty elections of December 1992, six women were elected to parliament; ironically in that year that heralded a new frontier for democracy in the country, no woman was nominated to any of the nominated seats in parliament.

Women formed only eight per cent of the seats in the 9th Parliament and about ten per cent in the current 10th Parliament placing Kenya 112th in ranking of female participation in parliaments globally. Despite provisions in the Political Parties Act 2007,

section 33 of the old constitution and the Persons with Disability Act, all political parties failed to nominate persons with disabilities after the 2007 general elections.

The barriers that limit women's full political participation remain. Some of these barriers are cultural or traditional; others are a function of political party organization; and some are engendered by the lack of technical or other resources available to women who seek increased involvement in politics. Until 1995, no woman had ever served as a cabinet minister,³ largely because cabinet members were selected from within parliament. Before 1995, the highest position ever held by a woman was that of an assistant minister. The situation is similar in local political bodies, where women are substantially under-represented in elected and appointed political positions.

The percentage of women in decision-making has remained low at 13.1 per cent in 2006 and 15.4 per cent in 2008⁴. Parliament share has been 8.1 per cent in 2006 and 8.7 per cent in 2008, while in the Cabinet the share was 5.8 per cent for Ministers and 13 per cent for assistant Ministers in 2006 with the proportions changing to 16.7 per cent and 11.5 per cent, respectively in 2008. This is good improvement albeit low. In the civic authorities, the number of women councilors has accounted for only 13.3 per cent and 15.8 per cent for 2006 and 2008, respectively.

In other areas of decision making in the Kenyan government, negligible number of women are represented in senior and middle positions where policy is formulated. In the diplomatic service for instance, women make 27% of Ambassadors and High Commissioners.

In the Judiciary, women comprise 44% of the lower tier of Judicial Officers; the Magistrates. Their numbers however dwindle as they climb up the ladder. In the second highest court in the land, the High Court, women account for only 20% of the judges. The Court of Appeal – the current highest court in Kenya – has no female judge. There was one female judge who was appointed to the International Criminal Court at The Hague but ironically, she was replaced by two male judges in 2009. The impact of women's absence in the court of Appeal is best captured in the women unfriendly decisions that have emanated from that court. The most notorious decision was the Echaria case⁵ where a bench of five men made a binding decision that for a married woman to lay a claim to matrimonial property registered in the husband's name, she must prove her direct financial contribution as her contribution as a home maker and reproducer does not count. Fida Kenya has since commenced proceedings to challenge the decision at the African Human Rights Commission.

The recently ratified Kenyan constitution heralds a new dispensation and women have a lot to celebrate. The constitution represents major gains towards gender equality and equity and in essence delivers on many points that have been at the heart of pro-

³ President Moi appointed the only female KANU MP as the Minister of Culture and Social Services in August 1995.

⁴ Economic Survey 2009

⁵ Peter Mburu Echaria v Priscilla Njeri Echaria (www.kenyalaw.org) (2007)eKLR

women movements in Kenya for along time. Thus the new dispensation is a political, economic and social Cape of Good Hope for the women fraternity.

Whilst the rules of engagement in politics have been by and large gender neutral, there have been structural limitations to women's participation. It was thus necessary to deal with these structural limitations as well as to ensure that the historical impediments that have relegated women to the back seat in all realms are addressed. The provision of reserved seats for women in the senate and other quotas for women in other elective positions, clearly stipulated requirement for inclusion of women in senior governmental appointments and the requirement that in all constitutional commissions the chair person and the deputy must be of opposite gender will go a long way to address the prevailing structural barriers and captures the thrust of concerns by women.

BUSINESS AND INVESTMENT

The economic inequality of men and women is a fundamental aspect of the stratification systems of modern society. A main characteristic of economic development is the progress towards an increasingly intricate pattern of labour specialization.

In Kenya gender based economic inequality is intimately connected to the nature of gender relations. At least in part because women tend to make less than men, women are more likely to stay at home to take care for children than are men, women are more likely to follow their spouses when they pursue career opportunities than the reverse and if unmarried, women are more likely than men to subsist at or below the poverty line. These tendencies are part of a broader culture of male dominance that tends to relegate women to 'women's roles', both in the family and economic relations.

As entrepreneurs, women in Kenya like men can take up advantages of opportunities created in special economic zones by setting up businesses. Women however face a number of obstacles which mostly condemn them to low income occupations.⁶ Women's businesses generally start small, grow slowly and end smaller than men owned enterprises. The participation of women in Kenya is also slow in sectors that require high capital requirements (especially in manufacturing) where they were found to be earning only about 32 % of what their male counterparts earn.

Statistics from the 2008 labour Force Report and the Kenya Integrated Household Budget Survey (KIBHS) of the same year indicate that Kenya's economically active population- those aged 15-64 years constituted 12.7 million persons and 1.9 unemployed persons, while the inactive population amounted to 5.3 million persons.⁷ The overall participation rates were slightly higher in urban than in rural areas. A gender analysis showed that the proportion of working females in the rural areas was higher than that of males, recording 77.1 % and 70.3 % respectively. This difference could be explained by the fact that a majority of the women who reside in the rural areas are engaged mostly in agricultural activities.

⁶ McCormick and Mitullah, 1995:ILO 1995

⁷ GOK,2008(a),2008(b)

The above highlights the contribution of Kenyan women to the economy through business and Investment. Their input is mainly in agriculture and the informal sector as more than 75% of the women in Kenya live in the rural areas. Two main reasons have been advanced for the invisibility of women in the mainstream economy. Firstly, only 1% of all the titles over registered land in Kenya are in favour of women. A further 5-6% is held by women jointly with men. This means that most women have no access to credit due to lack of collateral as land is the security most favourable to financial institutions.

Apart from lack of control over land, it has been argued that the multi tasking required of Kenyan women due to their dual roles in the household economy and labour market has left them 'time poor'⁸. An average Kenyan woman works longer hours (about 13hours) everyday compared to men. She however ends up earning less because the hours dedicated to her private world are often not remunerated. Further, most businesses in Kenya require multiple licences both from the central and local government. The requirement for licences imposes time and costs. These impacts more severely on women than men as the women are more financially and time poor.

In recognition of the plight of women in business and Investment, the government of Kenya, in 2006 initiated and established the Women Enterprise and Development Fund (WEDF) as a strategy to address poverty reduction through socio economic empowerment of women. The aim of the fund is to facilitate women's access to micro finance. The government has further addressed the challenge of women's access to credit through various institutions.

Fida Kenya has lauded access to the women's enterprise development funds and we have been working on creating awareness of the fund, training on entrepreneurial skills so that to help women venture into entrepreneurship. We further and conducted an appraisal on the performance of the fund (WEDF) in June 2009⁹. The highlight of the appraisal was the lack of skill by the women on how to manage the loans advanced by the fund, poor governance of the funds due to corruption. The report also highlighted the need for a policy on the management of the funds. The government has taken up the recommendation and is currently working on a policy.

HEALTH

As in the case with every developing country, provision of affordable medical care to the general population is a challenge in Kenya. The impact is once again more severe on women than men. Despite the steady rise in the Kenyan population (approximated at one million per year), women specific challenges persist in form of high maternal, infant and under five mortality rates, lack of adequately equipped maternal health care facilities and skilled birth attendance (especially in North Eastern and Coastal Provinces and all informal urban settlements), and defacto discrimination against poor women and women with HIV/AIDS in access to maternal health care.¹⁰

⁸ World Bank GENDER AND ECONOMIC GROWTH IN KENYA; UNLEASHING THE POWER OF WOMEN (2007) Judy Thongori et al.

⁹ Fida- Kenya WOMEN ENTERPRISE AND DEVELOPMENT FUND; AN APPRAISAL

¹⁰ Concluding Remarks of the Committee on Economic, social and Cultural Rights on Kenya 41st session, November 2008.

All this continue to happen despite the fact that Kenya has policies for ensuring access to comprehensive HIV/ AIDS/STI care and treatment options for all including: pregnant women, mothers and infants (including mother to child transmission). These include the Sessional paper No. 4 of 1997 on HIV, The HIV Prevention and Control Act of 2006 that officially made HIV treatment a right in Kenya, Vision 2030 and the Medium Term Plan 2008-2012, and the relevant health sector policies and guidelines including those on PMCT.¹¹

There has been limited access to sexual and reproductive health services and contraceptives, especially in rural and deprived urban areas resulting in a high number of unsafe abortions in Kenya. It is estimated that over 800 women die of unsafe abortions in Kenya every day¹². The victims are young women who go to unqualified medical personnel.

Access to family planning stands at 46 per cent for married women representing an unmet need of 54 per cent. Modern methods of contraception are commonly used (39 per cent) than traditional methods (6%)¹³. Between 2003 and 2008-09, use of modern methods increased from 32 to 39 per cent for married women, while use of traditional methods over the same period decreased from eight to six per cent. A higher percentage of urban women (53%) use contraceptives, compared with their rural counterparts (43 %).

In 2007, Fida Kenya in conjunction with Centre for Reproductive Health commissioned a study on the state of Kenya's largest public maternity hospital, Pumwani Maternity Hospital in Nairobi. The report brought out the Kenyan government's failure to take responsibility for severe human rights violations in health facilities that offer services to the poorest and youngest women. The reported violations include physical and verbal abuse by overworked staff, detention in health facilities for inability to pay, shortage of funding, medical staff and equipment. Lack of basic supplies and equipment such as anaesthesia, gloves, syringes, surgical blades, soap, disinfectant and even beds are a common phenomenon. Women are required to carry their own supplies and share beds before and after labour.¹⁴

Second only to reproductive health issues, HIV/AIDS remains a great concern among women. Its prevalence is higher in women than men. This is due to the persistence of unequal power relations between men and women, poverty and the inferior status of women which hamper their ability to negotiate safe sexual practices. The HIV/AIDS crisis has also introduced the angle of child-headed household of AIDS orphans where girls have disproportionate responsibilities that make them vulnerable to HIV/AIDS and prostitution.

PEACE AND SECURITY

¹¹ Kenya National AIDS Control: Kenya National aids strategic Plan iii 2009/13 Delivering on Universal Access to Services

¹² <http://kma.co.ke/downloads/maternal-deaths.pdf>

¹³ Kenya Demographic and Health Survey 2008/2009

¹⁴ FAILURE TO DELIVER: VIOLATION OF WOMEN'S HUMAN RIGHTS IN KENYA (2007) www.reproductiverights.org

Until 2007, Kenya was largely a peaceful country. It is the economic power of the region and has attracted a lot of international organizations – including the headquarters of UNEP. This famous tourist destination is also a host to thousands of refugees from its war-torn neighbours: Somalia, Sudan, Ethiopia, Eritrea, Rwanda and Burundi.

Kenya further successfully negotiated peace between Southern and Northern Sudan that resulted in the 2005 Comprehensive Peace Agreement. And it was the key sponsor to the failed Somali peace talks between 2002 and 2004 under the auspices of the regional body, Intergovernmental Authority on Development (IGAD). But the disputed presidential poll in the 2007 General Elections pitted the country in its worst post-independence security crisis. Ethnic violence erupted across the country with marauding gangs of youths beating, killing, raping, and destroying property belonging to tribesmen, women and children of opposite main contender in the elections and their sympathizers. Though the government sent out police to quell the violence, the police used excessive force against the rioting youths and by standing women and children, beating them up and shooting live bullets.¹⁵ As of February 2008 – when the two main contenders of the election recorded a peace deal – an estimated 1,500 lives were lost, 250,000 people internally displaced and millions of dollars lost due to the wanton destruction of property and the zero-economic activity during this time.

During the crisis, women mainly suffered sexual violence. According to the report a government-appointed Commission to investigate the violence,¹⁶ though sexual violence was committed against men and women, the latter “bore the brunt of these attacks.”¹⁷ Sexual violence was both “a by-product of the collapse of social order” and a tool to terrorize individuals and families to leave the areas in which they lived in. But the police was not keen to record any such reported violations. The CIPEV report enlists a number of incidences when the police either belittled sexual violence reports made by women¹⁸ and when they listened to the claims made, the police did not record them for further investigation and prosecution.¹⁹ Because of sexual violence attacks, women and children became majority of the internally displaced persons. Other negative consequences of the attacks included unwanted pregnancies, desertion by partners and spouses, sexually transmitted diseases, and trauma.²⁰

Despite this grim picture, women were involved in the peace process that saved Kenya from joining an ugly list of war-torn African nations. After intense domestic and international pressure, the two main contenders agreed to an African Union-mandated peace process, led by former United Nations (UN) Secretary-General, Dr. Kofi Annan, and a team of African Eminent Persons (AEP). The AEP members were retired President Benjamin Mkapa of Tanzania and Mrs. Graca Machel, wife of retired President Nelson Mandela of South Africa. Each of the protagonists sent four representatives, including a woman, to the negotiations to form the Kenya National Dialogue and Reconciliation

¹⁵ Human Rights Watch, “Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” available at <http://www.hrw.org/sites/default/files/reports/kenya0308web.pdf> (last visited on January 28, 2009), at 24 – 34.

¹⁶ See Commission of Inquiry into Post-Election Violence (CIPEV), “Waki Report 2008,” available at http://www.khrc.or.ke/documents/Waki_Report_08.pdf (last visited on January 28, 2009).

¹⁷ FIDA – Kenya, GENDER AUDIT OF THE CIPEV REPORT (Waki Commission Report), at 7.

¹⁸ *Id.*, at 8 – 10.

¹⁹ *Id.*

²⁰ *Id.*, at 7 and 10.

(KNDR) team. Kenya made global history by having a woman as a lead negotiator. Honourable Martha Karua – a Member of Parliament and once a FIDA Kenya Council Member – led the incumbent president camp in the talks.

Some of the Commissions that were set up immediately after the talks to spearhead reforms and cohesion in the country have been engendered. And women have constantly watched over the two principals to commit to the Peace Accord – a product of the Talks. In April 2009, women's organizations – including FIDA Kenya – under the umbrella Gender 10 consortium called for a nationwide week-long sex boycott in order to force the continuing feuding two principals to put the country into perspective instead of personal interests.²¹

One of the items under discussion in the Peace Talks was consolidating national cohesion and unity which had grossly been eroded prior to but mainly during the election violence. Tagged under the agenda for Long Standing Issues and Solutions – famously known as Agenda 4 – national cohesion is seen as key to preventing Kenya into degenerating into future insecurity. Parliament, therefore, established two commissions: National Cohesion and Integration Commission (NCIC); and Truth, Justice and Reconciliation Commission.

The role of the (NCIC) is to encourage national cohesion and integration by outlawing discrimination on ethnic grounds and hate speech. TJRC, on the other hand, seeks to address historical injustices that had more to do with the post-election violence than the disputed presidential elections. Analysts believe that the disputed presidential election was a spark that set off a time-bomb packed with explosives made of numerous unresolved post-independence historical grievances across most of the 43 Kenyan ethnic tribes.

Whilst NCIC has been able to execute its mandate without many hitches, TJRC is plagued by credibility issues. Many Kenyans are not happy with the chairman of the TJRC, Ambassador Bethuel Kiplagat, who is accused of having participated in or failed to prevent some human rights violations while serving under the leadership President Daniel Arap Moi – Kenya's second president. NCIC – on the other hand – has arraigned various sitting politicians in court for allegedly uttering hate speech. The Commission was also instrumental in ensuring that the outcome of the just-ended Constitutional Referendum did not degenerate the country into chaos by holding consultative meetings with numerous stakeholders prior to the plebiscite.

But as the country forges ahead through numerous national cohesion and unity initiatives, Kenya also wants to make impunity an issue of the past. The Chairman of CIPEV handed over a list of about 15 people – including serving government officials – who master-minded the post-election crisis to the Prosecutor of the International Criminal Court. The Prosecutor, Mr. Moreno Ocampo, has since obtained leave from the ICC to investigate these alleged perpetrators. He has been in the country to seek

²¹ Daily Nation Online, Bornice Biomindo and Kibiwott Koross, Want sex? Tell Kibaki and Raila to stop feuding, available at <http://www.nation.co.ke/News/-/1056/592456/-/u65luf/-/index.html> (last visited on September 9, 2010). See also Daily Nation Online, Bornice Biomindo, Women now turn the heat on politicians, available at <http://www.nation.co.ke/News/-/1056/592518/-/u65mje/-/index.html> (last visited on September 9, 2010).

the support of the government in doing this and to visit some of the worst affected areas by the violence.

The Registrar of the Court, Ms. Silvan Arbia, was in the country in the beginning of this month to discuss operational and legal framework issues of the Court in Kenya. This culminated in the signing of a Memorandum of Understanding which inter alia, allowed the Court to open a local registry and gave the Court officials diplomatic immunity.²² But the ICC will only try the master-minders of the violence – not the thousands of ordinary Kenyans that perpetrated the actual violence. This had been left to be tackled by a local mechanism. Parliament has thrice boycotted a private motion to set up a national tribunal to give justice to millions of Kenyans affected by the violence.

As these developments unfold, thousands of Kenyans remain in camps as internally displaced persons (IDPs). Efforts to resettle them in the areas they lived prior to the violence or other parts of the country have been shackled by corruption, emergence of fake IDPs and inadequate political will. Again, the security of women and children in the camps is an issue. Women do not attend the make-shift toilets because of fear of being raped. When it rains, the camps flood. It is unbelievable how pregnant women give birth and tend to their babies surrounded by water. Worse still, some women have resorted to prostitution to eke a living.²³



Mothers queue to get food at an IDP camp in Nakuru.

CONCLUSION

²² Daily Nation Online, Stephen Mudiari, Kenya allows Hague free run in poll probe, available on <http://www.nation.co.ke/News/Govt%20signs%20deal%20for%20ICC%20base%20in%20Kenya/-/1056/1002892/-/p83bme/-/index.html> (last visited on September 9, 2010).

²³ Daily Nation Online, Muchemi Wachira and Cynthia Vukets, Women in camps turn into prostitution, available at <http://www.nation.co.ke/News/-/1056/647308/-/item/1/-/le9pklz/-/index.html> (last visited on September 9, 2010).

Kenya is at the brink of change with the passing of its new Constitution which was promulgated on the 27th of August 2010. A lot of hope for change has been placed on the new Constitution in all spheres of the Kenyan's life and therefore the sound implementation of the Constitution in line with the spirit and letter will guarantee greater rights and freedoms for all Kenyans and a greater prospect in life. The gains for women in the new Constitution cannot be highlighted enough and the enforcement of the same will guarantee a redress of the past injustices against women by law and practice.