

KENYAN WOMAN



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Women hold their breath in anticipation

...By Joyce Chimbi

The Constitutional review process has to it a feeling of déjà vu as the clamour for a new constitution, which began 1990s, is yet to translate into tangible results.

It is, therefore, with a sense of 'do or break' that Kenyans are facing another constitutional making process as was seen with the overwhelming public response with views and recommendations on issues Kenyans would want to see captured in the new document.

For many, the current constitution is associated with colonialism which certainly has no place in a sovereign nation.

On November 18, 2009, the *Harmonised Draft Constitution* was made public and many saw it as the best attempt so far towards giving Kenyans a document that resonates with their thinking.

But this was just the first stage, the document is undergoing serious political processes that could see it transform but hopefully, retain segments key to nation building.

"This does not necessarily entail governance at that very high level of leadership but also in aspects that make people feel that their dignity and freedoms are respected," explains Mr Peter Kaloki, a Political Science student in one of the local universities.

He adds: "It calls for the marginalised and the minority groups such as women, youths and children being treated as stakeholders in the society. This may come through issues such as the Affirmative Action being taken seriously as seen in the draft."

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Members of Parliament (from left) Sophia Abdi, Sally Kosgey and Martha Karua lead others as they are heading to the conference room when the Parliamentary Select Committee converged in Naivasha to discuss the Revised Harmonised Draft Constitution.

EDITORIAL

What if the forward looking strategies were met....

In 1985 a United Nations conference was held in Nairobi under the banner "Third International Women's Conference". This meeting would later set the stage for the Beijing conference of 1995. Both conferences set significant targets for the advancement of women.

Among these targets was the need to promote women to positions of power as well as offer equal opportunities for men and women in key sectors such as education and employment.

Even 25 years after the Nairobi Forward Looking Strategies, 15 years after Beijing and 10 years after the setting of Millennium Development Goals, the Kenyan woman is still miles away from social, political and economic empowerment.

Granted, there have been subtle

changes in the society as reflected in the expanded space for women to exert their potential, but at a great cost.

In the run up to the 2007 General Elections, scores of women aspirants were physically and emotionally abused. Some were intimidated to the extent that they dropped out of the race.

And even among those outside the political circle, many have climbed the economic ladder of success at great personal sacrifice that includes being divorced by their spouses.

All in all, the struggle notwithstanding and bearing in mind that the very same things agitated for during these memorable conferences have been to a large extent captured by the *Harmonised Draft Constitution*, how would Kenya be if these targets were to be attained?

If the Kenyan girl was allowed a level

ground to access education without having to be absent from school for lack of sanitary towels, or dropping out of school into a forced marriage, this would only translate into a woman able to make decisions based on knowledge.

These would be decisions that can boost chances of her acquiring a job where she too can hatch competitive developmental ideas.

Land has remained a thorny issue in Kenya with most cultures disenfranchising women from owning property. Would it be too bad for women to own and or inherit property, particularly land? Again this can only be for the good of the country for then the country would have less squatters.

It is estimated that 85 percent of the workforce in the agricultural sector is constituted by women yet they take

home a paltry income or none at all. The motivation that they can work on their own land, produce more and make a significant income would certainly improve the country's economic growth and improve her family's standard of living.

The proposed 47 seats for women by the Parliamentary Select Committee is a significant proposal. It has long been argued that women are more faithful to positions than their male counterparts.

If this were to take effect, just like women hold families together, they would extend their tentacles to the national level and greater prosperity would set in the country.

Other contentious issues with regard to women's empowerment have had to do with the Affirmative Action, a strategy geared towards correcting social injustices.

Since women are largely more disadvantaged by the patriarchal society, these measures if put in place would raise a competitive edge.

If these strategies were to be implemented, women would consequently be empowered into social and economic independence through which they would stand a better chance of contributing to the welfare of their families as well as the nation at large.

It is, therefore, clear that these targets have been driven by positive intentions — intentions that have immense potential to translate into positive results where women will be accepted as equal stakeholders.

Beyond the struggle, Kenya would be home to a people who enjoy equal opportunities to be productive in the economic, social and political fields.

Which way in the clause 'right to life'?

...By Duncan Mboyah

The issue of abortion has reared its head within the constitution review process pitting conservatives against the liberals. In actual sense it is a fight between medics and faithful.

Religious leaders would like it stated categorically within the Constitution at which point life begins. This is a desire that resonates well with a clause supported by the Parliamentary Select Committee (PSC). This is the clause responsible for the debate between the two groups.

Initially, the Harmonised Draft Constitution had in the Bill of Rights Article 35 (1) stated: "Every person has a right to life." And (2) states: "A person shall not be arbitrarily deprived of life."

Religious organisations asked that this be amended to read for (1): "Everyone has the right to life from conception to natural death." And (2): "Abortion is outlawed except where the life of the mother is in danger."

Associations such as Family Health Option Kenya and Federation of Women Lawyers (FIDA) are opposed to a clause in the *Harmonised Draft Constitution* regarding the right to life clause recently amended by the PSC. The stakeholders led by Kenya Medical Association (KMA) are appealing to the Committee of Experts on Constitutional Review to disregard the version presented by PSC and instead replace it with the clause as previously put in the *Harmonised Draft*.

Remains illegal

They noted that should the Draft Constitution be debated and it becomes law as was amended by the PSC where "life begins at conception" and, therefore, emphasising that abortion remains illegal, there is a feeling that the life of a woman is being accorded equal status as that of the foetus she carries.

They said the previous suggestion that "Every person has the right to life" is the best option because it protects both the mother and the unborn baby as opposed to the recommendation by the PSC.

"You cannot stop people from getting sick as is entailed in the PSC yet the law against abortion already ex-

"A good number of pregnancies also lead to spontaneous abortions. These women in most cases will present themselves in hospital with bleeding, and delays in treating them could lead to death." — Mr Luke Simba Kodambo, chairman National Nurses Association of Kenya.

ists," said Prof Joseph Karanja of the University of Nairobi. He warned that if approved, the PSC proposal will end up stigmatising and criminalising innocent women as most cases of abortion are either spontaneous or induced.

He observed that even though the law against abortion already exists, the new inclusion by the PSC will lead to unwanted deaths arising from spontaneous abortions since no medical practitioner will attend to them for fear of being arraigned in court.

"If approved the way it is, Kenya will go against the African Union Maputo Protocol and will join Chile, Nicaragua and El Salvador — countries leading in the world for abusing human life," observed Karanja, committee member of Kenya Obstetrical and Gynaecological Society of Kenya.

He appealed to legislators to stop looking at women who have had an abortion(s) as sinners and instead adopt preventive measures similar to those applied in the war against HIV/Aids. Karanja asked them to also legalise sex education in secondary schools as a measure of educating the youth to live responsibly.

"A good number of pregnancies also lead to spontaneous abortions. These women in most cases will present themselves in hospital with bleeding, and delays in treating them could lead to death," said Mr Luke Simba Kodambo, chairman National Nurses Association of Kenya.

Kodambo said the fact that abortion is not permitted unless in the opinion of a registered medical practitioner already puts the life of a mother in danger given that there is a shortage of doctors and medics are often not found in rural areas.

"Nurses who attend to the sick in all corners of the country are at risk being jailed for murder," he reiterated. He explained: "Any woman hospital-

ised with any pregnancy related complication that is threatening a woman's life will have to wait for a registered medical practitioner to attend to her, yet they are often beyond reach."

Kodambo cautioned that not all conceptions lead to children being born as is in normal births. Some pregnancies come with various abnormalities and can lead to numerous complications whose treatment may require severe measures such as evacuation of the uterus.

Maternal mortality

The Kenya Medical Association (KMA) health committee chairman, Dr Otieno Nyunya appealed to constitution experts to adopt the previous clause in the *Harmonised Draft* or refine the language used in the clause by PSC.

According to a research conducted by KMA and other stakeholders, out of 21,000 Kenyan women admitted for abortion related ailments, 2000 die yearly. Nyunya warned that the clause does not augur well with the achievement of Millennium Development Goal 5 which requires that countries reduce by half maternal mortality rate as at 2015.

"At this rate Kenya which is already behind in attaining the MDGs will be a laughing stalk in sub-Saharan Africa," he noted.

FIDA's Deputy Executive Director Ms Grace Maingi-Kimani said women face a lot of violence including defilement that often leads to unwanted pregnancies and requires an option.

"Since the *Harmonised Draft Constitution* is a very important document there is no need for controversies. The clause can be changed to cater for incest and rape cases," she explained.

Maingi-Kimani said that the PSC draft is considerate of defiled teenage girls as it has closed the door for them



A pregnant woman. Reproductive health rights have been become an issue of debate in the constitution review with the argument being raised over the point at which life begins.

by forcing them to carry an illegitimate pregnancy.

"The number of medical doctors in rural areas is low, and with PSC recommendation in place, things are going to get worse for women of this country," said Mr Muraguri Muchira, Director of Programmes at the Family Health Options, Kenya. He said 24 per cent of women in rural areas have

no access to family planning services since there already exists a shortage of contraceptives in sub-Saharan Africa currently.

"We have waited for over 50 years hoping that reproductive health changes were coming as socio-economic healthy indicators are currently very bad only to be treated unfairly by the PSC," he observed.

Women hold their breath in anticipation

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His remarks are qualified by those of Mrs Patricia Nyaundi, formerly Executive Director of FIDA-Kenya, and now with the Truth Justice and Reconciliation Commission.

Says Nyaundi: "The Draft captures issues very important to women and there is, therefore, need for us to be strategic enough to safeguard these gains because this document will pass through very crucial stages of debate."

She explains: "These are stages such as the recommendations made by the public in the 30-day period as well as significant political stages, one being through the Parliamentary Select Committee and then parliament."

The *Harmonised Draft* has significant social and cultural provisions for women such as the dual citizenship where women can marry a foreigner

and still retain their citizenship. Further, it also allows for women to confer citizenship to their spouses after a period of at least seven years.

Other provisions involve the issue of women acquiring, owning and inheriting property. Under this Draft, they can inherit, an issue that has remained controversial since most cultures are against it.

Also key is the provision on Affirmative Action which would ensure that women are given more consideration in elective and appointive bodies so that they too are represented. For instance, with regard to the Political Party Fund, a party will not be eligible for financial support if "more than two thirds of its registered national office holders are of the same gender".

In addition, the Draft explicitly states that "women and men have a right to equal treatment including the right to equal opportunities in politics, economic, cultural and social activities".

Gender agenda

The Committee of Experts, having received the views of Kenyans, after the lapse of the 30-day recommendations' period produced the *Revised Harmonised Draft Constitution* within another 21 days which they handed to the Parliamentary Select Committee (PSC) on January 8. The Draft handed to PSC does not differ much from the original one particularly with regard to the gender agenda and essentially with provisions that are bound to impact directly on wom-

en. But that is not to indicate that the revisions are not significant.

In the *Harmonised Draft*, under the Chapter on Legislature, article 126(c) states that: "The Affirmative Action principle for the seven representatives for persons with disability". This provision is now interpreted as "all those coming through the Affirmative Action seats, women, youth, workers, marginalised groups will come in through the party lists".

On the issue of Regional Assemblies, there was the provision in article 216 (3) that: "In electing delegates, a country assembly shall take into consideration ethnic and other diversities, including gender represented in the country." It has since been removed and does not feature in what the PSC presented back to the Committee of

Experts. Under the Bill of Rights, the section on gender has also been removed while retaining other marginalised groups such as the youth, children and persons with disabilities, which will certainly impact negatively on women's issues.

These are seemingly minimal changes but they certainly carry a lot of weight with regard to safeguarding the gains that women had identified in the original draft.

However, this may as well be the beginning. The PSC has had 21 days of placing the *Revised Harmonised Draft* under the microscope and with the political intonations that come with this process, the document is bound to undergo further and much more radical changes.

Praying for the nation

...By Judy Waguma

Although from all walks of life, in raised hands they were united. They clapped, swayed and sung.

As they read from the Bible and Koran, this group of women had one request; a new Constitution.

The praying women came from different organisations and regions. This prayer day marked the beginning of 30 days of worship and prayers for a new Constitution in Kenya.

The quest for a new constitutional dispensation has been a long and arduous journey with few milestones and a myriad challenges. Since independence, there have been attempts aimed at constitutional review. Often, women's issues have been sidelined by successive administrations that have and continue to dangle the prospects of a new Constitution as a political carrot during the electioneering period to garner favourable votes.

Now Kenyan women are tired of rhetoric and are demanding for a new Constitution, they say it is now or never and they have, therefore, dedicated their prayers to this initiative.

"It has been a long journey but we are getting there," said Prof Wanjiku Kabira, chairperson Women Political Alliance.

Key issues

She said that even though some of the women's gains have been left out, the *Harmonised Draft Constitution* seeks to empower women into enjoying equal socio-cultural, economic and political opportunities as men.

Nonetheless, Kabira stressed that women must monitor the constitution process and ensure that key issues have been taken into consideration.

Kabira said: "The contentious issues such as devolution are key for women. We need structures of governance that will be responsive to the people and advocate for women's rights." The professor hoped it would also allow for the people to vote directly as the power is with the people.

Kabira reiterated that a new constitution is long overdue and "we cannot go around it in circles". She explained: "De-



Women gathered at The Stanley praying for the country and that the Parliamentary Select Committee be well guided on the amendments they would make to the Revised Harmonised Draft Constitution.

volution is closer to the people, women must be vigilant and they must audit the Constitutional Draft very carefully."

The women made a demand for what they believed was gainfully theirs. For instance, the merging of the Gender Commission with the Kenya Human Rights Commission did not go down well with the women. They had this to say: "As the women of Kenya, we want the Gender Commission to be retained independently. It's not a good decision that the Parliamentary Select Committee wants to do away with the two commissions; they should be there as separate bodies. We have a history of violations of not only women but also all Kenyans."

The women had no issue with power sharing as long as there was a system in

place for accountability. "Power can be shared at all levels, but we need a system of checks and balances," they said.

Executive Director of League of Muslim Women of Kenya, Ms Maimuna Mwidau, urged the women to appreciate the Draft as it is because it has women's rights at all levels.

She, however, stressed that the issue of Affirmative Action should not be below 30 percent at all levels.

"We want a leadership that is receptive to all. We need women's representation at all levels of leadership right from the government to the county," she reiterated.

Mwidau urged that the women's gains should be safeguarded as it is now or never. "We want a Constitution that will not be looking at ethnicity, political

interests or religion but one that will hold on to the gains of the women."

Councillor Rachel Kamweru from Nairobi warned the leaders not to water down the women's gains. She said: "We will put on notice anyone trying to water down the women's gains because women are tired and will not give up."

The women's message to the PSC was that its members should put aside self-interests and stick to their mandate of deliberating on contentious issues and finding consensus.

"We understand that they are human and that's why we will pray that God gives our leaders the wisdom to give us a Constitution that will serve all Kenyans, and one that will promote peace," they said in their message.

A PRAYER

"I respond to the invocations of the supplicant when he calls on me that they may be led right." Quoted from the Koran at the Prayer meeting.

Capacity building needed on religious and statutory edicts

...By Jane Godia

For the Muslim woman, the new constitution might not bring in anything new as most of her rights are taken care of in the Koran.

Since the Muslim woman's life is run by dictates of the Koran, her life is guided by what is enshrined in the holy book.

However, many Muslim women are often not even aware of these rights and neither are they aware of the rights that women are generally fighting for. This may make them not be interested in getting to know what is contained in the constitution in relation to women.

"The Muslim woman will, therefore, not understand the issues other women are agitating for in the new Constitution," says Ms Maimuna Mwidau, Executive Director League of Muslim Women in Kenya.

There is need to educate the Muslim woman on her rights as enshrined in the Koran before one can make her understand the constitution. Leadership, Mwidau says, comes from knowledge. It's through knowledge then that the Muslim women can raise their stakes in asking for space in decision making positions.

She explains: "This will make it easier for Muslim women to demand their rights which they will now understand that they have been denied."

Mwidau reiterates: "It's the Muslim men who are always at the forefront and many Muslim women do not know of so many of their rights as enshrined in the Koran but they always think there is a conflict between statutory law and Islamic law."

The Koran says in Chapter 4, Vs 34: "Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property...." According to Sharia, the man is the head of the family and it is his responsibility to take care of the family including supporting his wife and children. Equality come sin in the sense that while the man can divorce his wife, the Koran equally allows the Muslim woman to file for divorce if the man fails in his duties.

"The man must also pay alimony to the woman and only stops if she remarries," Mwidau explains.

Although Mwidau says the Draft Constitution has been greatly mutilated, a conservative Muslim woman will not

want to know as her only belief is in the Sharia.

While women proclaiming to other faiths are praying that the Bill of right be passed untouched, most of these gains already exist for the Muslim woman but she may not be aware of them. For example, the issue of inheriting property and land is a major gain for women. However, for the Muslim woman her rights in relation to land and property are already guaranteed.

Mwidau says the issue of inheriting land and property exists in Islam and that it cannot be negotiated since it is bound by virtue of one being a Muslim. "Under Islamic law the woman cannot share what she owns with her husband but he must share what he owns with her," explains Mwidau.

She says that Islamic laws tend to take preference because they are static while statutory laws are not favoured as they change with time.

These rights that women are fighting for may not be known to some women but through creating awareness, the women proclaiming this faith will better understand issues within their lives as Muslims and as Kenyan citizens.



Muslim women have many of their rights enshrined in the Koran.

Betrayed by watered down Bill of Rights



Women receiving food aid in Kajiado. The issue of food security is important yet the Parliamentary Select Committee did not find it necessary to have it enshrined in the Constitution.

...By Rosemary Okello

For Mary, the Constitutional review process has kept her hopes high and particularly with the chapter on the Bill of Rights. She, like many other women, believe that it will constitute a meaningful social contract between her and the government.

The Bill of Rights, which all along has been seen as the heart of the Constitution, was last week mutilated by the Parliamentary Select Committee when they removed various clauses that included equality in marriage as well as guaranteed access to food and water.

Many women like Mary were hopeful that although the Constitutional review process has been with us for more than two decades without success, this time round the process will translate into tangible gains for women. It would have been a favourable document had the Bill of Rights

chapter recognised Affirmative Action and equality in marriage.

"If the new Constitution does not address these fundamental issues, then it will be a meaningless and irrelevant document to most of us," says Mary.

The *Harmonised Draft Constitution* addresses pertinent issues and looks at how basic needs can be met. The chapter on the Bill of Rights was heralded by many women's organisations as the most important in that it gave cognisance to the rights of citizens. The recent removing and altering of certain favourable clauses has come as a slap in the face for women's organisations who have been championing for women's human rights. During a consultative meeting, the G-10 women's organisations

expressed concern on this move and said that rights to basic existence of human dignity should also include basic level of food, health, housing and education. The duty of the State should be to fulfil these rights.

Since the Constitution is a framework under which a citizen engages into a social contract with the State, by making sure that basic rights are respected and achieved, the State would be going in the right direction of making the Constitution relevant to the majority, who are basically the poor people.

Issues of concern to women are Article 61 (1) that speaks on social security and states: "Every person has the right to social security" and (2) "The State shall provide appropriate social security to persons who are

unable to support themselves or their dependants."

On Health, Article 62 (1) states: "Every person has the right to the enjoyment of the highest attainable standard of health, which includes the right to health care services including reproductive health care. And section (2) "a person shall not be refused emergency medical treatment".

And Section 63 on education states in clause 1: "Every person has the right to education." And in clause (2): "The State shall institute a programme to implement the right of every child to free and compulsory pre-primary and primary education and in so doing shall pay particular attention to children with special needs." While clause (3) states: "The State shall take measures to make secondary and post-

secondary education progressively available and accessible."

On the issue of housing, the *Harmonised Draft Constitution* states: "Every person has the right to accessible and adequate housing and to reasonable standards of sanitation."

On food it states: "Every person has the right to be free from hunger and to adequate food of acceptable quality."

On the issue of water, the *Harmonised Draft* states that "every person has the right to clean and safe water in adequate quantities".

For women, all these articles and the clauses therein were like a prayer answered since they all pointed towards poverty eradication. It must not be forgotten that women form majority of the poor population.

If this could have been adopted by the PSC, then many households, majority of which are headed by women, would have had a lot to celebrate about.

"Every person has the right to be free from hunger and to adequate food of acceptable quality."

Giving a last shot to threatened gains



Members of the Parliamentary Select Committee during a session in Naivasha. They are being blamed for not giving women's gains the seriousness that they deserve.

...By **Wambui Kanyi**

Along with other stakeholders, Kenyan women have travelled the Constitution Making Road since the inception of the process more than 20 years ago.

Baby girls have been born, educated and joined their sisters, mothers and grandmothers on this route. It is one of the longest routes ever travelled by Kenyan women in recorded history.

The journey has been bumpy and women have held each other's hand and uplifted each other's spirits when all seemed hopeless. Together, they have kept the fire burning and at every stage made immense efforts to remain on track despite numerous obstacles. Based on this long and winding journey, who would have thought that the Affirmative Action principle would have come as far as it has with regard to the proposals in the *Revised Harmonised Draft Constitution* by the

Committee of Experts handed to the Parliamentary Select Committee in January?

The *Harmonised Draft* had spoken to the heart of their concerns. They did not expect the Parliamentary Select Committee (PSC), one of the highest decision making organs in the land, to mutilate the Draft to women's disadvantage.

Women may have been in temporary slumber, maybe the oil had run out but the damage was done.

Why do I say this? It is because I find it difficult to believe that after all the women's struggle to ensure that the Affirmative Action principle of at least one third of either gender representation in all elective and appointive positions, including parliament was included in the document, the PSC did not see it necessary.

Parliament, it has been recommended should have 349 seats of which 47 will be for women.

While all over the world progressive governments and constitutions are

moving towards achieving 50:50 parity, Kenya is still on its initial stages and may not achieve these goals given the patriarchal nature of our governance institutions.

It's a good thing that they have recommended that the Cabinet should come from outside Parliament as this has been long overdue. If carried to the final document it will ensure separation of powers and Parliament can now play its watchdog role over the Executive.

The PSC recommended that women get 25 percent of Cabinet posts. This is a move in the right direction but it is still below what women are consistently asking for — at least one third of either gender.

Devolution is also in the right direction as it will give more opportunities to the women as well as bring resources and services closer to the majority of women. It's hoped there will be direct elections for key positions and the Affirmative Action principle will be applied at every stage.

All along women have been losing critical gains at every step. The Bomas and Wako draft constitutions provided for an independent Gender Commission as it would ensure gender issues are

monitored and receive adequate weight including resources.

The Committee of Experts has consistently merged the Gender Commission with the Kenya Human Rights Commissions. The PSC, being a male dominated institution did not understand why there was need to have an independent Gender Commission, and so it remains. This means that women's issues will be swept under the carpet and looked into after Human Rights issues, which already are a big mountain within the current Kenyan context.

Will there really be any space or resources to address gender and women's concerns?

As Kenyan women we need to intensify the struggle and seize the only remaining opportunity as the Revised Draft Constitution comes to Parliament for debate. If the Affirmative Action Principle of at least one third for elective and appointive positions at this last leap in the Constitutional Review Process is not addressed, the women's efforts towards this goal will be in vain.

Women are also concerned about peace and stability since they are the ones who suffer most in times of armed conflict. They lose their sources of live-

hood, they are displaced and in this situation they continue to play their gender roles including caring for vulnerable members of their communities, among them children, the sick and the elderly.

Women also become targets of gender based violence including rape, forced prostitution where they have to exchange sex for survival and basic necessities as well as forced and early marriages. Therefore, women would like a constitution that guarantees sustainable peace, ensuring that the institution of the Presidency is safeguarded at all times.

Women would therefore, need the threshold for the number of MPs supporting the impeachment to be increased to three-quarters of the entire house.

I am not a prophet of doom! Kenyan women must wake up and seize this last opportunity. They must once again burn the midnight oil to ensure gender equity and equality is enshrined in the Constitution. They must liberate Kenyan women from the current discrimination in regard to representation in decision-making. Kenyan women can make it!

Wambui Kanyi is the Executive Director, Bridge Africa — Agency for Development Concerns

The Draft had spoken to the heart of their concerns.

They did not expect the Parliamentary Select Committee (PSC), one of the highest decision making organs in the land, to mutilate the Draft to women's disadvantage.

Pushing for elusive decision making positions

...By Jane Godia

In 2001, the government of Kenya joined the rest of the world in committing to the Millennium Development Goals.

These goals, with targets that had been set under the auspices of the United Nations, were a blue print that would among other things promote gender equity and empower women.

Millennium Development Goal number three would be attained through strategies that included eliminating gender disparities in primary and secondary schools. The argument being raised was that women who have had an education are able to get into and engage in decision making processes.

Further, within this goal there were targets that sought to have the share of women in wage employment in non-agricultural sector increased.

Looking at the current situation, very few women hold high positions in government except in a number of limited ministries. The situation is even worse in the political field where out of 220 seats, there are only 22 women in both elected and nominated positions. This leaves Kenya lagging behind other younger nations such as Rwanda which has more than 50 percent women representation as well as Uganda and Tanzania that have over 30 percent representation.

Lagging behind

Outside parliament, the situation is not any better. Within high level multilateral organisations very few women hold positions of chief executive officers.

According to Mrs Deborah Okumu, Executive Director Caucus for Women's Leadership, it was in Kenya where the women's movement in the fight for equality first begun, yet in terms of tangible results it lags behind its counterparts within East Africa. "Women's movement building in the region started in Kenya. We are still at it while others have moved ahead," Okumu reiterates.

Unlike Kenya, Rwanda, Uganda, Tanzania and Sudan are already implementing affirmative action. This, however, is not to indicate that women have been sitting with their hands folded. They have continuously rallied to achieve the seemingly significantly small results that are now visible. Most have undergone untold physical and emotional abuse from a strongly patriarchal society to get to the table of decision making.

Long journey

It has, therefore, been a long journey and rather than relent, these women have remained committed to the cause and on track in their quest for equal opportunities to make decisions in political, social and economic positions. It has been a long and bumpy ride penetrating the male dominated fields.

Attempts by women leaders such as Mrs Phoebe Asiyo (former MP for Karachuonyo) and Mrs Beth Mugo (MP for Dagoretti), to push for amendment in laws to include Affirmative Action have been received with contempt and dismissed by their



Women parliamentarians at the Naivasha talks engage with Mr Moses Wetangul, Minister for Foreign Affairs. Being a member of parliament makes women key decision makers as they are able to influence policy.

male colleagues in parliament as a "feminist campaign".

According to a report released by the Ministry of Gender, the challenge the country is currently facing has largely to do with how to create an enabling environment that recognises potential in both men and women in working towards the country's development. Further, there are no strategies in place to address socio-cultural barriers that have contributed to gender disparities and the inability of women to realise their full potential.

In 2006, in an attempt to realise the MDGs target three which touches on women equality, President Kibaki ordered that 30 percent of public sector workforce be made up of women including in the senior and decision making positions.

Data of a bi-annual report collected by the Ministry of Gender in May, 2009, showing the overall figures for men and women in the public sector recruitment reveals that women make

up 30.9 percent of the workforce while men account for 69.1 percent.

Further, the data shows that only three out of 32 ministries had women constituting over 50 percent of the workforce in job group P and above, which marks the top level positions in decision making within the public sector. The three ministries are that of Gender, Children's affairs and Social Development, State Law offices and Ministry of State for Defence.

Lower ranks

In parastatals, overall numbers in labour force show that 39.2 percent are women compared to 60.8 percent men. Women in senior positions are less than 30 percent. A majority of women are mainly in lower ranks including secretarial, clerical and messengerial positions.

Even as President Kibaki gave the decree, the Third United Nations International Women's Conference held in Nairobi in 1985, a predecessor to the

Beijing meeting of 1995, had targeted that in 15 years there would be a significant global recognition of the roles that women can play in decision making by promoting them into positions that reveal their potential.

These targets were to be achieved through what was labelled The Nairobi Forward Looking Strategies in the Nairobi meeting which recommended practical and effective steps that would promote equality, development and peace for women. These strategies encapsulated areas key to women's advancement that included promotion of women to positions of power at every level and y sector to achieve parity with men, the establishment of national mechanisms to advance gender matters as well as the attainment of equal opportunities for women in all sectors such as education and employment.

Even though the 15 year period within which the Nairobi Forward Looking Strategies were to take effect elapsed without having achieved most

of its objectives, its end overlapped with the institutionalisation of the MDGs which to a large extent spoke to the heart of the above mentioned strategies. It is within these MDGs that a light still flickers with the hope that there will still be light at the end of the tunnel for women.

Special seats

Even more important to note is that the position of women's inequality in decision making in Kenya is likely to change for the better if the women's gains as documented in the *Harmonised Draft Constitution* will be implemented. The Parliamentary Select Committee in reviewing the Draft Constitution has recommended that there will be 47 special seats for women as well as another 290 seats which will be contested for equally by both men and women.

This, if implemented, will inarguably improve the situation of women as they sit with men in decision making processes where they too can equally influence policy change and or development for the development of all. It would lead to the actualisation of MDG three and this should snowball to realisation of Nairobi Forward Looking Strategies and the Beijing Platform for Action.

Women have not been sitting with their hands folded, they have continuously rallied to achieve the seemingly significantly small results that are now visible. Most have undergone untold physical and emotional abuse from a strongly patriarchal society to get to the table of decision making.

Translating land policies into tangible benefits



A woman working on the farm. Women have been the biggest losers in land laws but this will change if clauses on equality in the new constitution are passed.

...By Jane Godia

The issue of land in Kenya has remained explosive where in many cases brother has gone against brother, father against son and community against community in the fight for this precious resource.

The amount of land one owns determines his or her place in society. Those who own huge tracts of land have been regarded as prominent people. It is this high regard for land that has spurred destructive ethnic suspicions, clashes and consequent bloodshed.

This resource that is capable of provoking animosity among Kenyans

to levels unimaginable, is generally owned by men; a reflection of our solid patriarchal system of governance that is entrenched in an equally patriarchal society.

Division of land

Culture is largely against women owning and or inheriting property. Land is divided among male members of the family leaving out female members. Many communities argue that women belong to their matrimonial home and cannot, therefore, inherit land from their paternal relations. Even where a father has only daughters, land is never apportioned to them and is instead allotted to other male

members within the extended family. Often when a man, considered head of the family dies, the land is inherited by his brothers as the wife is bypassed.

In many communities women have been disinherited from family homes during divorce or at the death of the man. Women, therefore, largely constitute the landless population.

In many instances women and their children have found themselves homeless after the man sold the family land without their knowledge. This kind of action has left many women living as squatters.

Not paid for labour

With agriculture being the main economic activity carried out on land, women constitute 80 per cent of the workforce. Unfortunately, proceeds from their labour goes to those who own the land — men yet the women are not even paid for the work done.

It is an open fact that land has been a big factor in determining wealth in Kenya. Since women hardly own land, they have formed the biggest ratio of Kenya's poor. Until recently, land title deeds formed the basis of collateral for one to get a loan from the bank, automatically locking women out of economic empowerment.

Fortunately, there is a glimpse of hope for women to get out of this rut if the new constitution will be passed. The National Land Policy recognises the part that culture plays in denying women access to and ownership of land. In addressing Gender and Equity principles, it states in part: "Culture and traditions continue to support male inheritance of family land while there is lack of review/formulation of gender sensitive family laws. There is conflict between constitutional and international provisions on gender equality vis-a-vis customary practices that discriminate against women in relation to land ownership and inheritance."

Repeal existing laws

Even more encouraging is the inclusion of these recommendations from the above mentioned policy into the *Harmonised Draft Constitution*. The Policy further calls on the government to adhere to the principles of non-discrimination and to "repeal existing laws and outlaw regulations, customs and practices constituting discrimination against women in relation to land ownership and inheritance".

If these subtle efforts at empowering women are anything to go by, things are likely to change if the new constitution, which seems to have adopted from the land Policy, takes effect. For instance, the revised Draft Constitution Chapter Six Article 73 1 (f) states: "Land in Kenya shall be held, used and managed in a manner which is equitable, efficient, produc-

tive and sustainable in accordance with the principles that include 'elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land'."

In addition and of utmost importance, the National Land Policy calls on the government to put in place "appropriate legal measures to ensure men and women are entitled to equal rights to land and land-based resources before marriage (in cases of inheritance), during marriage, upon dissolution of marriage and after death of a spouse".

The Policy further calls on the government to put in place mechanisms to curb selling and mortgaging of family land without the involvement of the spouse. An issue also taken up by the Draft Constitution Article 81 (e) which states: "Parliament shall enact legislation to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and at termination of marriage."

All of these are positive efforts with regard to women owning land. However, Ms Catherine Gatundu, Deputy Coordinator of Kenya Land Alliance says the issue of women having gains in the new constitution must not end on paper. "Action needs to be taken to ensure women understand the opportunities, own it and move it to the next level which is implementation," she reiterates.

Communities argue

This comes from the fact that where laws have been put in place, many communities have argued that the law is meant for those in the capital city and not the rural people who form the majority and where most of land issues exist.

Article 77 Clause 2 (f) of the Harmonised Draft Constitution states: The national government shall define and keep under review a national land policy ensuring elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land."

Many women may not know about this considering that traditions and customary laws have been overriding in issues related to land. Gatundu says: "Awareness must be created where they do not know and where they know they must be moved to the level of getting the issues implemented."

She explains: "Many people hide behind culture to carry out discrimination which comes in at the implementation point since laws do not allow discrimination."

Gatundu argues that the level of awareness among Kenyans has gone up compared to the early 1990s when the issue of constitution review first came up, and there is now no feigning of ignorance.

She emphasises that those who have used culture to cause injustices and inequality will have it rough this time "because people are interested in what is going on and are engaging in these debates, women included".

For women to really understand their gains in the new constitution, Gatundu says that civic education issues are central to land and gender and will have to take priority.

"Many people hide behind culture to carry out discrimination which comes in at the implementation point since laws do not allow discrimination." — Catherine Gatundu, Deputy Coordinator, Kenya Land Alliance



Minister for Justice and Constitutional Affairs Mr Mutula Kilonzo (third left) joins commissioners of the Truth, Justice and Reconciliation Commission after they were sworn in. The team is led by Mr Bethuel Kiplagat (second right) as Chairman and Ms Betty Murungi (second left) and vice chairperson and are already holding briefs.

The long walk to justice

...By Joyce Chimbi

For many Kenyans, 2002 is a year believed to be Kenya's second liberalisation with the coming to an end of a 24 year leadership regime. It was an exit that rekindled a sense of hope that finally the much needed change in the country was close home.

There were many grounds being raised that indicated Kenya was a divided country and needed to be patched up by making all the wrongs right. The opposition, which then became government as well as civil society felt that Kenyans needed a body set up to correct historical injustices and to consequently enhance nation building through the healing of past political wounds. Many called for the establishment of the Truth, Justice and Reconciliation Commission (TJRC).

It would be the first Commission of this nature, and the first such blatant attempt at reconciliation at a national level. Other African countries such as Ghana, Sierra Leone, South Africa and Liberia have had such commissions with varying degrees of success.

In 2003, a task force headed by Prof Makau Mutua was formed to seek public views on the formation of such a body. The taskforce recommended that a TJRC would be prudent in the quest to reconcile Kenyans in light of a bitter historical past. The Commission was to look into injustices such as political assassinations and detentions; killings; politically instigated violence and clashes as well as rape among other crimes.

The Commission would, however, be formed several years later and the formation would be provoked by the unprecedented violence in 2007 after the much disputed election. But not without the weight of a provision in the National Reconciliation Accord of February 2008 that required that such a Commission be established and just as the 2003 task force had recommended, TJRC would date its work from 1963 to present.

The Commission began its work in 2009 and for three years, its mandate will be to provide a platform for victims and survivors of historical injustices to present their grievances.

It is against this backdrop that on January 21, that the Commission held a press conference to present an overview of its status.

Since the Commission officially began its operation, a lot of energy has gone into setting up its structures which includes recruiting for human resource.

"Funds have not been an obstacle so far and so in the upcoming months we will be on the road informing the nation about our mandate," explained Ambassador Bethuel Kiplagat, chair of the Commission.

He added: "This exercise will also involve getting information from the people about issues of concern to them.

It would be the first Commission of this nature, and the first such blatant attempt at reconciliation at a national level.

This information will include their views on how to better run the TJRC process."

It is a process in which the Commission says Kenya can find restitution for past injustices. The Commission will inquire into human rights violations including those committed by state, groups or individuals. This includes, but is not limited to politically motivated violence, assassinations, community displacements, settlements and evictions.

The Commission will also inquire into major economic crimes, in particular grand corruption, historical land injustices and illegal or irregular acquisition of land, especially those related to conflict or violence among other historical injustices.

"Of more importance, the process is sensitive to gender issues not only in how it is constituted and in hiring human resource, but also with regard to the manner in which the hearings shall be conducted," explained Kiplagat.

Although the Truth Justice and Reconciliation Act does not narrow down to sexual abuses, it does, however, make two important provisions.

First, it recognises that sexual violence constitutes genocidal crimes, which legal experts say is critical and

goes in line with the international thinking, particularly with regard to efforts towards eliminating violence against women.

Second, and more importantly, in light of the previously heated amnesty debate, the Act clearly indicates that no amnesty shall be granted for all cases involving sexual violence.

According to the Commission's schedule, the process of reaching out to the people will begin in marginalised regions such as the Coast in this case panning to areas such as Kwale, Lamu and Malindi, then move on to North Eastern. The schedule of places to be visited will be made public accordingly.

The process of opening files of problems bedevilling the country is by no means a small feat, further, handling these problems in a manner that elevates the marginalized in terms of both gender and region is a complex undertaking.

Consequently, in the next coming months the Commission has its work cut out and the nation is expectant because in this body, many hope that finally, Kenya is well underway in its pursuit to healing the nation and resolving issues that date to as far back as 1963.



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