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# **CHANGING THE MAINSTREAM**

## **CELEBRATING WOMEN'S RESILIENCE**

Wanjiku Mukabi Kabira, Patricia Kameri Mbote, Nkatha Kabira & Agnes Meroka (eds)

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Editors: Wanjiku Mukabi Kabira, Patricia Kameri Mbote,  
Nkatha Kabira & Agnes Meroka



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Nkatha Kabira & Agnes Meroka

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## DEDICATION

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Many women have been mentioned in this book for the different roles they have played in the women's movement and the various activities they have initiated towards changing the mainstream. Among them are Abigail Arunga, Catherine Nyamato, Alice Yano, Jael Mbogo, Ama Ata Aidoo, Julia Ojiambo, Anne Waiguru, Abida Ali-Aroni, Asenath Bole Odaga, Atsango Chesoni, Effie Owuor, Martha Koome, R. K. Limo, Margaret Wanjiru, Martha Karua, Pamela Uniter Kidula, Caroline Nderitu, Phoebe Asiyo, Charity Ngilu, Chiru wa GP, Zipporah Kittony,

Ciku Kimeria, Clara Momanyi, Jane Kiano, Jennifer Riria, Josephine Sinyo, Jenniffer Riria, Joy Odera, Nancy Baraza, Joyce Aluoch, Njoki Ndun'gu, R.E. Aburili, Field Marshal Muthoni, Flora Napwa, Kavetsa Adagala, Florence Mbaya, Ketty Arucy, Georgina Mbithe, Kingwa Kamencu, Grace Ogot, Lady Kalpana Rawal, Philomena Mwilu, Roselyn Nambuye, Wangu wa Makeri, Loise Kim, Mary Angawa, Lucy Wangunjiri, Sarah Ondeyo, Lydia Gaitirira, Adelina Mwau, Lydia Mumbi Nguya, Margaret Ogola, Maria Nzomo, Marjorie Oludhe-Macgoye, Martha Mburu, Mekatilili wa Menza, Micere Githae Mugo, Miriam Were, Monica Genya, Monica Wangu Wamwere, Moraa Gitaa, Hilda Orimba, Nancy Mutugu, Rachel Ruto, Jane Ogot, Muthoni Likimani, Nancy Mwanzia, Ndiko wa Mbatia (a community mobilizer),

Njeri wa Ndugo of Kairi, Gatundu North, Njeri Wangari, Njunguru wa Kimere (a seer), Pamela Ateka, Pasomi Mucha, Patricia Ngurukie, Philo Ikonya, Wanjiku Kabira, Eddah Gachukia, Jackline Oduor, Wangari Maathai, Patricia Kameri-Mbote, Rebecca Nandwa, Rebecca Njau, Rosemary Okello, Ruth Oniang'o, Salome Muigai, Sarah Kiarie, Kamla Sikhand, Shailja Patel, Sheila Ryanga, Sheila Wamahiu, Shiku Waweru, Daisy Amdany, Sitawa Namwale.

Although this list is quite short, the writers are aware that there have been many more women who have been on this journey, some of them for almost a life time.

There are the women who have been in the struggle for independence and who have passed on. A few of them, including Field Marshal Muthoni, Muthoni Likimani and many others are still alive, albeit at an advanced age.

Wangari Maathai, Jane Kiano, Rahab Wabici, Grace Ogot, Asenath Odaga, Sarah Wambui, Maggie Gona, Wilhemina Oduol, Milcah Ocholla, Margaret Wambui Kenyatta (Senior), Margaret Ogolla and many others have already gone to the next world.

It has been a privilege to continue your journey as we envision the journey towards the sunrise and celebrate women's resilience. We acknowledge you and dedicate this book to you and to our current and future generation of women.

We stand on your shoulders and we salute you.



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# FOREWORD

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BY PROF. MARGARET KOBIA

This book is concerned with the way mainstream institutions deal with women. It celebrates the strength women display when they challenge barriers in institutions, structures, and processes in their communities. It amplifies what may seem to be ordinary activities that women engage in on a day-to-day basis, but which contribute significantly to the economic, political, legal, social and cultural development of their societies.

The authors challenge dominance at two levels. Firstly, they challenge the idea that African women lack agency, that they are not strong, that they are unable to change neither their own circumstances nor those of their nation and their continent. The collection of essays demonstrates that the African woman can rise above the issues that hold her back, and indeed, in many areas, she has won significant victories. Africa now leads the world in terms of leadership at political levels with Rwanda and Ethiopia showing the way forward. Indeed, African women are on the rise.

Secondly, in this book, African women have embarked on a journey to challenge enduring legacies of patriarchy which continue to dominate the mainstream contemporary institutions of governance with their masculine and hierarchical nature, based on cultural symbols of dominance in politics, economics, philosophy as well as their own definition of values, customs and traditions.

Furthermore, the book demonstrates that not only have African women emerged from the margins and the shadows of subalternity but they have effectively changed legal and constitutional provisions that barred them from enjoying legal subjectivity; from participating in politics on an equal footing with men; from enjoying economic rights and from holding enforceable labour rights. In this way, they are introducing new values, new perspectives, and new ways of looking at the world.

This narrative of the visionary, strong, confident and victorious African woman is momentous. It calls us to appreciate the African woman in all her different facets, and by doing so, to make policy decisions that are better informed and that will reshape Africa's future. The African woman will continue to give hope to Africa, encouraged by the victories she has so far won.

My ministry and the government challenges the younger generations to imagine a better future for themselves, and by doing so, lay the foundation for a better society, not just for women, but for all people, as the mainstream gradually changes to create a more prosperous and humane society. It is a dream that the African woman is transforming into a reality.

As we continue to challenge the mainstream, let us talk about how women have effectively chipped away at these patriarchal structures and the positive changes that are emerging.

**Prof. Margaret Kobia, PhD, MGH**

Cabinet Secretary,

Ministry of Public Service, Youth and Gender Affairs

# FOREWORD

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BY PROF. JULIA OJIAMBO

This book celebrates women's resilience in the journey towards social transformation. Throughout the history of Kenya, Kenyan women have fought many battles to ensure that they occupy their rightful place in politics, economics and governance of their country. Kenya's *hi(s)tory* books have told 'his story' and often excluded *her* story. For example, the history of the liberation struggle by the Mau Mau excludes narratives of women who supported the Mau Mau fighters; women who were affected by colonial land policies; the women who were affected by rural to urban. Female subalternity is visible in this context.

Clearly women are waiting to tell their story, to document their experiences and to dream for a better Kenya. This book tells *herstory* by challenging the more popular and dominant *his(s)tory*, and demonstrating that women have claimed their place in time and space. The dominant narrative which promotes public and private distinction, relegating women to the private space and privileging the public space has been challenged. Women are celebrated in their role as care-givers, mothers, wives and home-makers, who also make a significant contribution to the national economy, to political and legal developments.

The role of women in post-Independence Kenya and their effective contribution in all spheres: economic, law-making, including harnessing new technology is shared as a way of redefining the narrative of a dominated and docile woman. The book redefines the narrative by telling stories of how women have engaged and challenged Kenya's authoritarian past; contributed to constitutional and political reforms; engaged in economic activities critical for family livelihoods and national development, while at the same time ensuring the well-being of the family as the core unit of any society.

Economically, women have also been in the margins. The mainstream narrative has been that formal employment is the best way to secure economic interests. In this narrative, women were excluded from the ownership of property, particularly with regard to real estate. With regard to land property, which is one of the most important forms of property in Kenya, like in most other African countries, the shift from customary land tenure to formal land tenure and registration as a means of creating security of tenure led to the disenfranchisement of women in two ways. Firstly, it stripped women of access to and rights over land, which they held under customary law. Secondly, the process of registration targeted household heads, who were mainly men. The answer to the question "who holds what rights over what land" largely excluded women. This dominant narrative has been challenged and women are becoming economically empowered, thus increasing their personal capacity to own both land and real estate property as well as other property.

The book is an eye-opener, demonstrating that the women of Kenya have come of age and are leading the way to their second season of harvest. They are challenging the dominant narrative about their role in society and pushing the agenda for changing the mainstream not only in the way the story is told but the heart of the mainstream which is its structures, policies and practice, values and norms.

**Prof. Julia Ojiambo,**  
Chairperson,  
University of Nairobi Council

# PREFACE

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The University is happy that the book *Changing the Mainstream: Celebrating Women's Resilience* has been produced. This book is the result of innovative scholarship and research pioneered by the African Women Studies Centre of the University of Nairobi. The Centre undertakes multi-disciplinary research, working closely with other colleges of the University of Nairobi.

The authors who have contributed to the collection of essays in this book are scholars from the African Women Studies Centre; the Department of Literature; the Department of Political Science; the School of Law; School of Government; Institute of Development Studies, Institute of Diplomacy and International Relations and the School of Economics, Kenyatta University, Egerton University, Riara University and even from Government. It is thus clear that gender equality is a cross-cutting issue, affecting all aspects of society and scholarship.

In this book, researchers from various disciplines have put together essays that paint a holistic picture of the African woman. A multi-disciplinary approach has been used to reflect on changing the mainstream. The authors aim to challenge dominance in various areas, including education, health, law, history, politics, literature, and economics.

The book lays the groundwork for future scholarship and research on African women's studies.

The book sets the pace for new ways of thinking around issues of social transformation, equality, and just societies and is useful not only for purposes of research, but it is essential for purposes of policy formulation.

It can guide interventions aimed at addressing gender inequality. In this way, this book aims at envisioning a transformed Kenya not only for women but the entire Kenyan society.

The University of Nairobi shares the vision of the women of Kenya.

**Peter M. F. Mbithi, PhD, EBS**

Vice Chancellor, University of Nairobi  
and Professor of Veterinary Surgery

# ACKNOWLEDGMENTS

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This book would not have been completed if it were not for the overwhelming support and great commitment of all authors who worked tirelessly and responded to all issues raised by the coordinators and reviewers of the project. We thank you most sincerely for this commitment.

We thank those who participated in the initial preparation and shaping of this book: Dr Mwiyaandi, Amanda Majisu, Agnes Mugane, Wambui Kanyi and Ayoo Odicoh for all your effort.

Our thanks also go to all those other scholars who supported us in their different ways. We are grateful to Prof. Kobia, Prof. Julia Ojiambo, and the Vice Chancellor, Prof. Peter M. F. Mbithi for their support. We thank Mashetti Masinjila for his very detailed reviews of all chapters, Anna Petkova-Mwangi for the technical editing of the book, Prof. Githu Muigai, Prof. Karuti Kanyinga and Prof. Kiarie Mwaura for reading the book and sharing their comments for the blurb. Minneh Nyambura for organizing of the manuscript and working on an initial layout and design. We thank our research assistants Garvin Rodgers, Bridget Njoki Wambui and Joyce Kanze Nzovu. We thank you for making it possible for us to compile this work.

The AWSC Secretariat and staff have contributed in ensuring the book sees the light of day. We thank you for organizing the book launch together with the technical committee of the writers. We thank you for all the logistics needed and that you facilitated. Specifically, we thank you, Wambui Kanyi and Margaret Wamaitha for handling all the logistics. We thank Prof. Julius A. Ogengo, Director of the Center for Self Sponsored Programmes for the quick and efficient management of the funds and for your valuable support in our efforts to meet the deadlines.

The Ford Foundation through the Institute of International Education (IIE) deserves special mention here. Maurice Makoloo, Regional Director Ford Foundation East Africa and Candice Arnone of IIE, we greatly appreciate your financing of the publication of this book. Without your assistance, it would have been impossible for this work to have been done at this time. We thank you most sincerely.

**Wanjiku Mukabi Kabira, PhD, CBS**

Director,  
African Women Studies Centre  
and Professor of Literature  
University of Nairobi

**Patricia Kameri-Mbote,**

Professor of Law,  
School of Law,  
University of Nairobi  
and Senior Counsel

# INTRODUCTION

---

Maya Angelo in her poem, “Still I Rise” says to us:

*You may write me down in history  
With your bitter, twisted lies,  
You may tread me in the very dirt  
But still, like dust, I'll rise.*

*Does my sassiness upset you?  
Why are you beset with gloom?  
'Cause I walk like I've got oil wells  
Pumping in my living room.*

*Just like moons and like suns,  
With the certainty of tides,  
Just like hopes springing high,  
Still I'll rise.*

*Did you want to see me broken?  
Bowed head and lowered eyes?  
Shoulders falling down like teardrops.  
Weakened by my soulful cries.*

*You may shoot me with your words,  
You may cut me with your eyes,  
You may kill me with your hatefulness,  
But still, like air, I'll rise.*

*I rise*

*I rise*

*I rise.*

*~ Maya Angelo ~*

The story of Kenyan women’s resilience on their journey towards social change is yet to be told. This book titled, “*Changing the Mainstream: Celebrating Women’s Resilience*” argues that the Kenyan women, like other women in Africa, have greatly contributed to the quest for gender equality and social transformation. They have brought women’s agenda to the national, regional and global levels and ensured that women’s issues are an integral part of the development agenda. While the country has

received a lot of credit at international, regional and national levels for the achievements in promoting gender equality and women's empowerment (GEWE), including a very women friendly constitution (COK 2010), documentation and analysis of their story is scanty. The journey towards changing the mainstream and challenging traditional structures of governance is still to be told. Indeed, studies in the women's movement and women studies show that women's voices, perspectives, and ideology remain outside mainstream scholarship.

This book reflects on the progress being made in the areas of law and constitution making; women's organizations; in meeting challenges in engendering governance institutions on the women's journey so far and the lessons learned; on opening up to new values and cultures; on the cultural struggles by women writers; as well as reflections on theoretical perspectives. The book documents unique Kenyan women initiatives in the field of women's economic empowerment, law and constitution making, gender equality in the judiciary, education, gender based violence, governance and literature, among others.

Despite all the challenges discussed in this book, women continue to rise. As Maya Angelo would say, their mantra continues to be, "Still I Rise!" This book is a testament to the success of women in changing long held perceptions of maleness and femaleness institutionalized through laws and policies that relegate women to a position inferior to men. It celebrates women's victories as they emerge from the shadows of law, politics, education and the general affairs of the country and as they take centre stage, moving from the periphery to the mainstream. Now they want to change the mainstream and they envision societies where dominant ideologies; processes; institutions and structures; as well as cultural symbols serve the interests of men and women, young and old, men and women of all races and ethnic communities.

This is the story of women with a vision and who must take stock of every single victory, celebrate and strategize for the next milestone. It is a journey of a thousand miles where the final destination must be kept in focus. We are aware that the struggle continues in battles that are yet to be won. Women have also quickly realized that being in the mainstream by being in institutions of governance such as Parliament, Judiciary, and other government institutions is only a first step in this journey. These institutions have had their owners for centuries, and for them to create the kind of society that women envision, they must change. This is what this book is about: changing the mainstream so that it can adopt new values, new structures that are of service to all our people whether men, women or children. But the drum beats of initial celebration cannot be silenced.

We are in the right direction but we need to address the mainstream philosophies in development, institutions and structures of governance, symbolic structures and cultural values that drive the mainstream where real change is going to take place. We need change. We must all change our personal values to create communities of love. We must enter new territory through changing the mainstream. It is not an impossible dream. For, together we can create a new Kenya, allowing all diversity of thought, experiences to transform our nation and providing a new paradigm for development in all its aspects. We will rise.

*Nkatha Kabira*

## SUMMARY OF THE BOOK

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The book brings together women from different disciplines to take stock of women's journey towards changing the mainstream. Collectively, the chapters provide tools, ideas and strategies that have been implemented in Kenya's socio-political context to bring about social change through women's empowerment and impact on the mainstream. The strategies range from collective action, lobbying, negotiation, sustained resilience, public interest litigation, and social media. The tools used range from formulating the principles of affirmative action to the formation of women's organizations, among others. The ideas include various public policies such as "add women and stir", empowerment through legal transformation, education, the judiciary and leadership, among others.

The book is divided into three parts. Part I presents women's claimed space in the mainstream. In the first chapter titled, *the Next Season of Harvest*, Wanjiku Mukabi Kabira argues that women's struggle in the constitution making process (1997-2010) was mainly guided by 'add women and stir' policies that fell short of adopting a gender equality and mainstreaming strategy. The Chapter reflects on the assumptions women made on their journey in order to learn from those experiences and understand the theory that guided the first part of the journey. The chapter concludes with some ideas on changing the mainstream.

In the second chapter, *Woman of Law: Kenyan Women's Triumph in the Constitution of Kenya 2010*, Nkatha Kabira and Patricia Kameri-Mbote, use feminist jurisprudence and feminist critiques of the social contract theory to argue that, as a result of women's participation in the constitution making process, women are now at the centre of the construction and the interpretation of the law. The law is a critical tool of empowerment, as was demonstrated by the energies put to reform the constitutional order as a way of bringing about socio-legal transformation in Kenya. The authors argue that empowerment of women through law is an achievement that women ought to celebrate. This is the first steps in the journey towards changing the mainstream.

In the third chapter titled *Gender and Governance in Kenya: Women's Journey beyond Numbers*, Maria Nzomo argues that while increasing the number of women in influential positions is a plausible achievement, it is insufficient and women should not stop at this point. They must think beyond numbers.

In the fourth chapter, *Women's Participation in Constitution Making and Its Nexus to the Constitutional Text: The Case of Kenya's 2010 Constitution*, Nancy Baraza, highlights the contribution of women in the constitution making process consisting of academics, lawyers, members of parliament/politicians. The Chapter sets the context for the realization of women's gains in the Constitution of Kenya 2010 through sustained commitment and resilience, high levels of organization, consultations and informal feedback mechanisms. It credits different women with key

achievements in moving the process forward as well as highlighting the role of women organizations that arose out of the needs of the constitutional review.

Continuing discussions on constitutional gains, Ruth Aura, in Chapter 5 titled, *Gender Equality: Integration of Women in the Judiciary in Kenya* examines successes, challenges and opportunities available for women in the Judiciary. She argues that the judiciary is an important empowerment tool for women, however, despite the law providing for gender equality in the Judiciary, women are yet to take their rightful place in the judiciary, particularly in the higher echelons. This is followed by Agnes Meroka's Chapter 6 titled, *Public Interest Litigation and Women's Rights in Kenya: The Double Edged Sword* arguing that public interest litigation has significant place in the struggle for gender equality and the enjoyment of women's rights. The author argues that while public interest litigation (PIL) has opened up spaces for the realization of women's rights, it has not yet been used effectively as a tool for advancing gender equality and women's rights. She notes that the use of PIL in the context of women's rights can be improved if the lessons learnt so far can be implemented and applied effectively.

Part 2 of the book consists of three chapters. In the first chapter, *Women in Education*, Ed-dah Gachukia argues that women in different disciplines such as law, political science, history, medicine, and agriculture, among others, need to see themselves as critical players in the quest for women's empowerment through education. She argues that there is a dire need to see the cross-cutting function of education if the dream of women's empowerment is to be realized. In the second chapter, *Women and Reproductive Health*, Wanjiru Gichuhi discusses the extent to which the Kenyan woman has worked towards empowering women through reproductive health rights. The third chapter, *Post-Independence Grassroots Women's Movements and Economic Empowerment: 1960s to-Date*, by Kiriti Ng'ang'a and Joy Kiiru, traces the initiatives and struggles of the women of Kenya for economic empowerment through various legal and policy vehicles as well as self-help groups, CSO/NGO, cooperative and advocacy enterprises. It also presents the actions the Government has undertaken to provide financial support to women's groups in an effort to promote women's economic empowerment.

In the fourth chapter, "*Women as agents of change (1985-2010)*," Elishiba Kimani and Philomena Mwaura, argue that women organizations are critical actors in the process of changing the mainstream. By proving concise briefs on selected organizations, the chapter celebrates women's resilience in the struggle towards the second liberation in Kenya.

Part 3 of the book consists of three chapters. In the first chapter, *Per Aspera ad Astra: Female Empowerment in Kenyan Literature*, Alina Rinkanya examines the works of Kenyan women writers from 1960 to-date. She argues that although women's literature in Kenya is a long-time and well-established phenomenon, it has received a rather timid attention from the critics. She demonstrates that Kenyan women's literature made a significant contribution to the journey towards women's empowerment and emancipation by being the 'silent teacher' for several generations of Kenyans.

In the second chapter, titled, *Re-thinking Feminism*, Mary Kinyanjui deconstructs western feminist influence on African women scholars and urges readers to adopt an African feminist perspective that focuses on motherhood as a source of empowerment. She introduces what she considers a new type of feminism which she calls utu feminism.

In the third and final chapter of the book, *Hashtag Feminism: How Women and Feminists in Africa are Leveraging on Social Media to Combat Gender Based Violence*, Nicole Wasuna advocates for the use of social media to advance women's rights through enlisting mass support from women across various sectors. She delineates feminist use of social media for aims that are critical to women's welfare.

*Nkantha Kabira and Agnes Meroka*

# ABBREVIATIONS

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<i>AAWORD</i>	Association of African Women Researchers in Development
<i>ACCORD</i>	Action for Community Organisation, Rehabilitation and Development
<i>ACHPR</i>	African Charter on Human and Peoples' Rights
<i>AG</i>	Attorney General
<i>AGPO</i>	Access to Government Procurement Opportunities
<i>AIC</i>	African Inland Church
<i>AIDS</i>	Acquired Immune-Deficiency Syndrome
<i>AMREF</i>	African Medical and Research Foundation
<i>ARVs</i>	Antiretrovirals
<i>AU</i>	African Union
<i>AWSC</i>	African Women Studies Centre
<i>BDPFA</i>	Beijing Declaration and Platform for Action
<i>CAAU</i>	Constitutive Act of the African Union
<i>CAJ</i>	Commission for Administration of Justice
<i>CCGD</i>	Collaborative Centre for Gender and Development
<i>CDF</i>	Constituency Development Fund
<i>CEDAW</i>	Convention on the Elimination of All forms of Discrimination against Women
<i>CEMASTEА</i>	Centre for Mathematics Science and Technology in Africa
<i>CGD</i>	Commission on Gender and Development
<i>CKRC</i>	Constitution of Kenya Review Commission
<i>COE</i>	Committee of Experts
<i>COK</i>	Constitution of Kenya
<i>COTU</i>	Central Organization of Trade Unions
<i>COVAW</i>	Coalition on Violence against Women
<i>CREAW</i>	Centre for Rights Education and Awareness
<i>CS</i>	Cabinet Secretary
<i>CWEFLC</i>	Constituency Women Enterprise Fund Loan Committees
<i>CWES</i>	Constituency Women Enterprise Scheme
<i>DCJ</i>	Deputy Chief Justice
<i>DCs</i>	District Commissioners
<i>DFID</i>	Department for International Development
<i>DGSDO</i>	District Gender and Social Development offices
<i>DTM</i>	Deposit Taking Micro-finance
<i>ECDE</i>	Early Childhood Development and Education
<i>ECK</i>	Electoral Commission of Kenya

ECWD	Education Centre for Women in Democracy
EFA	Education for All
EMCA	Environmental Management and Co-ordination Act
EOC	Equal Opportunities Committee
FAWE	Forum for African Women Educationalists
FGM	Female Genital Mutilation
FIDA-K	Federation of Women Lawyers – Kenya
FIS	Financial Intermediary Partners
FPE	Free Primary Education
FSE	Free Secondary Education
GA	General Assembly
GAD	Gender and Development
GDP	Gross Domestic Product
GER	General Enrollment Ratio
GEWE	Gender Equality and Women’s Empowerment
GJLOS	Governance, Justice, Law and Order Sector
GPS	Global Positioning System
GROOTS	Grass Roots Organizations Operating Together in Sisterhood
HBCA	Home Based Care Alliance
HIV	Human Immunodeficiency Virus
IADC	Inter-American Democratic Charter
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICPD	International Conference on Population and Development
<i>ICT</i>	<i>Information, Communication and Technology</i>
IEBC	Independent Electoral and Boundaries Commission
<i>IFMIS</i>	<i>Integrated Financial Management System</i>
IGAD	Intergovernmental Authority on Development
IPPG	Inter Parliamentary and Political Group
JOYWO	Joyful Women Organization
JSA	Judicial Service Act
JSC	Judicial Service Commission
KDHS	Kenya Demographic Health Survey
KEWOPA	Kenya Women Parliamentarians Association
KEWOSA	Kenya Women Senators
KMJA	Kenya Magistrates and Judges Association
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission of Human Rights
KSL	Kenya School of Law
KWFT	Kenya Women Finance Trust
KWJA	Kenya Women Judges Association

KWPC	Kenya Women’s Political Caucus
LATF	Local Authority Transfer Fund
LEGCO	Legislative Council
LPO	Local Purchase Orders
LSK	Law Society of Kenya
LSO	Local Service Orders
MDG	Millennium Development Goals
MFI	Microfinance Institutions in Kenya
MOEST	Ministry of Education Science and Technology
MYWO	Maendeleo Ya Wanawake Organisation
NARC	National Rainbow Coalition
NCC	National Constitutional Conference
NCIC	National Cohesion and Integration Commission
NCLR	National Council for Law Reporting
NCPD	National Council for Population and Development
NDI	Non Developmental Item
NFFP	National Family Planning Programme
NGAAF	National Government Affirmative Action Fund
NGEA	National Gender Equality Act
NGEC	National Gender and Equality Commission
NGOs	Non-Governmental Organizations
NPGED	National Policy on Gender Equality & Development
OAG	Office of the Attorney General
OAU	Organization of African Unity
ODI	Oversees Development Institute
ODPP	Office of the Director of Public Prosecutions
OPEC	Organization of Petroleum Exporting Countries
ORPP	Office of the Registrar of Political Parties
PCK	People’s Commission of Kenya
PCs	Provincial Commissioners
PIL	Public Interest Litigation
PMA2020	Performance Monitoring and Accountability 2020
PPA	Political Party’s Act
PPAD	Public Procurement and Asset Disposal
PPRA	Public Procurement Regulatory Authority
PSC	Parliamentary Select Committee
PWDs	Persons with Disabilities
RCCs	Regional Credit Coordinators
SACCO	Savings and Credit Cooperative Society

SDGE	Solemn Declaration of Gender Equality
SDGs	Sustainable Development Goals
SMC	School Management Committees
SMT	Science Mathematics and Technical
SOA	Sexual Offences Act
SWISSAID	Swiss Foundation for Development Cooperation
TIVET	Technical Vocational Education and Training Institutes
TSC	Teachers’ Service Commission
TVET	Technical and Vocational Education and Training
UKAWONE	Ukambani Women Needs Organization
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNCSW	United Nations Commission on the Status of Women
UNDHR	United Nations Declaration on Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities/Fund
UNHRC	United Nations Human Rights Committee
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
UNPIN	United Nations Population Information Network
UoN	University of Nairobi
UPE	Universal Primary Education
USAID	United States Agency for International Development
USIP	United States Institute of Peace
WAD	Welfare and Development
WAD	Women and Development
WEF	Women Enterprise Fund
WERK	Women Educational Researchers of Kenya
WHO	World Health Organization
WID	Women in Development
YEDEF	Youth Enterprise Development Fund



## PART ONE

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# TRANSFORMING THE MAINSTREAM

“Women are one-half of the world but until a century ago...it was a man’s world. The laws were man’s laws, the Government, a man’s government, the country, a man’s country...The man’s world must become a man’s and woman’s world. Why are we afraid? It is the next step forward on the path to sunrise, and the sun is rising over a new heaven and a new earth.”

*Martha Thomas (1908)*



## CHAPTER 1

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# THE NEXT SEASON OF HARVEST

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WANJIKU MUKABI KABIRA

### 1.1 Introduction

*For the great river starts its journey as a little stream which at first meanders around without any apparent direction, sometimes disappearing underground altogether, but always there, always moving towards the sea. (Ogola, M. 1994:71)*

Like the great river, the journey towards the first season of harvest (1992-2010) started “as a little stream which at first meandered around without any apparent direction, sometimes disappearing underground altogether”, but the vision and the mission of ensuring gender equality and social transformation was always there, “always moving towards the sea”. This chapter reflects on the first season of harvest so as to draw lessons from the historical journey of the great river. The chapter argues that one of the tools of our liberation is reflecting on and learning from our historical experiences. Not only must we learn from those experiences but also passionately speak about them for all to know.

Tradition and history are nurturing spirits of African women. If we do not know and do not understand where we have come from, we are less likely to be able to make sense of where we are going. Awareness of past trials and challenges must strengthen us for whatever the future holds. Knowledge of our history and the struggles we have gone through should, therefore, give us the grounding upon which we can think and plan our future actions, for history plants a consciousness that will propel us to continue walking the journey towards social transformation.

However, as we look back at history, we have to acknowledge that cultural belief systems and worldview influences women’s political and social thought. Ethnic and national identity consciousness, as well as the socialization processes, had a significant impact on women’s political knowledge during that first season of harvest.

Scholars and leaders will continue to perpetuate the myth that the most appropriate approach to right what has been done wrong for millennia is to address gender rather than women’s issues which, in my view, continues to invisibilize women. The language of gender will not change cultural concepts and cultural symbols because feminist thinking and practice threatens male supremacy. The situation of women will not drastically change without fundamental changes of what forms the basis of women’s oppression. We must change the way we think and stop being hampered by patriarchal assumptions even as we formulate our strategies towards changing the mainstream.

### **a) *The Chapter Arguments***

This chapter reflects on women's struggle towards changing the mainstream that has been guided by patriarchal philosophies, systems and structures, a mainstream guided by the philosophy of male power that privileges male values while marginalizing female values and philosophies. The chapter uses examples of Kenyan women and the Constitution of Kenya to make two main arguments.

The first argument is that women's struggle in the constitution-making process (1992-2010) was mainly guided by the spirit of 'add women and stir' policies. Thus it fell short of adopting a gender equality agenda and mainstreaming strategies that would lead to social transformation and consequently, change the mainstream. While women in some cases recognized that there was need for institutional change, they nevertheless, strategically chose the route of least resistance and in many instances postponed the ideas of political, economic and cultural-social transformation, for example, gender division of labour such as domestic chores and reproductive functions, which could have led to social transformation.

The chapter demonstrates that women adopted this strategy for four main reasons. The first reason was that women believed challenging the existing structures and philosophies would be resisted by the predominantly male-centres of power. They had experienced this before and not once. The second reason was that women were best placed to define what was a priority for them in the review process. The third reason was women believed that they would bring added value to the national agenda, including policies and programmes that would benefit the nation. The fourth reason was that Kenyan women adopted the strategies on the basis that it was the role of the Government to serve the people and to ensure their wellbeing and peaceful co-existence. The chapter reveals that like all Kenyans, women wanted to reclaim their place in society by negotiating the double covenant with the State and with the leaders of the various communities.

The second argument was that although women of Kenya had made significant progress during the constitution making and implementation process, they had not yet reached their destination of social transformation and mainstream change because the first part of the journey chose not to challenge institutional foundations, practices, cultural structures and symbolic representations, signs and norms. The chapter argues that the journey towards the second season of harvest has to find ways of challenging political, cultural and social institutions and their policies and practices if we are to reach the ultimate goal of social transformation. A close analysis of the choices women made and what they did in the struggle for the new constitution will reveal assumptions that guided the process and will help us reflect on the theoretical framework that guided women during the constitutional review process. In our view, women had specific assumptions about various issues which may include but are not limited to the following.

**i. Women are best placed to define what is best for women**

The first assumption was that women were best placed to define what was best for them in the review process. They understood other women's experiences, victories, successes, and challenges. They were right in this assumption for they demonstrated an unquestionable clarity of mind and purpose on what they believed was good for all women.

They did not think that men could articulate their issues. They were sure that men could not represent them as well as they could. They knew that they should be the source of public knowledge about themselves. This assumption is contrary to the conventional male narrative that when men are elected to Parliament they represent all parties women included. Women leaders had a different view: women are best placed to represent women. This belief was shared by both women at leadership and at grassroots level. Women knew that they were the only ones who understood their own problems.

**ii. Women bring added value to the National Agenda**

The second assumption was that women would bring added value to the National agenda, including policies and programmes that would benefit them as well as the nation. This argument was articulated very clearly by women leaders at different levels of the process, including Phoebe Asiyo's presentation on affirmative action (1997), Beth Mugo's (2000), Martha Karua's (1997 and 2006) (Kabira, 2012) and other women's contributions to discussions in the Parliament. Women leaders participated actively at various structures of the review process, including at the Constituency Constitutional Committees (3Cs) and the Commission (CKRC) and National Constitutional Conference (NCC). They felt that bringing women into institutions of governance would help deal with more women and people friendly programmes and policies. They argued that women could bring unique values such as inclusion and relational skills. These claims were not just mere speculations. Decades of research have shown that the presence of women in Parliaments, universities and international public institutions is of benefit both to men and to those who depend on women for service delivery, especially when the women are in leadership. (See Mbote and Kabira 2017; Kabira 2018; Ellison Shula 2004) Women believed that together we can create a different world shifting the burden from male shoulders and allowing the diversity of thought and life experiences to transforming our solutions perhaps bringing a greater peace, perhaps allowing men to be better fathers, perhaps providing paradigms in our security (Ellison 2004: 4).

**iii. The role of the Government to serve the people and ensure their well-being and peaceful co-existence**

The third assumption was that it is the role of the Government to serve the people and ensure their well-being and peaceful co-existence. Like all Kenyans, women wanted to reclaim their place in society, where corruption, ethnic tensions, poverty, conflicts, political thuggery, and other vices would come to an end. It was for them a negotiation with the state and with the society so that the country is better governed and they have their rights in society. They were

negotiating a ‘double covenant’. They wanted a government that would ensure that the country is stable and that they can live a peaceful, prosperous life. This knowledge led them to focus much more on the devolution of power and representation in the legislature and other institutions. They wanted an end to women’s oppression and sought consideration of their rights in the Constitution. This desire to end all forms of discrimination is indicated in the substantive and well-organized sections on social-cultural rights in the Constitution of Kenya Review Commission (CKRC) Report. These rights were focused more on personal, households and community levels, such as on issues affecting children, property, inheritance, harmful cultural practices, female genital mutilation (FGM) and control of resources, among others. Women had to negotiate a ‘covenant’ with the state and with the community - the sources of women’s oppression. That is why in many instances women asked for women only sessions where they could present main issues in private and discuss them among themselves. Kabira in *Time for Harvest* notes that sometimes one woman would begin to talk about her experiences and other women would pick up the story and tell it as if they had lived the experience.

The struggle for the new constitutional dispensation was a momentous period for Kenyan women at national and community levels. It deserves special attention so that we can learn and generate knowledge from this experience that can guide our future direction. This struggle was a mission born out of the realization that inequalities, political oppression and abuse of state power and other forms of oppression had to end. In the struggle for change we acknowledge that transformation is about movement and you need to have ideas on the direction you want to go. It is, therefore, essential for us to examine the assumptions that guided the women’s struggle for constitutional change so that we can start the journey towards the second season of harvest.

## **b) Theoretical Framework**

Social theorists such as Dale Spender argue that “human beings tend to project onto the objects and events of the world the value-system they have learned.” They argue that

... men and women select evidence from the world which fits into and reinforces the belief system of their culture. In the process, men and women in society tend to censor the contradictions, and they continue to see that which is consistent with their established world order” (Spender 1985: 28).

If you understand this, you will appreciate why women in leadership positions conform to established world order. We have not yet made fundamental changes in our society, and we must recognize that, but there is room for moving forward to the destination which we keep defining and clarifying. We must continue to focus on how to think differently and from feminist theoretical standpoints. We must conceptualize our utu feminist alternatives and add politics, economy, social-cultural changes and gender equality, among others.

As Dale Spender argues feminist theory is concerned with “consciousness and conditioning”

because these are the very realms in which women have expressly been disadvantaged. She observes that “men have developed their mode of thinking in our societies based on their experiences, so it is precisely the experiences of women that is omitted or ignored” (Spender 1985: 28). Since we want women’s experiences to inform the worldview of our societies, then we must change the way society thinks. We must, therefore, understand why women’s experiences have been left out. To do this, we must reflect on our socialization processes and not the way we have been doing it. We must reflect on our way of thinking. We must demasculinize our minds, and we must break up our mind-sets. In our addressing the patriarchal worldview, we must appreciate that it begins and ends with male experiences of the world and ignores women’s experiences of the same world. We must use feminist frameworks to think of a better world, a more just society.

## **1.2 Tools of Analysis**

This chapter examines two tools for analysing women’s work in the constitutional review process: ‘add women and stir’ and ‘gender mainstreaming’. In the past much work was done to understand women’s work within the context of patriarchal societies. Writers such as Ester Boserup (1970), Amina Mama (2004), Patricia McFadden (1999), Maria Nzomo (1999), Harding Sandra (1995), Sara Hlupekile Longwe (1994) and Kabira & Masheti (1994), among others have been looking for tools of analysis. Feminist scholars generally agree that policies, starting with Women in Development (WID), Women and Development (WAD) and Gender and Development (GAD) and even mainstreaming concepts, have deviated from the original feminist agenda of social transformation. Development workers and policy makers, as well as development partners, have however used the so-called ‘add women and stir policy’ as well as ‘gender mainstreaming’ policies which we discuss below (Patricia McFadden (1999)).

### ***a) ‘Add Women and Stir Approach’***

Studies show that for policies that are meant to have an impact on the lives of both men and women, it is essential for both men and women, to participate in the making of these policies. Harding (1995: 302) argues that the process of adding women to existing institutions and processes does not address issues of “gender relations, gendered structures and philosophy” of the development process, among other issues. Many African feminists confirm this argument. These feminist scholars, including Patricia McFadden (1999), Amina Mama (2004) and others argue that development projects targeting women have not been empowering. They argue that because women generally are the caregivers, they deliver community welfare daily for children, the sick and the elderly, hence the failure of development policies and programmes, will automatically have negative impact on those who depend on their labour and social services. So, when we lock out women from policy formulation and implementation, their experiences and knowledge do not benefit these policies; therefore, the policies do not benefit those who would benefit from women’s contribution to these policies.

For close to thirty years now women in Kenya have been holding conversations around their experienc-

es. During this process they organized sessions to educate themselves, to share their views and to make sense of the male strategy of oppression. This important political tactic was characterized by disputing the male ideas about them and validating their own. It was this strategy that led to the many women related provisions in the Constitution. This process, Dale Spender would say, provided an opportunity to develop “autonomous knowledge” (Spender 1985: 156). They have been documenting these experiences. See Wangari Maathai (2009), Kabira (2012), Asiyu (2018), among others. Women have also begun to look for knowledge generated by women.

This knowledge is also being developed in other parts of Africa by the Department of Gender and Women’s Studies at the Makerere University; the Women’s Studies Department, Cape Town; the African Women Studies Centre at the University of Nairobi; Femrite Uganda, Affad University, Sudan and the Feminist Pathways Journal, among others. This generation of knowledge entails firstly, promoting conscientization; secondly, understanding of women’s experiences; thirdly, it challenges the philosophical foundations of existing disciplines.

Some scholars have claimed that there is no value-free knowledge or technology. They argue that many areas of law, life, and governance which are supposed to engineer economic development are not value-free. These areas contain precise values which impact on the place of women in society. Consequently, adopting affirmative action strategies by ‘adding women and stirring’ does not fundamentally change institutions. The inclusion of women into existing systems does not alter the foundational values and principles underlying science and education, or the political, public and academic institutions or disciplines. These institutions do not fundamentally change.

However, we contend that gender is a complex issue. It is a relationship and an oppositional one, too. You cannot isolate it from the relationships. We can only understand women within gender relations because they have their fathers, brothers, sons, husbands, and employees. In essence, we have to look at the characteristics of social structures and symbolic systems where gender relations that give meaning to activities remotely related to sex differences and argue, for instance, that women are emotional, men are rational. Men are scientists women are artists. We create stereotypes of womanliness and manliness that are used to limit the opportunities for both men and women.

Scholars often associate objectivity and rationality with men and analogize subjectivity and irrationality with women. These arguments also guide the way we carry out research, the way we talk about objectives, research methods, subjects and objects, among others. We refer to value free research, objective analysis, rationality all of which is inaccurate. Also, these stereotypes of objectivity and rationality, associated with manliness and womanliness, lead to systematic ignorance of issues on women. Science and technology projects, for instance, endanger the survival of human societies and the environment. See Shiva (1988) and Harding (1986 and 1991). It is not enough to ‘add women and stir’. We have to challenge the very foundations of science, of politics, and of ideology.

We also recognize that gender intersects with class, race, ethnicity and other hierarchical social relations, societies, institutions, and practices. These gender relations and their symbolic struc-

tures do not just die because we have recognized them. They are very stubborn; they mutate at different times. We must not forget that what scholars today refer to as customs or tradition is the result of contested social changes that occurred not too long ago. Among the Agikuyu, for instance, women paying dowry for themselves when getting married is becoming a tradition. Very soon this will be referred to as a Gikuyu custom, yet it is women's response to cultural practices that promote women's oppression and an indication of how women get caught up in the web of patriarchy. It is a tradition that perpetuates a sense of guilt in women when they never get married because there would be no dowry paid to their parents or even if they did get married but dowry was not paid. This prompts them to pay the dowry themselves so that their parents can say they received dowry for their daughters.

Studying the origins, culture and practices of specific disciplines such as science and technology, politics, sociology, literature and medicine and their respective institutions, traditions, practices, and interests enables us, as scholars and philosophers, to detect various ways in which political values and interests enter methods of research and the description and explanation of social relations (See Pickering 1992). We need to interrogate theories of democracy, political inquiry, literature, psychology, sociology and anthropology in order to find out their philosophies, assumptions and rationale, based on women experiences.

We cannot assume that social-cultural institutions, in which we are 'adding women and stirring', are value free. They are not. That is why the National Assembly has found it challenging to implement the not more than 2/3 of the same gender rule and the government itself has hardly dealt with Article 27 of the Constitution in the Bill of Rights. Thus, political struggles over who will bear the costs and who will reap the benefits determine the institutional transformation of institutions such as Parliament, the Judiciary, and the executive as well as family structures. In essence, 'add women and stir' policies may increase the numbers in these institutions but this, in itself, will not transform change the mainstream. Changing the mainstream is a radical choice we have to make.

Recently, at an African Women Studies Centre (AWSC) seminar, a young man argued that women's empowerment is leading women to want to be equal with men and that is why there are so many wives killing their husbands. The man argued that women want to show that "what men can do, women can also do." He claimed that the fact that women want to do what men do is what is leading many wives and lovers to kill their men. This statement which echoes the sentiments of many in our society is far from the truth.

To the contrary, during the constitutional review process women were guided by the opposite desire - a desire to completely distance themselves from societal perceptions of who they were seen to be and what they actually were.

In analysing the gains of women's struggle for change, we need therefore to examine:

- ✓ Women's victories in the provisions of the Constitution of Kenya 2010 considering

their philosophies, assumptions, and implications on social transformation;

- ✓ The extent to which women's gains promote change for women's social gender roles and other key institutions and symbolic societal structures such as weddings, dowry negotiations or naming ceremonies, among others;
- ✓ The gains in the constitution relating to women's empowerment.
- ✓ How these social gains deal with social structure and symbolic systems;
- ✓ Our contributions to institutional changes, policies and practices.

## **b) Gender Mainstreaming and Gender Equality Analysis Tools**

Gender Mainstreaming means the development, improvement, reorganization and evaluation of policy processes to bring in women's and men's perspectives at all stages of the policy and programme development and implementation (See Kabira 2016). For some, gender mainstreaming entails incorporating a gender equality perspective into policies, institutions and structures. However, gender equality means different things to different people. Some feminists argue that gender equality is all about sameness ensuring that the law treats both men and women equally. On the other hand, some feminists argue that gender equality is about the differences between men and women. They say that it is about respecting and celebrating the differences and recognizing them as such.

Because of the different interpretations of what gender equality means, mainstreaming a gender equality perspective makes gender mainstreaming a contested concept in theory and in practice. In our view, this contest is the reason focusing on women, for instance, has been considered as going back to women in development approaches which to some has been overtaken by development approaches. Research however shows that women perspectives and knowledge remain outside the so-called development processes. We have forgotten that gender analysis tools of the 70s, 80's and 90s were meant to be just that, tools to help identify where the problem is and focus on it. However, the strategy for gender and mainstreaming in the development process has become a tool for making the women's issues invisible and sweeping them under the carpet. We must, therefore, redefine the mainstream itself, changing the mainstream is the path towards social transformation gender equality among other critical concepts.

### **1.3 What are the Measurements for Gender Equality?**

Sylvia Walby in her paper *Gender Mainstreaming: Productive Tensions in Theory and Practice* argues that gender mainstreaming deals with the tension between gender equality and the mainstream (Walby 2005: 322). Also, it is essential to reflect on the vision of gender equality, what do we envision in a society that has realized gender equality? Is it a society where the law abolishes gender division of labour? For instance, where women's oppression is no more? Moreover, how do we deal with other compound inequalities, especially those associated with ethnicity, class

and race?

These are fundamental questions and we need to appreciate the dualism between gender equality and the mainstream agendas. In addition, we need to examine how new gender norms will find their way into institutional thinking. A good example here is how fiercely the Kenyan Parliament and Kenyans, in general, have contested the two-third same gender rule. Critics of the rule argue that the strategy used to bring 47 women to the National Assembly through women special seats was a bad idea. This case illustrates that the struggle for equal representation in leadership positions is in tension with the traditional mainstream. If we look at the Big 4 Agenda which stipulates the 2018-2022 priorities of the government as food security, manufacturing, housing, and health we note that gender equality is not a priority for the government. Another example is the current political discussion on a possible referendum which is focused on the structure of the executive and the regional governments. Affirmative Action is being referred to only in connection with a suggested removal of the 47 seats allocated to women. Indeed, an implementation of the two-third gender rule is not part of the debate and yet it has been tabled for Parliament debate since 2010. This contest between gender equality and the mainstream is at the centre of the debate on gender mainstreaming. As a result, since the government controls the mainstream, gender equality takes a back seat as the government does not consider it as part of the mainstream. In this context, we need to discuss the issues as follows:

**a) *Gender Mainstreaming and Social Transformation***

Gender mainstreaming is a strategy for social transformation. Proponents of gender mainstreaming argue that firstly, it offers something new by inculcating feminine values into an otherwise male-led mainstream. Secondly, this process entails agreeing to weld these together in institutions, policies, structures, and even symbolic structures into something new.

**b) *Agenda Setting and Integrationist Approaches to Gender Mainstreaming***

For women's transformational quest to see the light of day, feminist scholars have argued that adopting agenda setting and integrationist approaches to gender mainstreaming are crucial. Agenda setting, according to Walby (2005: 325), involves four main things:

- i. transformation of existing policy paradigms;
- ii. changing the decision-making process;
- iii. prioritizing gender equality objectives;
- iv. rethinking policy ends.

In this case, it is the mainstream that changes. Is this where women want to go? If so, as we prepare for the second season of harvest, we will have to plan for it. We must identify institutions, policies and structures that must give way to something new. We need to envision this new thing.

On the other hand, integrationist approaches can introduce gender perspectives without challenging the existing policy paradigms, instead ‘setting’ gender mainstreaming as a way of more effectively achieving the existing policy goals. This approach to gender mainstreaming is less likely to be rejected. The strategy is meant to bring women into a process with set goals and to walk with the institutions that already exist. This strategy is intended to ensure the realization of existing policy goals realized in an effective, efficient manner. This approach is one of those that are often promoted by development partners who do not want to challenge existing cultures and attitudes of their parties. However, is this the route African women want to take? The strategies used in the negotiation of the Constitution seem to indicate that many African women leaders would choose this route. We need to hold conversations around this and agree whether this is the right route for the journey towards the second season of harvest.

It is possible that while navigating between gender equality and the mainstream, both are likely to change. We must continue to monitor the evolving nature of interactions between the mainstream and the progress of our gender equality agenda and keep our agenda in focus. We could consider effective routes to gender justice in which existing separate gender norms are retained, become equally valued and the society accepts the norms as different but equal. An example here will do. The government need not assess women’s care work (taking care of babies, and the community) as negative. The government might assess women’s care work as a different but a valuable economic contribution to society. Some of the proposals such as policies to improve childcare, similar to the one *Safaricom* has, have the potential for social transformation because they can transform the association of women with domestic and child care and to involve men in childcare which will then be seen as a valued job. We need to review our goals, using the agenda-setting process and decide if we want to use the integrationist approach and monitor the context between the mainstream and the gender equality goal and whether we are moving towards social transformation.

### **c) Other Inequalities**

As we move towards the second season of harvest, Kenyan women need to consider other existing inequalities. During the constitutional review process, at a meeting where women discussed their role in constitution-making, one of the women leaders explained that the numbers for women commissioners had gone down from 5 to 4 because according to the Review Law (1998) one of the slots had to go to differently able women. Women who are differently able were not part of the women agenda according to some of the women leaders.

Recent discussions on women’s property rights favour poor rural women or even poor urban women. However, it goes against the grain for those women who have, through sheer hard work, been able to get properties and whose interests in a marriage are not protected by law. Women must not wear masculine shoes; they must not wear the shoes and glasses of oppressors. They need to reflect on what is best for women, while keeping in focus structural causes of inequalities; these are issues that we need to address.

Gender mainstreaming is a powerful tool for change in feminist theory and feminist strategy. We can allow it to guide us as we prepare for our second season of harvest while appreciating the contested visions. In doing this, we must:

- Identify critical areas of focus for maximum gain for women and society;
- Analyse the philosophies, structures, institutions and practices of those institutions that drive the agenda;
- Evaluate how the policies we propose will deal with social structures and symbolic systems;
- Discuss the relationship between the mainstream and gender equality;
- Agree on the route towards social transformation and how to bring on board the complex inequalities in the context of ethnicity, class, disability as well as both big and small communities.

This section has examined two approaches that we need to reflect on as we move towards the second season of harvest. We can choose, as we did in the first season of harvest, to use ‘add women and stir’ approaches or we can opt to take the bull by the horns and use the gender mainstreaming and gender equality approaches. Defining the path to the future is essential as we analyse and deal with the contested visions and the challenges of the mainstream which is already entrenched.

## **1.4 Learning from History**

*Know your story and tell it passionately.*

This section reflects on lessons learned during the journey towards the first season of harvest. History shows that women, being the underdogs in society, have always organized themselves together in groups to deal with their needs, both practical and strategic. In the process of lobbying for their interests in constitution making, women made critical choices in defining the type of electoral system they thought would be appropriate and the reasons for supporting the devolving of power to the people, among other decisions. The need for women’s representation in leadership was considered necessary, as discussed earlier, and this led to the formation of women’s political organizations that spearheaded this struggle and led to our first season of harvest. Kenyan women created structures such as the Women’s Political Caucus (1997), the Women’s Political Alliance (2000) and the Coalition on Violence against Women (1998) which have been very useful to them. Furthermore, the constituting of the National Women Negotiating Teams (2007), G10 Group Formation (2009) and CGGD’s Women Mobilization Network by the Collaborative Centre for Gender and Development (1999) shows that women can create structures that hold them together and move their agenda forward.

Women must not think that these structures must be permanent and thus fall into the trap of those who want to accuse women of not being united. Women have come together at crucial moments in their lives, and that is why they must trust that when that time comes, women will

rise again. Just as in the journey towards the first season of harvest, the journey for the second season will begin with a small group of women who will get together and start the process. In the meantime, we need to learn from the experiences women have had from 1992-2010 and later so that we can draw lessons from there. Our historical experiences must be one of the tools of our liberation. We must learn from them and tell them passionately.

**a) *Lessons from our Experiences 1992-2010***

We acknowledge and affirm those women who were at the front line and some of whom did not even see the first harvest. Women started in small groups which eventually became a flood and their voices could be heard. We must learn from those who were there before us for the history of their struggle will propel us to the second season of harvest and will serve as a tested guide on a journey of a thousand miles. We need to find ourselves in our history and in our experiences by reconstructing our past and identifying the place where to locate ourselves. We must tell our story of the struggle and tell it with passion. In narrating our story we should consider women's presence in national leadership as a good beginning and affirmative action as an example of the 'add women and stir' approaches. We must continue to negotiate the 'double covenant' and we must continue to walk the journey with our heads held up high.

**b) *Women's Presence in National Leadership is a Good Beginning***

One of the most contested provisions of the constitution concerns women's representation in elective and appointive positions. Parliament has never accepted women's 30 per cent representation in the National Assembly and the Senate. If they had, they would have amended the Constitution to ensure the implementation of Article 27. This battle for affirmative action is discussed elsewhere in this book, but women recognize that it is imperative for them to be in leadership. However, Phoebe Asiyo (2018: 193) says in her memoir:

...What stands out in our journey to secure affirmative action in the constitution is not so much the resultant gains, but the innumerable pitfalls, well-designed traps, camouflaged minefields and outright insurgency by sections of our society, keen to retain the hallowed trappings of power within a masculine stranglehold. The cunning artistry of the make controlled parliament was all planned to control women. Why would an august house be so bent on controlling the nomination of women commissioners to CKRC unless there was too much at stake?"

Indeed, women's presence in leadership is an important milestone and a good beginning for Kenyan women.

**c) *Affirmative Action as an Example of the 'Add Women and Stir' Policy***

Women faced much resistance to the affirmative action strategy at all stages of the constitution making. Some resisted the strategy for women's representation at the district level because they feared that a woman district representative would be too powerful for them to handle. Women

were negotiating for entry into parliament where men had entrenched themselves and created institutional structures guided by a philosophy based on male experiences, just as was the case with all other institutions. Men's justification for being there was based on the belief that the process of getting there was democratic. Women had not challenged the nature of the institutions they were hoping to be included in. They believed they would change these institutions from within.

Sarah Childs and Mona Lena Krook, revisit the argument given by the proponents of the critical mass theory, namely, numbers and outcomes, particularly those concerning women's behaviour in the legislature (Childs and Krook 2008: 732). They, as well as other feminist scholars and women's rights activists argue that women need a critical mass in a legislature to make a difference regarding outcomes and influencing legislation. Understanding the critical mass theories is essential since these theories guided the mobilization of women in their struggle for inclusion into legislative bodies, particularly in our region. Affirmative Action strategies entailed increasing the numbers in the decision-making processes. This strategy is a distinctive hallmark of the constitutional review processes in Kenya, Uganda, Rwanda, Somalia, South Africa, and South Sudan, among others.

Political and gender scholars have argued that until women are in big numbers, 33% being the number customarily given, they will not have a significant impact on the institutions they enter. Proponents of this theory and leaders in the women's movement have used this argument to justify the inclusion of women into political and appointive offices. Kenyan women used this theory to bring women to the National Assembly, the Senate and County Assemblies in Kenya. We now need to use the experience we have to address the issue of the substantive representation of women as critical actors and formulate possible paths to improve their substantive representation.

Towards the end of the constitutional review process, women faced much resistance to affirmative action for women's representation at all stages of the constitution making. Men feared women district representatives would be too powerful to handle and as such resisted district strategies for the inclusion of women. As earlier noted, at that stage we believed that women would be able to transform the institutions once we were insiders.

Young male parliamentarians believed that there was not enough space for everyone and therefore, the women's agenda had to go. This resistance by the male parliamentarians may explain why it was necessary for women to think about women only seats. They knew that men would not allow an equal playing field and they did not challenge the underlying philosophy of what democracy means. Kanter & Dahlerup argue that for women to have a significant impact on legislative outcomes they have to grow from minority individuals into a significant majority of all legislators. In essence, as numbers increase, women can influence policies in women's favour and make their colleagues accept and approve legislation promoting women's concerns (Childs and Krook 2008: 733).

As Childs and Krook argue, increasing the number of women in representative bodies leads to a greater attention to the women agenda. Attention to women's agenda will, in turn, lead to social transformation. They note further that, a more supportive legislative environment produced by the presence of more women influences those who do not see themselves as representatives of women or women's issues. The authors further encourage women to form exclusive coalitions with one another to create a "critical mass" that will be sufficient to promote women-friendly outcomes (Childs and Krook 2008: 733).

Guided by theories such as the critical mass theory, women during the review process opted for 'women's special seats' as the preferred option. However, this too had to be crafted in such a manner, that whatever positions women got, did not become more powerful than the positions the male legislators hold. The CKRC included women's special seats into the proposed Constitution to safeguard the interests of the women as this was the route of least resistance.

At the end of the constitutional review process, the MPs left the principal of the 30% and removed the implementation structures proposed by CKRC in the draft that was finally adopted after the 2010 Constitution. The struggle for affirmative action is a clear manifestation of male resistance to women's access to political leadership. Political representation is about power and at every opportunity the male institutions have looked for ways of taking back control from women.

As we move towards the next season of harvest, we need to imagine a woman-friendly world; a world that will include a sense of security where people leave their bicycles and cars unlocked outside their homes or parking lot; a world where you can walk around at 2 a.m. There are no street guards, food is cheap. You don't have huge vehicles moving around carrying one person but then it is very quiet; churches are empty with only a few elderly people and no music or a choir bigger than the congregation. You have your basic needs of water, food, electricity and healthcare well satisfied but you want to feel the warmth of family, of community life, singing and people praying, churches full. There are no gender-based intellectual debates on burning issues, and people will respect other people's choices. It will be a world full of love and energy where women would have a room of their own; where both the old and the young will be appreciated and there would be increased support for the elderly and care and compassion will be extended to all in our communities. Women's voices will be heard, we would have a safe space, we would support women in leadership and they would be accountable to the women and to the Nation. We would all have food, health care and jobs. Women would be free to define themselves rather than being defined by their culture and their men as stated by Ellison (2004: 167). We need to imagine our new world so that we can walk towards it. "Call it heaven on earth and why not," as Prof. Rubadiri of Malawi would ask. Back in 1908 Martha Thoms said:

Women are one-half of the world but until a century ago (we can now say centuries) it was a man's world. The laws were man's laws, the Government a man's Government, the country a man's country ... This man's world must become a man's and woman's world. Why are we afraid? It is the next step forward on the

path to the sunrise and the sun is rising over a new heaven and a new earth. Our dream must be big enough.

As we move towards the next season of harvest, we must “step forward on the path to the sunrise to a new heaven, a new earth,” a new Kenya, a new Africa, a new world.

#### ***d) Negotiating the ‘Double Covenant’***

Like all Kenyans, women have gone through an oppressive regime. They have experienced ethnic tensions, conflict, poverty, poor governance, corruption and poor leadership. They, therefore, want a government that will ensure the country is stable and people have a peaceful and prosperous life. It was in this context that they were negotiating a ‘double covenant’ and why they were so focused to sit on the committees debating devolution, representation and legislature. One can easily trace women’s footsteps through the decisions of these committees. During the period 2002–2005 women focused on those three institutions because they believed the structures of government were going to be very useful in making the country governable for justice to prevail and to achieve the wellbeing of Kenyans. The Constitution stipulates certain provisions on women’s representation. In the Bill of Rights there is the assumption that women have rights. During the review process, women played a significant role in the Bill of Rights committee. Women wanted the right to land and other properties to be included in the Constitution. These rights included property ownership, inheritance rights, getting rid of cultural practices that demean women such as the female genital mutilation (FGM), reproductive rights and control of the resources. The Constitution entrenches many of these provisions.

However, there were hardly any issues related to labour, domestic chores, care work, or time use for women, among others. These issues could have rocked the boat, so women did not raise them and they were not seen as a priority at the time. Today feminists consider these issues as critical areas of social transformation. Feminist studies propose that dealing with gender division of labour for women is a significant issue. However, some gradual changes are already taking place in these areas as patriarchy and its ideologies keep mutating. That is why women in academia should make sure we remain close to reality and keep exploding myths that continue to pop up in this struggle.

#### ***e) We must Walk with our Heads Held up High and Enlarge our Territory***

What we have learned from the history of our struggle is the importance of self-pride for women. At the Bomas of Kenya Conference, for instance, women did not give the impression that they were ashamed of being women. They had no plan to entertain men so as to beg for their support. They felt they were good enough and were proud that they were women. This pride of themselves as women gave them the confidence, and a grounding that enabled them to negotiate, lobby, and consolidate their gains. They were not interested in sitting pretty or even dancing with men so that they could gain their support. Women delegates knew that millions of women were standing with them and felt grounded and secure. The older ones were proud of their age. Old age had

become an accomplishment. It gave them status from which they could challenge men. Grace Ogot walked steadily in the company of senior politicians to negotiate the structure of Government on behalf of women. This self-confidence, being proud of our womanhood is necessary for the next part of the journey. It makes you grounded and secure.

Women believed that the numbers they had at the National Conference, the knowledge they had about the process, their ability to organize, to lobby, to negotiate and to stand in the line of duty, together with the supporters from outside the Conference, were enough to make them stand on their own feet. They felt the power of the support of many women's organizations and groups in the country that formed the women's movement. They were ready to take their place. The organizational nature of the women's struggle for the constitution was the driving force behind their success. The reason women in Parliament have not been able to push for the implementation of the 2/3 gender rule since 2010 is that they need the collective power of women. They need to be grounded and secure and call the support of the many faithfuls that are ready to move the women's struggle forward.

#### ***f) There is Room for Everyone***

In this process, there were also many young women who brought technical skills as well as the energy to run around to get information and bring it to the women leaders who, in turn, would prepare lobbying documents in record time when requested. The older ones would say, "I will wear a hat and a dress in the colour purple, the colour of royalty, in the style of Orié Rogo Manduli". Age and experience were advantages that permitted Hon. Phoebe Asiyo to ask Joseph Kamotho, the then KANU Secretary General, which village is further from Nairobi, Murang'a, or Karachuonyo? Kabira notes in her book, "Be an outrageous older woman. If you turn MOM upside down, it spells WOW, wonderful old woman, Wise Old Woman, Witty Old Woman, Wicked Old Women." "We can put on a new hat" (Asiyo 2018: 10). Women felt at home in the style of Orié Rogo Manduli and walked like peacocks with elegance and confidence, with a head square that could reach the sky and not care what anyone said. There was space for all the women: the old, the young, the not so young, the rural, the urban, the politicians, the academics. There were possibilities for all of them. Each one of them contributed to this organized, powerful team of women. They wielded so much power that at times leaders of KANU, the ruling party at the time, would call the women aside and ask them whether they would help the party to derail the process until a later date. The women had learned to negotiate and Phoebe Asiyo would ask Kalonzo Musyoka, Kamotho and others, "What is in it for us?" If there was no immediate answer to this question, the women would say, "No deal." When we rest and start the journey again, we shall need this power, the Woman's power.

#### ***g) Addressing Structures of Power***

As we discuss the next season of harvest, we must also address structures of power. Many scholars have defined power and connected it to resistance. Foucault (1978: 95), for instance, tells us "where there is power there is resistance". Indeed, women know that civic education is not

enough to change the mainstream. It requires much, much more and greater commitment. The change of these structures must come from the women's movement and individual actions such as the action Wangari Maathai took to prevent the government from building towers on public land, in a park where people hang out with their families and friends. Kenyan women generally operate from the margin, but this very same marginalization brought them together and produced collective energy for resisting the same marginalization. Their resistance has strengthened women's consciousness and has made them see that the National Assembly, the Senate and the judiciary operate from within a clear patriarchal ideology which must give way to better structures and practices that can deliver for both men and women as well as the nation.

We can use the tools of mainstreaming women's interests in basic foundational philosophies, policies, and practices to change the structures. We must look into all these institutions that wield power guided by male ideology and develop mechanisms that can induce change. During the first season of harvest, women had neither a common position nor a common strategy on this issue, especially regarding the creation of regions or structures of the National government but they had agreed on the structures for people's participation at national, district and constituency levels. Let the truth be told: women were the ones who designed the blueprints for people's participation in the Constitution making process. However, when it came to discussions on the structure of government, which eventually broke up the National Constitutional Conference, women could not help the conference. These institutions wield power and men know it. They know if you control the institutions of power you control the people. However, power is also a contested term which we shall discuss further as we move on the journey towards the second season of harvest.

What's more, women challenged these institutions, though in a limited manner, through the introduction of affirmative action for representation of women and other marginalized groups. Women challenged traditional terms of democracy. Proponents of the conventional definition of democracy for centuries did not see or even consider that the concept and the reality of its implementation excluded the majority of the people. During the Second Liberation struggles, the "progressive men" in civil society and in the opposition used to ask women to hold on with their issues so that we combine forces against the oppressive systems and then come back to the women's issues. These individuals and groups had no intention of challenging those theories. When you are dealing with centuries of oppression, of exclusion, of marginalization, what appears in the Constitution regarding Affirmative Action for the representation of women and other marginalized groups is no mean achievement. The proposal challenges the traditional leadership model based on theories of democracy and definition of people. This is a strategy that requires deliberate plans and efforts by the state and other institutions to combat discrimination and promote equal access to positions of leadership and resources to support equitable development. The inclusion of affirmative action policies is a milestone in our country and our region, but we must move further and challenge the philosophy of traditional thinking, institution building and policy making, among other issues. We are joining other nations in re-defining democracy for ourselves and challenging the mainstream as we also promote gender equality.

Indeed, challenging the mainstream must be an agenda for the second season of harvest.

### ***h) De-ethnicising the Mind***

As we move towards the second season of harvest, we must de-ethnicize our minds. In his book, Ngugi wa Thiong'o talks about "Decolonising the Mind." We now want to talk about de-ethnicising the mind for ethnic ideology and myths become a self-fulfilling prophecy that begins to play out in our institutions. Often the myths about the Agĩkũyũ, the Luos, the Luhyas, the Kalenjins, the Kambas and other Kenyans determine how these communities relate to each other. Building trust in our ethnic relations demands the development of new social myths and gradually dismantling the old/current ones. Like gender stereotyping, ethnic stereotyping is not just in the mind. It has a perfect material base, which helps to reinforce the social, political and economic conditions within which they are developed and employed. Competition over scarce resources and control of political and economic power become the basis for ethnic stereotypes. This is a significant issue that women must address.

Ethnicity is always a sensitive issue to deal with in a nation such as ours. It is sensitive due to the prevailing ideology, ethnic stereotyping and sense of marginalization among some of the ethnic communities, caused by economic inequalities and assumptions that communities benefit when their leaders are in leadership positions and it becomes their time to 'eat'. The truth is that it is a brotherhood club, not an ethnic club. We all know this, but myth and ideology are not about truth or facts. Often they play on people's fears or desires. They are just as categorical as traditional myths and don't ask if what was said is a fact but accept it on face value.

As I argued in *Time for Harvest*, "ethnic identity in Kenya and elsewhere, especially in Africa today, comes into focus when competition for autonomy among ethnic groups begins". This perception is common when different groups are reminded of inequality in the distribution of national resources by political leaders as was the case at the National Constitutional Conference at the Bomas of Kenya (2003–2004) and also during the Referendum in 2005. It also emerged during the collection of views from Kenyans and when ethnicity reared its ugly head during the 2007 elections (Kabira 2012: 313-332).

Women sometimes support their community silently on issues that are looked at differently by other ethnic groups. Even at the Conference at Bomas, when debate on matters turned ethnic, women were more or less observers. They had not consulted or prepared themselves for this turn of events. Moreover, men did not ask women for their opinion since men did not consider women as leaders of their communities. Ethnic identity for women is critical. That is one of their identities. If your community is threatened, you, your family, your people are threatened. We cannot, as women, therefore, move away from ethnicity and the problem it raises. Sometimes we fall into a trap when we refuse to accept our various identities openly. Women can learn from our history in the struggle for constitution making and plan on how to carry this debate forward. Hopefully, we may, in the not so distant future, be the ones to guide the nation to become a Nation that appreciates diversity, enjoys our differences and creates a new society.

Women must lead the way in disentangling ourselves from ethnic myths.

To expect women to deny what holds them together in search of a new universal common bond with other women becomes very problematic because as Masheti (1994: 1) says in *Delusions*, “the male culture is the culture, the male ideology is the ideology of the ethnic group”. He notes:

Patriarchy gives men legitimacy (from cultural/historical point of view) control over women reproduction, labour and conscience. The male ideology becomes “the ideology”. The foundation of patriarchy is in the different social institutions which define from a male perspective, the norms, practices and behaviour that is acceptable. It has roots in long established traditions of male dominance which have made the male perspective, ‘*The societal perspective*’.

This section has looked at our history with constitution-making and suggested we need to reflect on the movement and learn some lessons from it. We have learned that women have the power to bring about changes, the leaders can look at the multitude of those who walk behind them, talk with confidence. There is room for everyone, and we must influence institutions as we move towards changing the mainstream.

## **1.5 Reflections on Assumptions Guiding Kenyan Women’s Struggle**

This section reflects on the choices women made and may help us identify the assumptions that guided the struggles.

### ***a) Use of Women’s Traditional Power***

The struggle for women in leadership positions seems to have been guided by an approach which assumes that it is unwise to rock the boat. I say this because, throughout the process, women came up with scenarios particularly of their representation in institutions of governance and always reflected on how much critics would resist the proposals. In negotiating spaces for themselves, women have adopted this approach. This same argument influenced who would lead at different times. They needed women who were older, more seasoned, respected by the often aggressive male politicians and who did not seem to threaten the power barons. Men see these women as not so radical, as soft-spoken, using moderate language, but if they are old, they can be witty, challenging and authoritative. In some African traditions, men would see these older women as having reached the status of male elders. They deserve male respect. That is why women leaders such as Hon. Phoebe Asiyo, Hon. Jael Mbogo, Prof. Julia Ojiambo and Prof. Eddah Gachukia, among others were leading the negotiation teams. Women were looking for access to political power through paths of less resistance, using woman power and status supported by traditions. Younger women were aware that men would not dismiss these leaders and would dialogue with them.

### ***b) Status Acquired Through Professional Qualification***

It is important to note that power did not come only with age. Power also came with professional

qualifications and impacted on how men and women viewed 'learned' women in the professions. For instance, men and women alike assumed that women who were lawyers, political and social scientists were knowledgeable and sources of strength in women's negotiations.

### **c) *Power of Numbers***

Women also had established their power to organize. This power was hidden in the numbers that organizations brought to the table. During the review process, women realized that there was power in the numbers of organizations and used this to ensure that institutions of governance and democracy would open up space for them. They used the numbers to demonstrate that their views represented the women at the grass roots level. There were times when the Women Political Alliance claimed to have over sixty women organizations working in different parts of the country. For this strategy to work, women felt that every time men saw women as one big organization such as the Central Organization of Trade Unions (COTU), they would be given one or two positions in any committee, but when there were sixty organizations representing different regions, they could negotiate for even ten positions.

They also used the strength of women in political parties to bring the issues to the parties and open the doors for other women to have conversations with the political party leaders. These strategies showed that women's assumptions proved successful at the end of the process.

### **d) *Belief by Women that their Leaders have the Knowledge and the Power to Speak on their Behalf***

This assumption became very handy in the process. One day my stepmother who was in her 80's called me and asked me, "Wanjiku, what is this Katiba saying? Is it saying that our daughters should be allowed to abort? What is it saying?" I explained to her that the provision said: "abortion is not allowed unless the mother's life is in danger". She was pleased to hear that, and she said okay, "I will say yes to the constitution". My stepmother's message is essential. Throughout the process, women looked up to the women leaders for guidance and gave them support. They believed in them. They trusted them. They had faith in them. This attitude exploded the traditional social myth that women are their own worst enemies. This faith in their leaders, made women feel safe in the knowledge that women leaders depended on them as a shield to refuse to give up or give in.

As I noted in *Time for Harvest*, "during the review process, particularly during the women-specific sessions, women had high expectations for a better social order". They could feel the desire to be free to sing, to laugh, to break the chains. It is clear that tradition has buried the free woman and she is struggling to come out of the shadows and into the world, to be heard, to sing and to move the world with her intuition, her love, her dreams, and her song and dance. Kenyan women demonstrated this by giving their views during the review process (Kabira 2012: 91-213). They had faith in their leaders. This gave the women leaders much power, and this power propelled the struggle without ceasing. Those at the forefront became resilient. They could not let down all those millions of women that believed in them. This, we believe, gave the women leaders the energy they needed to continue.

The women of Kenya had, like the old woman in the poem *Grandma Remembers*, worked very hard

and explained themselves to everyone who was willing to listen and even to those who were not so willing to listen. They knew that the majority of the women believed in them and that, for them, was enough. However, this trust did not just happen. Women leaders and women's organizations built their trust among the women at the grassroots level. They became one with them. One significant event that happened was, when on the day of the debate on the 50 seats Bill, the women leaders were escorted by more than 2000 women to present to Parliament a petition with close to 1,000,000 signatures (Kabira 2012: 64-68). These signatures were collected over a weekend and were presented to the then clerk of the National Assembly. While receiving the petition, Mr Ndindiri noted that that was a significant day for Kenya because it was the first time in the history of the country's Parliament that petitions had been taken to Parliament by the public. He said that he was very proud of Kenyan women for being the first to initiate that process and added that even if Parliament did not pass the Bill, the women of Kenya would go down in the history of the country's parliamentary procedure with their petition to Parliament.

On another occasion, in April 2010 women leaders brought 1,000 women to the Bomas of Kenya to again review their gains and take a position on the 2010 Referendum. Women agreed that they had every reason to take the battle to the Referendum and ensure a YES vote that would pass the new Constitution.

**e) *Belief that Men always Want to Control what Women do***

At a Conference on Women's Economic Empowerment in Meru County (June, 2018) women shared their strategies for making husbands believe that they are the ones in charge of their homes. Many participants said that one of the ways of buying peace at the household level and being able to carry on with the barriers without '*Mambo Mingi*' was to make the husband a patron of the companies they (the women) started. The women argued that these men like big names but they think what women are doing is small business. Women argued they should keep them thinking they are big but "be clever in your business and do not tell them everything". This is much like the strategy of the African American slaves who used to say "let them see us only through the mask". This strategy is another philosophy that guided the women through the review process. Even when they had not agreed on issues, they would keep that close to their chest when they went to negotiate with the men.

This underscores the importance of the theory that the women's energy to bring about change and social transformation will be propelled by the support of a movement backed by women at all levels. This theory guided women's struggle towards a new constitution dispensation that took their issues on board. This should be a guiding principle in organizing the journey to the second season of harvest. Women at the grassroots level, farmers, small-scale traders, teachers, nurses, civil servants - all gave thumbs up for the women leaders to continue with the struggle. In our view, this was one of the most important reasons women had the energy to move mountains. Behind them were millions of women and the leaders felt their support, the warmth and power as they climbed to the top of the mountain.

### ***f) Men's Voices in the Struggle***

Although the struggle for women's empowerment and gender equality is generally led by women, the Kenyan women recognized the importance of building linkages with selected men who could be comrades in the women's struggle. Voices of men such as Ndindiri, Oki Ooko Ombaka, Simeon Nyachae, James Orengo, Kiraitu Murungi, Mukhisa Kituyi, Paul Muite, Raila Odinga, John Michuki and the Hon. Mwai Kibaki were like a drop in the ocean but women valued their support. The majority of the male politicians were either lukewarm or hostile to the women's agenda. It took Mzee Simeon Nyachae to say in Parliament that Parliamentarians will not remove affirmative action from the draft constitution. We must move on. It took Hon. Michuki to connect affirmative action for women to the post-colonial negotiations to implement the affirmative action programme for Africans in the business community. These were old men with experience. It took Hon. Kibaki to proclaim the 1/3 policy for women. Some younger men such as Muite, Ombaka, and Orengo were also instrumental with their support.

### ***g) Knowledge of what Women Want***

The women's agenda at the public hearings, through presentations by women's organizations and women leaders, was very coherent. Issues of land, inheritance, basic needs of water, health, food, security, education, gender-based violence, traditional cultural practices harmful to women, gender equality and citizenship were among their priority areas.

In addition, an Affirmative Action proposal for women representatives at all levels, with clear percentage of at least 30 per cent was found to be paramount. Women also focused on the rights of the elderly; rights within marriage; reproductive rights; property ownership and issues of succession and inheritance; cultural diversity, ethnic, regional and communal rights; good governance; culture and the family; natural resources; rights of vulnerable groups such as persons with disabilities; gender equality; equitable distribution of resources; environment and natural resources; and the rights of minorities. These issues are found in all constituency reports of the Constitution of Kenya Review Commission (CKRC). The convergence of the views by National Women's organizations and grass root women's movement working together created a unified agenda for women. The stories show that women's determination to change the world was evident in the struggle. There was a high level of consciousness among women.

## **1.6 Conclusion**

This chapter has argued that institutions established on male perspectives cannot produce an overall improvement in women's circumstances, nor can they lead to social transformation. We have demonstrated that for social and legal transformation to be realized, the perspectives of women's lives and men's lives must guide institutional design (Harding 1995: 302; Kabira 2012). We have also shown that imbuing institutions with women-centred worldviews is one of the areas we can focus on in our journey towards changing the mainstream.

The chapter has illustrated that we are moving from a season of harvest characterized by resistance to transforming ourselves and our world. During the first season of harvest, women were guided by the philosophy that their leaders know where women want to go and they can trust them. The leaders of the women's groups and organizations felt they stood on a firm foundation because the women believed and supported them. They found power in their capacity to organize and negotiate. We need to distil the knowledge gained from our experiences. We then need to translate this knowledge into power as we did during the review of the constitution. We need to sustain that capacity to organize so that we can prepare for the second season of harvest.

The second season of harvest will entail six essential tenets. The first tenet is for women to take their rightful place in the political arena and in other spaces, too. We must examine women's experiences and women's worldviews, and create new knowledge and new frameworks in promoting the democratic process in Africa because, as Andre Lorde says, "The master's tools will never dismantle the master's house" (Lorde 1984: 126). We, therefore, must take the struggle further by identifying critical tools of analysis and preparing the agenda for changing the mainstream.

The second tenet is dispelling myths about Africa and African women. The women of Kenya, like Molaro says, will be guided by true African feminism in the next season of harvest. The third tenet entails exploding tired old notions of male superiority and interrogating false dichotomies. In the second season of harvest, we may want to think about strategies that deal with mainstreaming women's knowledge, experiences and assumptions and may reflect on how to transform political, economic and social institutions as well as concepts such as democracy, governance, legal process, politics, and political power. We must challenge the traditional understanding of devolution, executive authority, legislature, judiciary, and their composition if we are to change the mainstream.

The fourth tenet involves summoning the faithful to explore unexamined areas of women's lives admonishing women and men alike about patriarchy. We may want to learn from our African women writers such as Mariama Ba (Senegal), Elieshi (Tanzania), Margaret Ogola (Kenya), among others, about how to deal with patriarchy at the household level and all other levels. However, before that, we may again decide to go to the women themselves, for if we want to know what they want to do about marriage, family structures and gender division of labour, we must have conversations with them for they know where the shoe pinches. That is the starting point. Not so long ago, the women Representative from Kiambu advised Gikuyu men to marry five wives if they can take care of them. However, women interviewed from Kiambu town poured scorn on that advice. This shows that the representative does not know what the women whom she represents want. We also need to acknowledge that gender relations are historical and contextualized, and we must not keep referring to traditions that are long gone. Most importantly, we must, as Sandra notes, examine the foundation and philosophy of such subjects as politics, science, technology, psychology, religion, law, among others and expose their gendered foundations.

The fifth tenet involves looking at the material realities and recognizing differences. As we deal

with women as the reference point, we need to look at the material reality and recognize the differences, whether ethnic, political or class, amongst women. It is essential that we recognize these diversities and appreciate them within the broad framework of transformative ideology. As we prepare for the second season of harvest, we must identify strategies that will help us dismantle oppressive structures. We must also recognize our ethnic identity, celebrate it, acknowledge it and see it as a cause for celebration rather than a reason for division.

The sixth tenet involves insisting that beliefs translate into transformative activity. There is much to be done. Challenging a system that has existed for thousands of years is not an easy task, particularly when dealing with a system that keeps mutating, entrenching itself, seducing its subjects, and co-opting a few of its victims while creating structures, philosophies, and ideologies to sustain it. However, it can be done as Phoebe Asiyo says in her book *It Is Possible*. Our secret is to start again and join many others in Africa who are walking this journey. We must remember: “never (to) doubt that a small number of dedicated people can change the world. Indeed, it is the only thing that ever has” (Margaret Mead (1901-1978) in *Women Know Everything*).

It is also important to remember that women in academia have a role in this mammoth task. We must continue to reflect on this journey and guide the process, not alone but with other women leaders in different spheres of life. We must also learn from the experiences of women from all classes, ethnicities, ages, professions, and disciplines.

Most of all, we must learn from our experience in the struggle towards the first season of harvest and build on that knowledge. We must learn from our history that gives us a basket full of fruits. During the next season of harvest, we will say with Chairman Mao Tse Tung: “Let a million flowers blossom”. Women must lead on this less travelled path.

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## CHAPTER 2

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# WOMAN OF LAW: KENYAN WOMEN'S TRIUMPH IN THE CONSTITUTION OF KENYA 2010

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PATRICIA KAMERI-MBOTE AND NKATHA KABIRA

### 2.1 Introduction

In 2008, Patricia Kameri-Mbote and Nkatha Kabira (the authors) published a piece titled the title *Separating the Baby from the Bath Water: The Politics of Constitution Making in Kenya*. We argued then, that although vicious political and ethnic intrigues characterized the constitution-making process, it was necessary to separate 'the baby' (the Provisions of the Constitution of Kenya, 2010) from the 'bath water' (the political intrigues). We contended that this was because the proposed Constitution 2005 represented major gains towards gender equality and equity. We opined that the proposed Constitution represented major gains towards gender equality and equity and delivered on many points that have been at the heart of gender and women movements and struggles in Kenya from the 1980s onwards. The Constitution contained provisions for civil liberties that are at the core of liberal feminist aspirations such as equality of opportunity in education, employment and political spheres; encapsulated nascent concerns such as equity and socio-cultural rights and went far beyond what we had in the old Constitution ('the independence Constitution') by going as far as domesticating many of the provisions of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, the Maputo Protocol and many other international and regional treaties safeguarding the rights of women all over the world.

In this 2008 piece, we argued that it was necessary to protect the 'baby' and avoid throwing away the baby with the 'bath water'. At the height of political and ethnic intrigues, we called on the women of Kenya to hold fast to the dream that was embodied by the 'woman of law' in the then Proposed Constitution of 2005.

This Constitution had gone through several stages of negotiations and consultations. The stages included preparing the CKRC, as well as the people for the review process and the research studies on constitutional issues to be undertaken by the CKRC, while comparing the constitutions in Uganda, Rwanda, Germany, South Africa, Tanzania, Ghana and Ethiopia. This stage was critical in defining the issues. It also entailed several stages of public consultations whereby, during the process of collection of views, Kenyans told the CKRC commissioners what they wanted in a new constitution. The next phase required the CKRC to analyse and collate the views. It was at this stage that the CKRC drafted the first report and draft bill to alter the Constitution.

Soon thereafter, the Commission disseminated the Main Report and the Draft Bill for debate and comments by the public. The CKRC then prepared an annotated compendium of people's comments and disseminated it to the delegates at the National Constitutional Conference ("Bomas Conference"). The next stage entailed the CKRC organizing and holding the Bomas Conference from 2003-2004. The delegates debated and made suggestions for amendment to the Draft Bill.

The Bomas Conference sought to make sense of what Kenyans had said during the earlier stages of the review. The resulting product was the Draft Constitution of Kenya 2004 (the Bomas Draft). In the final stage, Parliament considered the contentious issues and facilitated the process of national consensus and finally, the publication of the Proposed New Constitution 2005. The process was marred with vicious political intrigues which saw the Constitution defeated in a divisive Referenda that pit the "Yes" and "No" teams at loggerheads. This was not the end of the story. The process of getting a new constitution continued and eventually, the Constitution of Kenya 2010 was promulgated into law on the 4<sup>th</sup> of August 2010.

Ten years after this highly divisive Referendum, the authors revisit the impact of separating the 'baby' from the 'bathwater' in choosing to say "yes" to the Constitution of Kenya 2010. Ten years later we reflect on the gains as encapsulated in the Constitution of Kenya and revisit the importance of nurturing, nourishing and bringing up the 'baby'. In this paper, the 'baby' represents the significant gains towards gender equality and equity encapsulated in the Constitution of Kenya 2010. The 'bath water' symbolizes implementation challenges ranging from lack of political will to cultural and socio-economic hurdles.

The central issue we investigate in this chapter is that even though we continue to face challenges in implementing the provisions of the Constitution of Kenya 2010, nevertheless, the women of Kenya have much to celebrate. We make two central arguments. The first one is that although we continue to face challenges in implementing the provisions of the Constitution of Kenya 2010, the women of Kenya have much to celebrate because women are now at the centre of the interpretation and construction of law. The second argument is that women's role in the process of constitution-making directly correlates with the successes and gains reflected in all the chapters in the Constitution.

The chapter is guided by feminist jurisprudence, and critics of the maleness of law as depicted in the article *The Man of Law* by Ngairé N. These theories reveal that firstly, women ensured that the principle of affirmative action was adopted to guarantee their participation in all the review institutions. Indeed, all pieces of legislation attempt to mainstream this philosophy. Second, while recognizing that the traditional concept of law is supposed to be gender neutral, and the term 'man' is used to mean 'man and woman', the women negotiated for provisions in the law that would recreate the new social contract considering the philosophy underlying Feminist Jurisprudence by going beyond gender neutrality. Third, the participation of women in the negotiations ensured that the State adopted inclusive policies in the process of recreating a new social contract for Kenya as well as the implementation process.

The Constitution demystifies and diversifies the ‘man of law’ by recognizing that women in their socio-political and economic context bring richness to the development of law. The people-based approach embodied in our Constitution encourages inclusivity and understands the importance of the development of a social contract with all sectors of society and different groups, including minorities, persons living with disabilities, women, socio-cultural groups and religious organizations.

The chapter demonstrates that because of these values of inclusivity guiding the process as well as the desire to demystify the man of law, the Constitution of Kenya 2010 represents significant gains in the journey towards having women at the centre of articulation and interpretation of the law – a significant move towards the sovereignty of women.

This chapter examines women’s gains in the Constitution of Kenya 2010. While the Constitution has many benefits for women, the most significant ones include: having gender equality as a national value and principle of governance to inform activities at all levels; women’s political participation; the Bill of Rights that provides for equality, affirmative action and rights to education, health, food security, water and sanitation; access to land and property irrespective of marital status; and citizenship. The chapter argues that women’s role in the process of constitution making directly correlates to the successes and gains reflected in all the chapters in the Constitution. Indeed, the spirit of the women’s struggle is imbued both in the letter and the spirit of the Constitution. In discussing the gains, we connect what women said during the constitution review process (2000-2010) and what the Constitution provides for, so as to illustrate the extent to which the Constitution is a product of the women’s struggle for a new Kenya.

The chapter is divided into six main parts. The first part is the introduction. The second part is the background and context. The third part provides the theoretical framework. The fourth part connects what women said during the review process with the product as embodied in the Constitution of Kenya 2010. The fifth part analyses the gains in the Constitution and the sixth and final part concludes with some reflections on the post-2010 victories for women in Kenya’s Legal System.

## **2.2 Background and Context**

The journey towards the development and adoption of the Constitution of Kenya 2010 has been a long one for the women of Kenya. Starting a whole century earlier with Mekatilili wa Menza and Wangu wa Makeri to the days of Phoebe Asiyo and Wangari Maathai and up to the days of Charity Ngilu and Martha Karua, despite all the challenges discussed in this book, women continue to rise. For each one of these women, Maya Angelou would say, “*their mantra continues to be. Still, I Rise!*” Indeed, after years of struggle, the Constitution finally became the law of the land that recognized the existence and rights of women.

Throughout the 1980s and 1990s, critics often dubbed the Kenyan Constitution as gender-biased and gender-blind. The constitution review process, therefore, presented an excellent op-

portunity for women to renegotiate their space and to reclaim their rightful place in the society. In November 2010, after ten years of intense negotiations, consultations, meetings, and discussions among different stakeholders (NGOs, political parties, civil society members, and religious groups) a legislative and institutional framework for reviewing the Kenyan Parliament finally adopted a legal and institutional framework for the review of the constitution. The Constitution of Kenya Review Commission (CKRC) was the product of a merger of two commissions: the People's Commission of Kenya (The Ufungamano Initiative) and the Parliamentary Select Committee. The work of the CKRC was to ensure a comprehensive review of the Constitution 'by the people of Kenya'. The Commission consisted of 29 commissioners, the Attorney General and the Secretary, and reflected Kenya's ethnic, geographical, cultural, political, social and economic diversity and the principle of gender equity.

The women of Kenya were at the centre of the review process and insisted on gender equality and equity and affirmative action. The objectives of the review included: guaranteeing national unity; establishing a democratic system of government that enshrined good governance, constitutionalism, the rule of law, human rights, and gender equity; promoting the people's participation in the management of the country; and promoting respect for ethnic diversity.

As we shall see, each of these guiding principles is enshrined and mainstreamed in the Constitution of Kenya 2010. Women participated in the talks leading to the review process, and the CKRC took their views on board. Women participated in the Constitutional review stakeholders' consultations at Bomas and in the process of nomination of five commissioners by religious and civil society organizations in 1999. Women also consulted with political leaders, with religious leaders, with NGOs and civil society organizations to ensure that the review process took on board the issues that were at the centre of the women's movement. Some defining issues included: Affirmative action and the inclusion of the historically marginalized and minority groups. Secondly, ensuring that the final product safeguarded the wellbeing of the people of Kenya while paying attention to, among others, gender equity; equal citizenship; equality and redress of the discrimination or hardships suffered in the past; and respect of human rights and fundamental freedoms. It also sought to ensure that outcome would safeguard equitable access to national resources; full and inclusive participation in public affairs; and the provision of basic needs to all Kenyans through the establishment of a fair framework for economic growth.

During the review process, as we argued in the piece in 2008, Kenyans saw the Constitution as a power map. In the words of Okoth Ogendo,

... a 'power map' on which framers may delineate a wide range of concerns. The process of Constitution making, which involves, among other things, making choices as to which concerns should appear on that map has become the central question of political discourse.

Essentially, different interest groups had varied political reasons for participating in the making of the new Constitution. As Okoth Ogendo notes in his classic piece titled, *Constitutions with-*

*out Constitutionalism*, the constitution can be used for the continued exercise of uncontrolled power. Others may want to gain political power and regional control through new Constitutional rules, which therefore, promote personal and sectarian interest. The majority may wish to adopt a new democratic social covenant which supports freedom, rights for all, equitable access to resources and opportunity, prosperity, peace, and unity among others. For others, the Constitution is viewed as a political tool for ascendance to and fall from power. Accordingly, the decisions made about the process are not made primarily on merit, but on their political value (See Ogendo 1993).

Consequently, the constitutional review process was characterized by uncertainty due to the role played by politics, ethnic interests, and political party interests. The politicization of the review process generated differences that were marked by the constant shifting of positions by political actors. As we argued in 2008, the initial Constitution of the Kenya Review Commission Act of 1997 was severally changed to accommodate consensus or even shifting positions vis á vis the process of Constitution making. Several stakeholders argued that the current Cap. 3A, as most recently amended through the Constitution of Kenya Review (Amendment) Act, 2004 had problems. For example, the Electoral Commission of Kenya (ECK) indicated that the referendum provisions in the Act might be inadequate.

The political polarization also impacted on the Draft Bill and the Naivasha Accord, which proposed the scrapping of the Senate. Later, the entire legislature deliberated the Bomas Draft and the Naivasha Accord in *Kilifi where they crafted a Kilifi Draft*. Sixteen women Members of Parliament took part in the negotiations at Kilifi. Throughout conflicts of interests arose between the women's agenda and the political parties' agenda. The campaigns relating to the Referendum, whether to vote "Yes" or "No", were also another major challenge and presented yet another conflict of interest issue for women. As noted earlier, we characterized these ethnic and political intrigues as 'the bathwater' and hoped that Kenyan women would vote "yes" for the 2005 Constitution. Sadly, this Constitution never saw the light of day.

It took several more years of intense negotiations following the post-election violence in 2007-2008, the drafting of Agenda 4 by the Kofi Annan Mediation Team and the formation of the Team of Eminent Persons to review the contentious issues, for the Constitution of Kenya 2010 to see the light of day. The authors of this piece contend that the 'baby', as captured in the Constitution of Kenya 2005, for the most part, remained intact even in 2010. As such, in choosing to say "yes" to the 2010 Constitution, Kenyans preserved the 'baby' while throwing away the 'bath water'. During the 2010 Referendum, women, for the most part, were united in voting overwhelmingly for the 2010 Constitution – a constitution which we argued disaggregated the man of law and captured the letter and the spirit of the Woman of Law.

### **2.3 Theoretical Framework**

In this section we discuss the theoretical framework guiding our discussion of women's gains in the Constitution of Kenya 2010. We rely on three main theories: the 'man of law' as espoused

by Ngaire Naffine; Feminist Jurisprudence as described by Carol Smart in *Feminism and the Power of Law* and the feminist critique of the social contract theory as expressed by Carol Pateman, among others. Together these theories expose the law as being male oriented, espousing male values and excluding women from the law's purview.

### **a) 'The Man of Law'**

'The Man of Law' by Ngaire Naffine is a piece that we find critical in locating our discussion. According to Ngaire, the law is full of contradictions although it professes to be internally coherent and precise. Its institutions, principles and general orientation may all be seen to reflect and reinforce the priorities of those who interpret and administer the law. Because of this, the law still plays a vital role in reproducing the existing patriarchal order (Naffine 2001: 2-3).

The 'Man of Law,' according to Ngaire, is an idea of humanity imbued with specific social and physical characteristics and moral qualities that are considered ideal by those that interpret and administer the law. Ngaire argues that 'the man of law' is used by scholars as the central justifying character of the *Gesellschaft* concept of justice (Naffine 2001: 23). The man has five main characteristics. He is male, educated, affluent and over twenty-one years old. He functions in the public sphere without reference to the demands of a family. He is entirely self-interested. He is not seen to benefit from the emotional and physical services of a caring wife. The *Gesellschaft* concept of justice wholly severs the 'man of law' from the life of the heart (Naffine 2001: 25).

In this piece, Ngaire makes the following set of arguments. Firstly, she argues that the law's characterization of the person often serves to render women (and many men) marginal in the eyes of the law. Furthermore, in *Gesellschaft*-type laws, the man is deemed to be the natural inhabitant of the public sphere. On the other hand, the laws accord the woman a more constraining domestic role (Naffine 2001: 11). This means that man belongs in the 'public,' often associated with the state, politics, government, while the woman belongs in the 'private,' the sphere often described by scholars as the domicile for reproduction and 'domestic' roles such as childbearing, wifehood and motherhood, among others. Additionally, she argues that the omission of the experience of women from our *Gesellschaft* type of justice is neither an innocent oversight nor a conscious male conspiracy against women. Instead, it seems to be a function of a positive and genuine commitment on the part of the law and its agents to a traditional view of the sexes (Naffine 2001: 13).

Moreover, she reiterates that there is a clear relationship between law and class because the idea of neutrality itself displays a class bias and sanctions wilful blindness to existing inequalities between people (Naffine 2001: 13).

Importantly, because of uneven distribution in the society, the real effect of the constitutional ideals of freedom and equality is threefold. The first is that it preserves the existing rights of people who do own property. The second is that it quiets possession of that property. The third is that it engages in profitable transactions while conferring an entirely meaningless right to negotiate on the market and to freedom from interference with their property, on those who have little with which to interfere (Naffine 2001: 16). According to Ngaire, the law embodies a middle-class style of masculinity (Naf-

fine 2001: 18). *Gesellschaft* law envisions and projects on to the law, this middle-class man whose scholars project physical, moral and social characteristics of the ‘ideal type’ of man (Naffine 2001: 25-26).

We argue that for far too long the Law in Kenya was male and exposed male values because of adopting and embracing this *Gesellschaft* conception of law and justice as received by the British during the colonial encounter. As a result, the law not only used male characteristics, male standards such as the ‘reasonable man’ standard, and the doctrine of coverture in Family Law, among others but also embraced an idea of a man in the structuring of legal institutions, ideologies, and terminologies. The characteristics that Gilligan describes as the features of men such as objectivity, logical, rational, strong, black and white, among others, are superimposed into the meaning and character of law. As a result, women are presumed, under the Blackstone’s doctrine of coverture to be under the wing and the cover of the man and as such women could not own land because the man is the head and the woman is under the cover of the man. In addition, the woman could not pass on citizenship rights because she was under the wing and the cover of the man. She also could not play a role in certain political spaces because she was domiciled by law to her role as a mother, as a wife and as a daughter – because she belonged in the “private,” in the “domestic” sphere.

### **b) Feminist Jurisprudence**

To fully appreciate the strategies and the struggles of women in the process, we need to understand feminism as an ideology and feminist frameworks as a strategic way of organizing thought and informing practice. Feminist jurisprudence is a philosophy of law based on the political, economic, and social equality of the sexes. The Constitution is a legal document and therefore, needs to be analysed by scholars from feminist perspectives. Law can be used to reinforce or give permanence to certain social injustices, leading to the marginalization of certain groups of people. Legal rules may give rise to gender inequality, and legal systems can become obstacles when legal and social transformation demands changes in legal rules, procedures, and institutions to remove existing disparities.

During the review process, feminist jurisprudence inspired the values and philosophies adopted by women in Kenya. These include the desire to end discrimination; the promotion of gender equity; occupation by the woman of her rightful place in society; the creation of a more democratic and healthy nation; ensuring maximum participation of women and men in decision making; and equal access to opportunities and resources. From the public consultations to the first sessions of civic education, to the women Constitution Review commissioners to the women at Bomas and back again to the women commissioners, to the women Parliamentarians, and to the women of Kenya, one sees a united women’s agenda.

The women’s agenda has consisted of renegotiating a contract that sanctions patriarchal leadership of men. It subordinates women to men and in no small extent utilizes domestic violence to legitimize its hegemony and reproductive and other gender roles.

### **c) *Feminist Critiques of The Social Contract Theories***

Feminists all over the world have been critical of the social contract theories as espoused by philosophers such as Hobbes, Locke, and Rousseau. They have argued that the social contract theory has a historically located man in mind. Like Ngyire, feminists have criticized the social contract theories for their lack of recognition of feminist perspectives. Carole Pateman argues, for instance, that beneath the social contract there's what she calls a 'sexual contract' – an agreement between men to dominate women in marriage, prostitution and other societal arrangements (See Pateman 1988). She also argues that Hobbes, Locke, Rousseau, and Rawls all have a specific man in mind – a man who is self-interested, individualistic, a product of capitalism, and interested in protecting his private property interests. This man, she argues depicts the western liberal individual and does not capture the reality of women in society (See Pateman 1988). Charles Mills has further explained that this contract is also problematic because it fails to consider the place of black men. He argues that beneath the social contract, there is a racial contract – an agreement between white men to dominate black men. This contract, he claims, leaves out the perspective of black men in the making and remaking of society (See Mills 1997). Africans, too – have been critical of the social contract theory. Critics such as Menkiti have argued that the social contract based on western liberalism does not depict the nature of African society. He explains that unlike western society that begins with individual rights, African societies start with community rights (See Menkiti 1984).

Similarly, the great Mbiti Maxim, "*I am because we are since we are therefore I am*" is at the centre of the African social contract theory (Menkiti 1984: 171). The formation of society under African thought precedes the existence of individuals, and the process of becoming an individual is processual. He also argues that the relationship between the living and the dead determines rituals, naming systems and all factors that are significant in the formation of society (See Menkiti 1984).

In this chapter, we argue that the women of Kenya, too, critique sharply the social contract theory. They claimed that the social contract in Kenya must be representative of the face of Kenya and women must be at the centre of the law. Accordingly, the Kenyan women participating in the review process demystified; disaggregated and ultimately ensured that all organs and institutions mainstreamed the 'woman of law'. Indeed, all legislative and institutional frameworks governing the review process included the woman of law by integrating Affirmative Action policies in the constitution of all review organs, and laws.

Second, while recognizing that the traditional concept of law is supposed to be gender neutral, and the term 'man' is used to mean 'man and woman,' the women negotiated for provisions in the law that would recreate the new social contract considering the philosophy underlying Feminist Jurisprudence by going beyond gender neutrality.

Third, the participation of women in the negotiations at Safari Park 1, 2, and 3 (which provided the blueprint for Constitutional reforms), ensured that the Kenyan Parliament included them in the process of recreating a new social contract for Kenya.

The separate identity of women and men was achieved through the disaggregation of participants in

the laws governing the review process to include male leaders and female leaders, male experts and female experts, thus recognizing the need to demystify and diversify the ‘man of law.’ In negotiating for the law that was to govern the review process, there was recognition that different members of different communities would bring richness to the development of the law.

Finally, the negotiation for the adoption of the one-third representation principle was designed to secure a critical mass of women, whose voice could influence the process, ensuring that women were both seen and heard.

## **2.4 Kenyan Women’s Victory in the Constitution of Kenya 2010**

This section focuses on analysing the extent to which the Constitution of Kenya 2010 mirrors what Kenyan women said they wanted. The section relies on the thematic issues identified by the CKRC and isolates the specific issues that directly connect to what the women said they wanted. In all these areas, women are at the centre of the construction and interpretation of the law. This section analogizes what Kenyan women said to what the Constitution of Kenya 2010 ultimately provided. We also thematize the part alongside the schematization of the issues by the CKRC Commission Report of 2005. The section focuses on the following areas: Culture, Affirmative Action, Bill of Rights, the Legal System, the State and Political System, Participatory Governance, Organs of Government, Devolution and Land and Property Rights.

### ***a) Culture***

The women of Kenya presented their views to the Constitution of Kenya Review Commission on various aspects of life as they relate to culture. The historical and the present political, economic, social and cultural factors influenced the views they expressed. These views may be summarized as follows:

- On diversity of the Kenyan people:
  - i. The Constitution should recognize and celebrate the diversity of the Kenyan People. (Article 11)
  - ii. Our differences should be seen as strength and not as a weakness (Art 44, Clause 1-3).
  - iii. The Kenyans collective experience and shared values should form the basis for the development of national culture (Art 11, Clause 1-3).
  - iv. National celebrations, symbols, designs, etc., should have Kenyan values. This includes national days, national currency, Coat of Arms, etc.
  - v. National holidays which symbolize national and shared values should be established. Do away with parochial or divisive holidays (see Art 8 & 9 on Symbols and National Days).
  - vi. The state should promote peaceful co-existence and solidarity among all Kenyan communities (See Art 241, Clause 1-6 on Defense forces and Defense Council).

- On languages:
  - i. Recognize and respect all Kenyan linguistic communities.
  - ii. All Kenyan languages should be respected, promoted, preserved, protected and developed.
  - iii. Kiswahili should be the national language.
  - iv. Kiswahili and English should be the official languages (The Constitution of Kenya 2010: Art 7).
- On compensation and restitution:
  - i. All Kenyan peoples, cultural, linguistic and religious communities have the right to organize, practise and manifest their culture, identity and heritage.
  - ii. All Kenyan peoples, cultural, linguistic and religious communities have the right to maintain, protect and develop their culture (past, present and future); this includes historical, archaeological and religious sites, material culture, designs, ceremonies, festivals, knowledge, folklore, literature, creative, visual and performing arts, artefacts, ornaments, customs, traditions, rites, rituals and names (The Constitution of Kenya 2010: Art 11, Clause 1-3).
  - iii. Establish a mechanism to deal with historical claims and rights: including property rights, land rights, appropriation, and access and visitational (The Constitution of Kenya 2010: Art 40, Clause 1-6; Art 67, Clause 1-3).

As a result of this, the Preamble of the Kenya Constitution recognizes the right to culture for all the women of Kenya who come from various ethnic, cultural (Art 11), linguistic (Art 7) and religious groups. It also recognizes that women are protected as individuals, as families and the nation at large (the Constitution of Kenya 2010). In addition to the recognition of women as groups, the Constitution also explicitly outlaws customary law that is inconsistent with the Constitution (Art 2, Cl 4). In addition, the Constitution provides that equality, social justice, inclusiveness and human rights form part and parcel of the national values and principles (Art 10, Cl 1). Article 19 (1) of the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. Article 21 (3) stipulates that State organs and all public officers have the duty to address the needs of vulnerable groups within the society, including women, older members of the society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. Article 27 (3) provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Furthermore, the Constitution states at Article 27 (4) that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital

status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

### **b) *Affirmative Action***

According to the CKRC Report, women told the Commission that they felt marginalized; that they comprised one of the lowest proportions of female legislators in the world, had a lower rate of participation in education than men and were not adequately involved in business and government to the same extent as men (See Art 97, cl 1 &2; Art 98, Cl 1). They also noted that customary law denies women inheritance of land and often leaves widows and their children destitute (See Constitution of Kenya 2010: Art 60 on Principles of Land Policy).

The women urged the CKRC Commission to ensure that the State should provide facilities and opportunities to enhance the status of women to enable them to realize their full potential and advancement. Furthermore, the law ought to integrate women into all levels of decision making, allow women to express their views and establish a women's desk to monitor progress. Also, the Constitution should outlaw religious and cultural practices that discriminate against women indirectly or directly.

The Constitution of Kenya 2010 contains elaborate provisions in response to these concerns from women. For instance, the Constitution recognizes women as part of the marginalized groups (Art 100). It then proceeds to provide for Affirmative Action as a means of improving the position of such groups. As a result, the requirement to have not more than two thirds of any elective or appointive body coming from one gender has significantly increased the number of women in administrative positions (The Constitution of Kenya 2010: Art 27, Cl 6; Art 27, Cl 8; Art 56; Art 81 par b). Not more than two thirds of the members of representative bodies in County governments should be of the same gender. The woman of law is now in many areas of law and governance in Kenya (Constitution of Kenya 2010: Art 175; Art 177 par b; Art 197).

### **c) *The Bill of Rights***

There is no better way for us to describe the quest for women's rights than to use the example of Akinyi in the CKRC Process as documented in Kabira, *Time for Harvest (2012)*. Here is her story:

Akinyi: You see, when I got married, my husband was very good to me. He would come home every day with something for our child and me. Sometimes, he would bring half a kilo of meat or fish. Now he does not sleep in my house. He says I smell, I am dirty, I don't cook well and that I have grown old. I have four children now; the oldest one is now eight years, and the youngest is one year old. I don't have anyone to help me with the children when I go working in the garden, or fetching firewood. I have to go looking for food every day.

Mary: How old are you, Akinyi?

Akinyi: Twenty-four years.

Wanjiku: Twenty-four years old. You said you are old.

Akinyi: You see I got married a long time ago. It is now eight years since I got married. I was going to school but there was not enough food in our home. My father gave me to these people. My husband's people. I had grown up in these plains where nothing grows. There is famine all the time. It is very dry. We are not lucky like those nearer the lake who can go fishing. We are between the hills and most of the time it does not rain. They say we are in the area where there is rain shadow. We are eleven in my mother's house. My father has four wives, so there are many other children in my father's homestead. My parents could not feed all of us so I was given away to my husband's people. My parents said, if I could get food, they would be happy.

Akinyi: The government should provide us with medicine and water. We have no water here; we walk very far to fetch water. Sometimes, I leave at 5 am to go and fetch water for drinking so that by seven in the morning, I am back. In the dispensary here, there are no nurses and there are no drugs. We have malaria all the time and sometimes you just wait for it to get out of your body or you go to the kiosk and get medicine.

Mary: That is true, we need drugs here and we need nurses. You have spoken for many of us." (Kabira 2012: 110-111)

According to Kabira, many other women at this endorsed, reiterated and agreed with what Akinyi had said. Because of the many stories from Akinyis, Wanjikus, Marys, Fauzias, Rukias, and others, the Constitution of Kenya 2010 translated many women's concerns into constitutional rights (See Kabira 2012).

The Cultural laws that are oppressive to women and contravene the Bill of Rights are invalid. The Constitution protects women from forceful cultural rites and practices at Art 2 (4). The Constitution of Kenya 2010 at Art 44 (3) also provides that the general rules of international law and any treaty ratified by Kenya form part of the law of Kenya. International law includes all agreements promoting women's rights. Cultural laws that are oppressive to women and contravene the Bill of Rights are invalid as per Art 2 (5), 2 (6) and Art 2 (4).

Also, the Constitution of Kenya 2010 protects the political, economic and social rights of women. The law provides women with equal protection and fundamental freedoms (Art 27 (1) and Art 27 (2)). The Constitution also provides for equal access to political and economic opportunities as well as for equality in cultural and social spheres. Art 27 (3) provides that women have the right to access reproductive health care. They are also guaranteed economic and social rights without gender discrimination at Article 43. Though abortion is prohibited, it is allowed if the pregnancy poses a risk to the mother's life. This exception protects the health and life of mothers. Article 26 (4) of the Constitution protects women from forceful cultural rites and practices. Article 44 (3) provides that the Constitution protects women against forced marriages. It also offers women

equal rights in the marriage at Article 45 (2). At Article 45 (3), the Constitution also protects women from discrimination on all grounds, including pregnancy which is unique to women. Art 27 (4) provides for the establishment of the Kenya Human Rights and Equality Commission which helps to promote gender equality and gives women a platform to address inequalities. Art 59 (2) of the Constitution states that it is the equal duty of both parents to provide for the child.

At the heart of the Bill of Rights is the woman of law – Akinyi, Rukia, Wanjiku, Naserian, Nanjala, and Amina.

#### ***d) The State and the Political System and Participatory Governance***

At the heart of women’s quest for constitutional reforms was their participation and representation in decision-making. The goal of increasing the involvement of women in politics had remained elusive. The provision on equal representation of men and women in the Bill of Rights (not more than two-thirds of the members of elective or appointive bodies shall be of the same gender) has been the rallying call for women in seeking equality. Political parties are expected to respect and promote human rights, fundamental freedoms, and gender equality and equity. Gender equality in political parties is essential for fair representation in elective positions. The Constitution protects the provisions relating to women by ensuring that the only way the Kenyan Parliament can change these provisions is through a national referendum.

In addition, the Constitution of Kenya 2010 has many provisions on participatory governance of women. For instance, the women have the right to register as voters as per the requirements outlined in Art 83 (1) of the Constitution. Article 85 of the Constitution of Kenya also allows individuals to run for elective positions as independent candidates and provides that women may run for office without having to be members of political parties. Article 90 of the Constitution requires allocation of party seats that promote gender parity.

Furthermore, Article 98 which provides for the representation of women in the Senate is boosted by the nomination by parties of sixteen women, plus one woman to represent the youth and one to represent persons living with disabilities. Also, Article 175 of the Constitution provides that not more than two-thirds of the members of representative bodies in County governments should be of the same gender. The two-third gender rule offers women more opportunities to be in governance. These participation provisions disaggregate the ‘man of law’ by ensuring that the ‘woman of law’ is seen and heard.

#### ***e) Organs of Government***

The women of Kenya described the organs of government of yesteryears as being discriminatory and patriarchal. They argued that the organs of government needed to include women. As a result, several provisions were mainstreamed into the Constitution to ensure that the law included the woman of law in all organs of review.

The Constitution of Kenya 2010 also recognizes the rights of women under the chapter on the

executive. It places the onus on the President of Kenya to uphold the core values enshrined in this constitution, of which Affirmative Action is critical.

The Constitution of Kenya 2010 at Article 174 enshrines Affirmative Action as a core guiding principle in the exercise of power in devolved governments. The Constitution provides that all commissions and independent offices conform to the one-third principle of representation. The establishment of the National Gender and Equality Commission is also a critical milestone for women as it has monitored the implementation of constitutional provisions relating to women.

Furthermore, the Constitution of Kenya 2010 also recognizes the rights of women under the chapter on the executive. It places the onus on the President of Kenya to uphold the core values enshrined in this Constitution, of which Affirmative Action is critical.

The Constitution of Kenya 2010 also provides for the ‘woman of law’ in the Judiciary. The amendments in the 2010 Constitution have enabled an increase in the number of women judges and magistrates. The Kenya Women Judges Association notes that 53% of Chief Magistrates, 40% of Senior Principle Magistrates, 35% of Principle Magistrates, 44% of Senior Resident Magistrates, and 59% of Resident Magistrate are women. There are now as many as 56 female Judges (39%) and 86 male Judges, as compared to only nine women and 33 men in 2010 (See Gender in Kenya). Currently, the number of male and female magistrates stands at 230 and 216 respectively, which is a near 50-50 balance (See Gender in Kenya). The number of women judges and magistrates will continue to rise as the Kenyan government continues to appoint more and more women, in line with the constitutional provisions on equality.

### *f) Devolution*

The addition of 47 seats in the National Assembly for women’s representatives and raising the number of Members of Parliament from 210 to 290 creates more opportunities for women in leadership positions. Article 97 provides that 18 seats in Senate be specifically reserved for women. Article 98 of the Constitution of Kenya provides that the Cabinet is a public body and thus the two-thirds gender rule should be observed during the appointment process. In addition, the Constitution of Kenya 2010 prohibits traditional dispute resolution mechanisms that contravene women’s rights. Art 159 (3) also stipulates that one of the aims of devolution is to protect the rights of marginalized groups. Women fall under this group. Art 174 (e) and Art 100 provide that not more than two-thirds of the members of representative bodies in County governments should be of the same gender. The two-third gender rule offers women more opportunities to be in governance.

Furthermore, Articles 175, 177 (b) and 197 of the Constitution facilitate the increase in the number of women members of Parliament. The provision in the Constitution for forty-seven women, each elected by the registered voters of the counties and each county constituting a single member constituency has increased the number of women in the National Assembly. In addition to these 47 women, another 16 were elected by Kenyans through the political parties. Even though we are yet to meet the ‘not more than two-thirds gender’ rule, the country has made significant

progress. Unfortunately, the drafters of the Constitution did not provide the mechanism for achieving the two-thirds gender rule in the Constitution.

With the introduction of devolution, the Constitution established County Assemblies. In these Assemblies, the ‘not more than two-thirds gender’ rule was satisfied because the Constitution provided a way out if not enough women were elected competitively as Members of County Assemblies. The Constitution also established the Senate. Moreover, the Constitution of Kenya 2010 at Article 174 enshrines Affirmative Action as a core guiding principle in the exercise of power in devolved governments.

### ***g) Land and Property Rights***

Another significant gain for women is in land and property ownership. Very few women own land, which is very important for livelihood. The Constitution provides for the rights of women and their freedom from discrimination in property matters. The Constitution of Kenya recognizes Gender equality as a vital land policy principle. Further, among the laws that Parliament is expected to pass, laws ensuring equality in matrimonial property holding and inheritance are included. It is heartening to note that The Land Act 2012, the Land Registration Act 2012, the Land (Amendments) Act 2016, the Matrimonial Property Act 2013 and the Marriage Act 2014 have ensured that the woman of law is at the heart of land and property rights.

## **2.5 An Analysis of Women’s Gains in Kenya’s Constitutional Dispensation**

Kenya’s legal system moved away from one that barely acknowledged the place of women to one that celebrated women in every sphere of life. The new constitutional order made provisions for, among other things, the following:

- nondiscrimination based on sex;
- socio-economic and political rights of women;
- women’s citizenship rights;
- women’s representation in decision making bodies;
- Affirmative Action;
- customary law, which is discriminatory, null and void to the extent of its inconsistency;
- equitable distribution of resources (See Kameri-Mbote and Kabira 2008);
- protection of matrimonial property;
- the right to own property.

Women as a special group, as well as being part of the larger Kenyan community, had far-reaching gains in the Constitution of Kenya 2010.

Firstly, the new Constitution placed all Constitutional authority in the people and enhanced their dignity and identity by recognizing their diversity of culture. Secondly, the Constitution sets out a new value system premised on integrity. Thirdly, the value and integrity of all Kenyans were secured, and Kenyans could claim all their rights in courts, including socio-economic rights. Fourthly, it protected and advanced the rights of minorities and marginalized groups and communities through the principle of affirmative action, which the Constitution embraces as a fundamental constitutional principle for the allocation and application of resources and opportunities.

Moreover, the Constitution sought to protect and safeguard the natural environment and resources to ensure the sustainability of the livelihoods of all the people of Kenya. It also provided for an elaborate system of representation and participation of the people at all levels of government through a network, considering the diversity of all Kenyans and upholding the right to be voted into office as an independent candidate.

The Constitution also provided a system of checks and balances in all organs of government, granting citizens the right to raise complaints. Furthermore, it strengthened the role of representative bodies to monitor the powers of the executive arm of the Government, more particularly, by establishing Constitutional Commissions and offices to oversee the fight against abuse of power.

Also, the Constitution provided for a more efficient justice system, emphasizing substantive and accessible justice, delivered by qualified and highly esteemed judicial officers. It also provided for the devolution of power; enhanced participation and representation of the people; mobilization and control over resources; the possibility for a needs-based development and allocation of resources; and increased citizens' responsibility in the government and management of public affairs.

The Constitution put in place a more rational, efficient, accountable and transparent fiscal management system, emphasizing the equitable allocation of resources across all regions and priorities of the people.

## **2.6 Conclusion**

The Constitution of Kenya Review Process challenged the 'man of law' and forced Kenyans to rethink and reimagine the nature of the legal person. The result was the radical shake-up of the 'man of law' in the Judiciary, in the legislature, in the executive, in education, in the legal process, in the democratic process – in every socio-political and economic space. For instance, using gender-neutral laws where 'he' meant 'she' and 'he' with women remaining in the shadow of the law as gendered interpretation and construction of the law was demonstrated.

We argue that the Constitution is a victory for women because the 'woman of law' has emerged against all odds. The women of Kenya have much to celebrate because women are now at the centre of the interpretation and construction of law and women's role in the process of consti-

tution making correlates with the successes and gains reflected in all the chapters in the Constitution. We have seen that the law has been demystified by the ‘woman of law’ in the areas of culture, affirmative action, Bill of Rights, the legal system, the state, the political system, participatory governance, organs of government, devolution and land and property rights.

We conclude this piece by noting that changing the mainstream through constitution making, is a process not a destination. The journey to the proverbial “new dawn” continues. Women continue to RISE. As Maya Angelou says, “into daybreak that’s wondrously clear, women continue bringing the gifts that my ancestors gave. They continue to rise...” Indeed, constitutional implementation, like constitution making, is a process, not a destination. The journey to “daybreak” endures, as the woman of law continues to rise and women resiliently continue to change the mainstream.

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## CHAPTER 3

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# GENDER AND GOVERNANCE IN KENYA: WOMEN'S JOURNEY BEYOND NUMBERS

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MARIA NZOMO

### 3.1 Introduction

This chapter is informed by the view that human relations, including gender relations, are fundamentally organized around power relations. The issues and concerns that arise from those relations revolve around the challenges of sharing power in an equitable and just manner. The gendered power hierarchies that emerge in the allocation of strategic resources and labour are legitimized by a patriarchal social-cultural ideology that is deeply embedded and normalized by many societies.

This chapter, therefore, argues that in Kenya as elsewhere, the power question is central to the persisting inequalities between women and men in governance. The chapter thus seeks to analyse the Kenya women's journey on the road towards gender equity, equality and social justice through effective participation in public decision-making structures and processes. It reflects on the significance of the gains made; the hurdles that remain and provokes us to critically reflect on the next steps and what needs to happen; the strategies that need to be deployed and followed through; the kind of critical actors/torch-bearers that need to emerge to guide the next phase(s) of the journey and the outcomes that should be envisaged.

The central argument of the chapter is that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired equity and social justice.

The chapter is informed by my journey as a feminist International Studies scholar, seeking to make sense of the world in which we live; a world characterized by various types of social injustices and human beings' self-inflicted pain and loss through wars and avoidable conflicts, among others. These largely arise, in my view, from insatiable selfishness and greed; desire for monopoly of power and unwillingness to share it with others. Consequently, those with strategic power, whether economic, social or political, resist any efforts to share it. In respect to gender relations, the power question is central to the persisting inequalities between women and men in governance.

Despite increasing knowledge which confirms that it would be in the interests of all women, men and the society as a whole to cooperate, share power and work together as partners to promote

the core common goods of development, security and human rights, progress has been slow in engendering and democratizing governance and its outcomes.

Masculinised ideological and socio-cultural norms have in many societies been employed to legitimize gender-based exclusions and marginalization in the public decision-making arena. Centuries of struggle to banish the negative aspects of socio-cultural values, especially patriarchy, continues to face resistance. The problem is further complicated by the dominant economic ideology of international capitalism, that not only lacks a 'human face', but tends to increase rather than decrease gender-based inequalities.

This chapter seeks to analyse Kenya women's journey on the road toward gender equity, equality and social justice, through participation in governance. It reflects on the significance of the gains made this far and the hurdles that remain; but more importantly, it provokes us to critically reflect on the next steps and what needs to happen; the strategies that need to be deployed and followed through; the kind of critical actors/torch-bearers that need to emerge to guide the next phase(s) of the journey and the outcomes that should be envisaged.

The central argument of the chapter is that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired equity and social justice. The chapter also makes the point that whereas the entire society is responsible for transforming and democratizing governance, elected, nominated and appointed leaders, both women and men, bear a special responsibility to represent and deliver on mandates delegated to them by taxpayers.

Thus, notwithstanding the momentous challenges women encounter in accessing public decision-making positions, the journey towards gender equality and social justice remains unfinished until critical actors and gender champions emerge to effectively contribute and sustain the process of eliminating patriarchal and hegemonic governance structures, values and processes that undermine the achievement of sustainable equity and equality for both women and men's enjoyment of human welfare, security and rights.

It is also important to keep in focus that women, just like men, are neither homogenous nor united by only one common ideology or philosophical belief. Beyond their shared biology and experiences with patriarchy, there are some more significant differences of class, ethnicity, race, religion, sexual orientation, political affiliation, etc., which may exert greater influence on women's behaviour in public life.

I note that the journey for women in Kenya thus far indicates incessant pursuit of gender equality in Kenya to participate in governance processes effectively and that some effort has also been made to acquire an influential voice and use the governance platforms to advance gender and other societal interests, on an equal basis with men. These efforts however, are often undermined by the low level of societal acceptance and belief in gender equity and equality as a common good. In this connection, the chapter notes that the incremental gains that have been

made, especially in developing legal, policy and institutional norms, have yet to make a significant impact in transforming societal and governance values and outcomes of decision-making, in a democratic direction.

This vexing issue is part of what this chapter attempts to address. The chapter thus examines the extent to which societal behaviour demonstrates and upholds democratic values; the rule and spirit of the law; promotes gender justice and general public good. Guided by the broad feminist theory on which the analysis of this chapter is anchored, the chapter assesses the gains; challenges and prospects as well as the underlying ‘drivers’ that are likely to determine that the transformation process is moving forward. The chapter starts by reviewing the existing state of knowledge on gender and governance; the debates on the significance of the numerical gains made by women on the journey towards gender equality; international and national norms developed to serve as basis of advancing gender equality and democratic governance; the milestones and the challenges encountered on the Kenya women’s journey towards equity and social justice and the way forward.

### **3.2 Gender Equality and Democratic Governance: The State of the Art**

Governance has been defined in a variety of ways. The World Bank (1989) defined governance as the “sum of the many ways individuals and institutions, public and private, manage their common affairs” (cf. Rittberger & Zangl 2003; The Commission on Global Governance 1995:2). Many generally concur that ‘good’ (democratic) governance entails open, accountable and transparent processes; capacity, effectiveness and efficiency; a professional ethos that combats corruption, exclusion, nepotism and personal gain; and strict financial control and management of public funds. In this chapter, governance is defined as the management of public affairs, in a manner that encompasses the mechanisms, processes, and institutions, through which citizens and groups articulate their interests, mediate their differences and exercise their rights and obligations.

Many scholars have laid importance on the issue of women’s participation in governance. Over two centuries ago, John Stuart Mill pointed out that the participation of both the majority and minority will have to be ensured for a government to be competent and efficient. In his book on Representative Government (originally published in 1861), he advocated bringing intellectual and social diversity into government by extending the franchise to women, noting that the idea of denying suffrage to half of the population and thus losing their talents in society, was *non utilitarian idiocy*; while Rule and Zimmerman (1997) argue that a parliament would fail to recognize or comprehend issues of great importance to women in society, if there were few women members (cited in Reynolds 1999: 547-8). The European Network of Experts (1997:8) also observed that a balanced representation of women and men at all levels of decision-making guarantees better government, informed by a cross-fertilization of inputs of both women and men as biological groups, their own and unique perspectives, experiences and values and ideas on how power should be exercised.

Ekvall (2015) has argued that decisions made and policies implemented by governance institutions shape perceptions of the roles which women and men play in society, as well as determining their access to rights and resources. She also notes that involvement of women in defining these policies and processes, and in influencing the institutions that produce them, make it more likely they will respond to the different needs and situations for both women and men, and contribute to gender equality. Hence, reducing patriarchal norms has an impact on the way governance is carried out by involving women (Ibid; Brody 2009; Pearce 2000) note, access to decision-making bodies will serve no purpose unless it is part of a broader framework to transform power relations within society and eliminate the discriminations women consistently experience. He thus argues that transforming gender relations must be addressed at every level of society, beginning with the domestic sphere, as “democracy in the home is a precondition for democracy abroad”. This should be enjoined by transformation of gender relations in the economic sector and political arena, bearing in mind that mainstreaming women is no longer enough. Annica (2010) also argues that gender relations, being relations of power, define the access and nature of participation in governance that tends to privilege men and masculinity while marginalizing femininity and its concerns. Other research done on the issue of gender and governance has shown a strong correlation between patriarchal norms and poor governance. This research has noted a correlation between an increase in women’s empowerment and rights, and significant improvement in overall governance, as manifested in better societal quality of life; enjoyment of rights and reduced gender-based violence and other forms of violence (Miguel 2007; Ostby 2005; Pinker 2011).

### 3.3 Representation and Democratic Governance

Chowdhury (1994: 21) offers five reasons why increasing women’s representation and participation is necessary: (i) it is a democratic and justice imperative; (ii) women’s presence in governance gives legitimacy to the State and the democratic process; (iii) women, just like men, are entitled to have representatives to lobby for women-specific needs; (iv) women’s increased participation in politics and decision-making bodies facilitates positive democratic change and opens up more spaces for them; and (v) women’s representation in governance has a demonstration effect that encourages citizens to appreciate women’s leadership capacities.

Pitkin (1967), among other things, has made the case that public democratic governance generally takes the form of a representative government, in which people elect and delegate authority to lawmakers (representatives), who should stay accountable to their electors. Representation then should be the instrument through which the majority of citizens, who do not participate directly in the day to day management of public affairs, find voice and effective vehicle for addressing their welfare; channelling their grievances and other matters of concern to them. (Dahl 1989; Fenichel 1967; Reid 1989; Pennock and Chapman 1968; Schwartz 1988; Manin 1997; Rehfeld 2005).

As correctly and succinctly articulated by Pitkin (1967), representation consists of making citizens’ voices, opinions, and perspectives ‘present’ in the public policy-making processes. Thus,

political representation occurs when political actors speak, advocate, symbolize, and act on behalf of others in the political arena. Pitkin identifies four different types of representation: i) formalistic representation, which consists of formal authorization to represent; ii) Descriptive representation whereby a representative resembles those being represented and is assumed to have common interests and experiences with the represented iii) Symbolic Representation whereby a representative is perceived as ‘standing for’ the represented symbolically, regardless of what he/she has done for the represented and iv) substantive Representation, which entails the actions taken on behalf of and in the interests of, and as a substitute for the represented.

### 3.4 Making Women’s Presence in Governance Count: beyond Numbers

Inspired by Pitkin’s theory of representation some gender and feminist researchers on ‘beyond numbers’, suggest that in order to attain a governance framework that promotes gender equality, there is need for a conscious and concerted effort by women in public governance, to set an agenda for change and to follow through with policy impacts, and accountability mechanisms and processes linking the state and civil society. Crook (2006 & 2009); Hassim (2003), Nzomo (2002, 2003, 2011, 2012, 2013, and 2014) have also argued that formal access to institutions of governance is an important first step and an essential democratic requirement.

However, formal access and presence in governance institutions is neither an end in itself nor does it necessarily translate into influence and capacity for substantive representation. Numbers, however large for any interest group, do not, on their own, guarantee power and influence. Shirleen, Hassim & Amanda Gouws (2011), in their paper, *Power To Change* also make the case that political systems do not necessarily evolve incrementally in a democratic direction; rather, direct interventions are needed in institutional design and in political cultures to ensure inclusion and participation of all citizens. Formal political institutions provide actors with the opportunities to either change and challenge patriarchal norms, or legitimize the patriarchal status quo and ensure continuity in social and political life characterized by boundaries of inclusion and exclusion (Pierre 1999: 390).

The biases present in formal institutions towards masculine values, actors and processes often entail that some groups and ideas are privileged over others, resulting in unequal access to resources (Lowndes 2002: 91). Nzomo (2002, 2003, 2011, 2012, 2013, and 2014) has also made the case that women in political leadership, just like men, should not be expected to represent other women homogeneously and to promote a transformative gender agenda. Women just like men have only two shared commonalities - their biological makeup and a shared experience of patriarchy. Beyond this, identity differences (of class, ethnicity, race, religion, sexual orientation, political affiliation, etc.) become apparent. Goetz and Hassim (2003), provide a framework (dubbed triple “A’s”), for assessing women’s political performance, by considering their levels of access, presence and influence across different political arenas - the State, the Political System and Civil Society, across three political processes: Access, Agenda setting and Accountability.

This framework recognizes that women’s access to the State does not necessarily lead to a feminist agenda setting and accountability to women as a constituency. Instead, there is a need for critical ac-

tors, both women and men to emerge and consciously take on the role of gender champions and feminists within and outside the State and seek to push for gender-responsive governance. In this context, one of the ways to assess performance is by the extent to which critical actors are able to set an agenda that advances actionable gender equality policies followed by tangible outcomes.

All these scholars thus concur that in promoting gender and social justice agenda, the narrative needs to shift from solely numbers to include 'beyond numbers'. The attainment of a threshold of 33% women presence in decision-making does not guarantee that this 'critical mass' becomes critical actors/representatives, who 'act for' and substantively advance gender and democratic agenda. Many remain symbolic, and/or descriptive representatives who may formally 'stand for' the gender agenda, but substantially have other diverse interests, capacities and interpretations of their role in public decision-making positions. Because of this, women's status and capacity for meaningful political representation is said to largely depend on: (i) the kind of access they have to formal political structures-parliaments, political parties, etc.; (ii) the specific socio-cultural, economic and political contexts that mitigate women leader's capacity/inclination to influence policy and in turn fulfil a transformative gender agenda and remain accountable to the constituent group(s) they represent; (iii) the size of the numerical presence/physical numbers of women in political office and (iv) the nature of the institutional norms and practices pertaining to governance institutions. In addition, this chapter takes cognizance of the diverse and unique values and experiences those women possess and bring into politics as people's representatives; which when joined together with male inputs, can contribute to improving the quality and outcomes of governance (Phillips 1995; Freeman 1975; Tripp 2006; Peterson and Runyan 1993; Bystydienki 1992; Shanley & Pateman 1991; Stanley 1990).

Under the circumstances, the extent to which women can convert formal representation into substantive representation depends only partially on their capacity and determination to succeed. Overall, women enter the political arena carrying the burden of patriarchal cultures and values that privilege masculinity in public governance and undervalue femininity, which is assigned reproductive rather than public functions. Consequently, the rules, norms and values that underwrite to political engagement, reflect masculine values, as prescribed by culture and tradition. Hence entry into public governance does not eliminate hegemonic masculinity nor alter significantly gender inequality in the division of labour and power, which limits women's engagement in public life and creates gender imbalance in political representational structures and processes. The point is that, even if women were a homogenous interest group (which they are not), the prevailing patriarchy and hegemonic masculinity, would still pose a significant challenge on their formal presence in governance to make a substantive difference.

### **3.5 UN Perspective: Numbers and Beyond Numbers**

A UN expert group meeting held in Addis Ababa in 2005 noted that it is of utmost importance to have equal numbers of women and men in political office, based on the following: i) the justice argument – women have the right to be represented in equitable numbers with men; ii) the

experience argument – women’s experiences, just like men’s, add value to policy-making and implementation; iii) Group interest argument – interests of men and women are different and thus women are needed in representative institutions to articulate other women’s interests; iv) the critical mass argument – women can only effectively represent other women’s interests in governance, when they achieve a minimum 33% numerical level of representation; v) the democracy argument – the equal representation of women and men enhances the democratization of governance; and vi) the role model argument - women are attracted to political life if they have role models in the arena.

While acknowledging the importance and significance of increasing numbers, the experts noted that there is need to assess the contexts and conditions under which equal presence can become effective in empowering women and men, and thereby sustain democracy. In other words, substantive representation of women must look ‘beyond the numbers’ of women ‘representatives’ that claim to speak for women’s interests but without tangible outcomes. It has, however, been noted in this regard that within specific political, cultural and social contexts, women representatives do attempt to address women’s basic needs and tend to be less corrupt than men and hence bring some credibility to governance (Vargas and Wieringa 1998). But this finding cannot be generalised. The experts emphasized that it is necessary to go ‘beyond numbers’ and assess to what degree and under what conditions elected women actually represent and contribute to gender equality.

The experts identified three important conditions that contribute to the ability of women to promote gender equality effectively: i) the presence of critical actors of individual women (and men), who play key roles in the political process; ii) critical structures in the form of political processes and institutions that enhance women’s political influence and iii) critical junctures - of certain socio-economic and political moments when forces combine to provide unprecedented opportunities for women to influence policy-making and implementation process.

The case for thinking beyond numbers is thus a call for more nuanced and constructive dialogue and analysis on the how, who and what of attaining a gender responsive and inclusive democratic governance environment, with rules of engagement that facilitate both women and men leaders, provide a level playing field to set and realize desired agenda(s) and outcomes.

It is on the basis of this framework that this chapter analyses Kenya women’s journey to date and project on the future, but focus primarily on the post-colonial era. The issues addressed in this chapter focus on the following areas: (i) the status and significance of women’s access to State/political institutions (e.g. Parliament, Executive and Judiciary); (ii) the normative (legal, policy and institutional) frameworks put in place to provide guidelines for democratic governance and their efficacy; iii) the gains made in accessing governance institutions and in engendering and democratizing institutional culture towards morality in statecraft and social responsibility.

### 3.6 International Accountability Norms and Mechanisms for Promoting Gender Equality in Governance

Ideally, international legal, policy and institutional norms should provide a powerful accountability instrument as well as a mechanism for countering patriarchy and other cultural norms that undermine gender equality in governance. My argument in this section is that Kenya as a member of the international community has adequate international norms and frameworks to anchor the development of its national norms and practices.

Since the UN Charter was promulgated in 1945, numerous legal, policy and institutional norms have been put in place to promote gender and equality across the board. The Charter clearly articulates the commitment of all member states to uphold the principle of gender equity and equality. The 1948 Universal Declaration of Human Rights further declared that all human beings are born equal in dignity and Rights. This was followed in 1965 by the coming into force of the three UN treaties that are normally jointly termed as the International Bill of rights on political, economic and socio-cultural rights.

Many other similar international conventions and treaties were put in place between 1945 - 1995. The most notable treaty that emerged in the intervening period was the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is regarded as the principal international treaty for promoting gender and women's rights. Article 7 of CEDAW calls upon State parties "to take all appropriate measures to eliminate discrimination against women in the political and public life of the country". Further, at the 16th session in 1997, its Committee on the Elimination of Discrimination against Women adopted general recommendations regarding the participation of women in public life and emphasized that State parties should ensure that their constitutions and legislation complied with the principles of the Convention and that they were under an obligation to take all necessary measures, including temporary special measures, to achieve equal representation of women and men in political and public life.

It is also important to note that UN agencies, of which all states are members, carry the mandate of promoting gender equity and equality. The United Nations Commission on the Status of Women (UNCSW) is the key international institution put in place in 1946 to serve as an anchor for all issues related to gender and women's rights. At its forty-first session in 1997 UNCSW adopted Agreed Conclusions (1997/2), which emphasized that attaining the goal of equal participation of men and women in decision-making, was important for strengthening democracy and achieving the goals of sustainable development.

The United Nations Security Council in its resolution 1325 (2000) on women, peace and security, reaffirmed the important role of women in the prevention and resolution of conflicts and in peace-building and stressed the importance of their equal participation in decision-making and full involvement in all efforts for the maintenance and promotion of peace and security. Furthermore, the UN General Assembly resolution 58/142 of 2003 on women and political par-

ticipation, urged Governments, the UN system, NGOs and other actors to develop a comprehensive set of policies and programmes to increase women's participation in decision-making, and support and generate political will, serious commitment to the promotion of the advancement of women and the goals of gender equality.

Despite the existence of these and other international norms, the scorecard of State and non-State actors indicates slow progress towards the democratization of the hegemonic and masculinised structures, culture and processes of governance prevailing in many societies, including Kenya.

This concern was well articulated fifty years after the launch of the UN Charter by the 1995 Beijing Platform for Action, which drew attention to the persisting inequality between men and women in decision-making across the world, with Kenya being among the worst offenders. It reaffirmed women's persistent exclusion and marginalization from formal politics and other governance spaces. The Platform noted that this situation undermines the achievement of effective democratic transformations in governance institutions, including parliaments.

The Beijing Platform for Action emphasized that:

... women's equal participation in decision-making is not only a demand for justice or democracy, but also a necessary condition for women's interests to be taken into account. Without the perspective of women at all levels of decision-making, the goals of equality, development and peace cannot be achieved. (Para. 181)

The Platform, therefore, identified the need to develop implementable strategies to ensure women's equal access to and full participation in power structures and decision-making; as well as increase women's capacity to participate in decision-making and leadership. In this regard, it recommended the following strategic and implementation measures:

- i. to set specific, measurable targets for achieving gender-balanced composition in all governance bodies and committees as well as public administration and judiciary;
- ii. integrate women into elective positions in political parties;
- iii. promote and protect women's political rights;
- iv. reconcile work and family responsibilities for both men and women;
- v. enhance leadership and gender awareness training;
- vi. develop transparent criteria for decision-making positions and vii) create a system of mentoring.

### **3.7 The Kenya National Legal, Policy and Institutional Accountability Mechanisms: Constitution 2010**

The 2010 Constitution and the various legal and policy frameworks deriving from it are a key source of norms and accountability mechanisms. These mechanisms include Article 10 of the Constitution that provides for fundamental national values that should form the basis of the gender relations and governance ethos. Chapter 4 that constitutes the Bill of Rights provides a comprehensive template for actualizing and implementing individual and group rights and in particular, gender equity and equality. Chapter 6 on Leadership and integrity sets out strict requirements for those seeking public leadership and prescribes responsibilities of leadership, Conduct of state officers, financial probity etc. The Right of Recall of non-performing elected MPs as provided for under article 104 of the Constitution was expected to force MPs to remain accountable to the electorate. This article, along with the Elections Act, reinforces the provisions of Chapter 6 of the Constitution.

The 2010 Constitution also provided the legal platform for the domestication and adoption of laws and reforms on women's participation in politics. These laws have resulted in an increase in women's representation within all levels of government and, consequently, allowed women to increase their influence in decision-making processes. However, a large gap still exists between commitments pursuant to the ratification of the texts and the reality of women's leadership. Much more needs to be done to guarantee the full realisation of women's rights to representation as envisioned in the international law, the Constitution of Kenya, and in Kenyan law.

Many observers have hailed the Kenya Constitution as one of the most progressive in the world, as it complies with the international and regional obligations arising from treaties and conventions and other commitments signed and or ratified, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the 2003 Protocol to the African Charter on Human and People's Rights on the Rights of Women.

The 2010 Constitution has also provided the basic and most fundamental normative framework for guiding the implementation of promoting rights and democratic governance environment. The institutional mechanisms analysed below, all draw their mandates from the 2010 constitution.

### **3.8 Gender Aspects of the Kenyan State Mechanisms of Governance: 2010-2018**

As the analysis below indicates, Kenya is no longer short of legal, policy and institutional mechanisms to provide the basis of transforming gender relations and governance in a social justice direction.

#### ***a) Parliament, The National Assembly and the Senate***

Parliament is one of the three arms of government that is charged with the important roles of legislation and oversight of other State organs. Chapter 8 of the Constitution of Kenya estab-

lishes the Legislature. Article 93 of the Constitution states that “There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.” To implement the two-thirds gender rule, Parliament first drafted the Constitutional Amendment Bill, 2015 (the Duale Bill) with provisions for a gender top-up clause like the one applied to county assemblies.

The constitution confers upon Parliament the core roles of legislation and exercise of oversight functions over other state organs. These twin roles give Parliament enormous powers to develop and facilitate the implementation of governance norms; ensure accountability of other state organs and promote gender equity and equality in Parliament and other governance institutions. The two Houses of Parliament shall perform their respective functions in accordance with the Constitution as stated in Article 93 (2) of the Constitution.

These mandates confer wide-ranging strategic powers upon Parliament, which it could utilize to advance gender equity and equality and democratize and engender the culture of parliamentary governance. Despite these powers, the Kenyan Parliament has demonstrated to be one of the most masculine and patriarchal governance institutions in Kenya. As a legislative body, Parliament has to-date failed to pass any bill that would implement the two-thirds gender rule. Indeed, the extent of Parliaments’ role in the promotion of gender equity and governance can best be assessed against its failure to pass any bill that would implement the two-thirds gender rule.

Parliament first drafted the Constitutional Amendment Bill, 2015 (the Duale Bill) with provisions for a gender top-up clause like the one applied to county assemblies. In a move that seemed to contradict the Duale Bill, the Legal Affairs Committee of the National Assembly also tabled a separate bill – popularly referred to as the Chepkonga Bill– which provided for gradual implementation of the gender rule.

The Chepkonga Bill lengthened the timeline for the implementation and ensured that the Parliament would not be dissolved if it failed to meet the Supreme Court’s August 2015 deadline. In the meantime, another bill was tabled in Senate, similar to the Duale Bill, but also limiting to two the number of terms one can serve as a county woman representative. Yet another bill, known as the Green Amendment, was developed by an informal parliamentary caucus on human rights, proposing to substantively change the Constitution through a referendum. This bill proposed to create twin constituencies to offer additional competitive seats for women.

All these gender focussed initiatives aimed at implementing the two-thirds gender rule failed to garner sufficient votes in parliament, despite receiving endorsements from President Kenyatta and others. In my assessment, the various lame attempts by some MPs to pass their respective versions of the two-thirds gender bill, lacked the seriousness and commitment necessary to provide an implementable/ enabling legislation for implementing the two-thirds gender rule.

The lack of harmony in coming up with one implementing legislation, along with the consistent lack of quorum every time the bill came up for voting, demonstrates lack of political will and entrenched patriarchal governance values that undermine gender equality.

(See also, [http://www.parliament.go.ke/About\\_Parliament/](http://www.parliament.go.ke/About_Parliament/))

### **b) Parliamentary Gender Mechanism: KEWOPA**

At the parliamentary level, two female parliamentary caucuses are in existence. These are the Kenya Women Parliamentarians Association (KEWOPA) and the Kenya Women Senators (KEWOSA). The two contribute to Parliament's work in the area of integrating gender into laws and policies. Similar caucuses are also established in the 47 County Assemblies. These two have, inter alia, jointly with sections of the women's movement, been lobbying and putting pressure within and outside Parliament, for the implementation of the 'two-thirds gender rule'.

The Kenya Women Parliamentarian Association (KEWOPA), of which all women MPs in the National Assembly are automatically members, was launched in 2004. On its website (<http://www.kewopa.org/>) KEWOPA states that its vision is that "women and men are equitably represented in Parliament and decision making in public and private spheres to promote sustainable development. It also articulates its mission as being:

... to promote the advancement of parliamentary democracy by enhancing knowledge & understanding of democratic governance and facilitate the networking of women parliamentarians for the socio-economic and political development of Kenya (KEWOPA).

It also outlines its contribution in attaining its vision and mission. These include: i) the realization of the family Bills: - Marriage Act 2014 and the Matrimonial Property Act 2013 and Protection Against Domestic Violence; Act ii) Spearheading the push for the realization of the two thirds gender principle as proposed by the Constitutional Amendment Bill 2015 (No. 4), initiated by some KEWOPA members; iii) developed gender-responsive budgeting guidelines for Parliament; iv) developed a Members Handbook on Sexual and Reproductive Health and Rights. Other legislative KEWOPA contributions include: (i) the Children's Act of 2002; (ii) the Sexual Offences Act of 2006; (iii) the Counter Trafficking in Persons Act of 2010; (iv) the review of the Employment Act of 2007; (v) the Prohibition of Female Genital Mutilation Act of 2011 and the Breast Milk Substitutes (Regulation and Control) Bill now before Parliament.

Women-friendly policy changes initiated by KEWOPA include: (i) the tax waivers for sanitary wear and diapers; (ii) engendering the 2008 revised Standing Orders of the National Assembly; (iii) securing paid maternity leave for women MPs and female-designated washrooms; (iv) the appointment of women MPs as Chairs or Co-Chairs of five of the standing Parliamentary Committees and (v) the 2008 establishment of the Equal Opportunities Committee (EOC) that monitors and promotes equal opportunities for all marginalized groups. KEWOPA has also played a strategic role in engendering the 2010 Constitution making and subsequent implementation processes (Nzomo 2011).

Based on the achievement's scorecard as presented, it can be argued that under KEWOPA, Kenya women in this key governance institution have performed well, despite their numerical minority status and patriarchy-inspired resistance to gender equality encountered from most male MPs. KEWOPA seems to have demonstrated some capacity to set a gender agenda in Parliament.

This has led some to conclude that, if a ‘critical mass’ of women was attained in Parliament, they would secure more transformative changes in Parliament. That however, is debatable, especially when one examines the demonstrated inability to set an agenda on the vexing governance question of corruption. KEWOPA members, for example, have consistently voted with male MPs in support of the endless unilaterally determined salary increases in a society, where the majority of Kenyans are wallowing in poverty. My view of what needs to happen for the output of KEWOPA to change is to put more effort in ‘recruiting’ and ‘converting’ hegemonic patriarchs into gender champions/feminists whose alliance can be counted upon in promoting gender equity and equality.

The argument that an increase in the numbers of women MPs would automatically lead to positively influence governance is not supported by evidence of the record of performance of the more than ten African countries where women political representatives have attained and exceeded the 30% threshold. Like KEWOPA, they have also successfully spearheaded the enactment of some women and gender-responsive legislation, but have been unable to transform the patriarchal culture and norms of political institutions. Furthermore, the current political stalemate in Kenya occasioned by the male political elites’ resistance to the implementation of the 2/3rds gender quota is a clear signal of the power of patriarchy and the likely battle ahead, as patriarchal forces continue to defy and resist gender equality. This reminds us that the Kenyan State and other institutions of governance remain gendered and greater physical presence of women will neither automatically alter the dominant masculine culture embedded in those institutions nor the gendered distribution of political power and other resources.

Formal access by Kenya women into governance institutions, without change in the patriarchal institutional norms, hinders women’s capacity to set a transformative gender and democratic agenda; and/or strengthen accountability mechanisms. The point therefore is that, a key priority agenda of women political representatives should be to develop better strategies/mechanisms for transforming patriarchal institutional values that normalize inequalities and undermine and render ineffective any legislative successes. This will entail sacrifice, political will and commitment.

### ***c) Executive Mechanism: State Department for Youth and Gender Affairs***

This State Department on Youth and Gender, domiciled in the Ministry of Public Service, Youth and Gender, which in turn is located in the Presidency - the executive arm of government, is a strategic institution, which if well utilized, can make a significant contribution towards the positive governance change Kenya requires. The department is responsible for developing national policies on gender, creating standards to guide the implementation of policies, making legislative proposals to parliament and providing leadership in that regard. More specifically, it is mandated to:

- (i) Institutionalize gender mainstreaming in ministries, departments and agencies as well as in the devolved county level and private sector;

- (ii) Promote the development and review of gender policies and legislation;
- (iii) Promote research, collection and analysis, storage and dissemination of sex-disaggregated data to inform programing, and
- (iv) multimedia campaign to promote women leadership as an advocacy tool.

To-date, the Department scorecard includes: i) revision of the National Policy on Gender and Development to align it with the Constitution so as to realize the participation of women, people with disabilities (PWDs), youth, ethnic and other minorities; ii) development of the National Equality Policy to facilitate implementation of the constitutional equality principles in all sectors; iii) the provision of guidance on the application of Article 27 on affirmative action with respect to gender and iv) issuance of a national strategy document to support women in elective politics and guide state and non-state actors on the implementation of programmes to prepare women for elections.

While recognizing the achievements made by the Department and its parent ministry, it is significant to note that the Department has given a scorecard containing only a contribution towards the normative policy norms required to realize gender equity and equality. The next, but more challenging step is to initiate implementation programmes and monitor the extent to which such outcomes contribute to the process of total societal change that benefits all.

Change of mind-sets is a crucial part of that process. The Department's programme initiated and launched in August 2018 is a good example in that direction. At the launch of this programme, the Department recognized and celebrated a few Kenya women heroines, who have distinguished themselves in public service and in particular, blazed the trail in search of gender equity and equality in Kenya. But for this programme to have long-term and sustainable impact, it needs to be integrated and entrenched in all other governance institutions.

#### ***d) The Office of the Registrar of Political Parties (ORPP)***

Political parties serve as the main conduit for candidates to compete for and attain elected office. The ORPP is the statutory body charged with the main responsibility of creating and enforcing regulations on the formation and operations of political parties, as contained in the Political Party's Act (PPA). The PPA is a key accountability tool, for enforcing and monitoring political Parties' compliance ensuring probity, transparency and fairness in the recruitment processes of all political office aspirants. In so doing, ORPP should thus enforce accountability of political parties as provided in the PPA. In particular, ORPP should play a significant role in the implementation of the two crucial gender equality articles of the Kenya 2010 Constitution: Articles 27 and 81(b). For example, those placed on political party lists should be selected based on merit; proven commitment and service to the nation; leadership ability and integrity and in compliance with the no more than two-thirds rule. Since its creation, the ORPP lays claim to having completed a number of activities to improve the representation of women in political parties, including advocating for amendments to the PPA that created more enforcement provisions for

the ORPP. In 2017, the ORPP created a gender-sensitive nomination checklist for political parties to guide the drafting of party constitutions, and conducted some auditing of political parties for compliance with the Constitution and amended the PPA. The ORPP works directly with the Independent Electoral and Boundaries Commission (IEBC) to audit nomination lists and regulate parties during the electoral process. The ORPP also lays claim to some positive achievements in ensuring compliance with the two-thirds gender principle.

However, the ORPP could do more to promote women's representation and effective participation in the governance structures and processes of political parties. Though provided with tools for enforcement and sanctions, the ORPP's performance in utilizing its enforcement powers to advance meaningful gender equity and equality in the governance structures and processes within political parties has been negligible. The scorecard indicates glaring masculine and hegemonic party control, which are treated as personal and exclusive political vehicles by their predominantly male owners, unregulated and unsanctioned by ORPP. It has further been noted in this regard, that ORPP has focussed largely on holding meetings and workshops designed to showcase the benefits of women's inclusion, and developing materials to guide the political parties in complying with the law. This is far from adequate. For example, its claim to having contributed to women's greater representation in political parties is not supported by evidence. Although most parties claim to have met the two-thirds gender constitutional requirement in their governing bodies, evidence as recent as 2017, indicates that women still typically occupy low positions, such as women league leaders and deputies to other positions, which do not offer visibility and has minimal influence on party decisions.

Furthermore, a gender breakdown of IEBC's candidates list for the 2017 elections revealed that prior to the election, the number of women lagged far behind that of their male counterparts. Of the 14,501 candidates who participated in the 2017 elections, only 8.7% were women, despite the concerted efforts of various actors to increase the pool of aspiring women (NDI & FIDA 2017).

Moving forward, ORPP should, for example, redirect a large chunk of its time and financial resources towards more targeted, sustained and comprehensive civic education to raise the civic and gender awareness of both women and men on their rights and responsibilities; their role in contributing to the development of a democratic and gender equitable governance culture and its correlation with the improvement of overall societal welfare. The ORPP could also better collaborate with the other relevant agencies, such as Directorate of Immigration and Registration of Persons, the National Council of Persons with Disabilities, and the IEBC, the National Cohesion and Integration Commission (NCIC) etc.

Women as members of political parties have their own role to play in enhancing their capacity to influence and promote gender equity and democratic governance. In this connection, it is worth noting that party systems comprising one or two dominant parties such as Kenya, party loyalty and identification is often very strong in parliaments and discourages representatives, both women and men, from forming cross-party alliances. Ultimately, women MPs are often unable to balance between their accountability to their respective Parties that demand adherence

to the party ideology and, on the other hand, their role to champion the gender agenda, whose ideology may be in contrast to that of their respective political parties. Women parliamentarians thus need to address this challenge if they wish to effectively contribute to the transformation of the patriarchal governance culture that prevails in Parliament. Women parliamentarians often face the dilemma of having to follow their party's directive or to articulate demands for women and gender equality.

***e) National Cohesion and Integration Commission (NCIC)***

The NCIC is a statutory body established under the National Cohesion and Integration Act No.12 of 2008. The establishment of NCIC recognized the need for a national institution to promote national identity and values, mitigate ethno political competition and ethnically motivated violence, eliminate discrimination on ethnic, racial and religious basis and promote national reconciliation and healing. Its core mission is to “develop and sustain processes that alleviate all forms of ethnic discrimination and promote diversity through knowledge’ (<https://www.cohesion.or.ke/index.php/about-us/ncic-at-a-glance>). It also promotes the constitutional national values of professionalism; integrity; accountability and transparency; affirmative action for the marginalized and the minorities; and inclusivity and respect for diversity.

Towards this end, in 2016 the National Cohesion and Integration Commission (NCIC) audited commissions, parastatals, and county public services to determine how diverse they were. The audit showed that women comprised only 12 per cent and 33 per cent of the chief executive officers of parastatals and national commissions, respectively. These statistics indicated a wide gender gap in the top offices of government despite the law providing for gender equity and equality. In the 2017 general elections, the NCIC generally included women in its mandate for monitoring conflict, but was not specifically focused on women.

NCIC, in my view, is a crucial institution which could greatly improve gender relations and the quality of governance in general if various organs of government desisted from undermining its capacity to implement its mandate. For example, to-date it has been noted that many of the cases of breach or failure to comply with provisions of social cohesion and integration taken to the prosecutory and judicial organs for action have often been undermined by political interference. Again, the challenge here is not an inadequate framework or the norms therein contained. Rather, the key challenge is the dominant institutional culture that undermines the development of a culture that upholds the rule of law, promotes equity and equality, as well as values of accountability.

***f) The Independent Electoral and Boundaries Commission (IEBC)***

The IEBC has the constitutional mandate to conduct and supervise referenda and elections of all public bodies. In line with Article 88 it has an obligation to uphold the general principles of the electoral system, including the two-thirds gender rule. IEBC is expected to propose to Parliament any legislative and regulatory proposals for enactment to guide the delivery of its mandate.

Given its mandate, the IEBC could play a greater role in providing guidelines to political parties to ensure compliance with the two-thirds gender rule. It has been noted that to-date the IEBC appears to have restricted its role to the implementation of the gender rule through party lists only. IEBC needs, inter alia, to work with other stakeholders in carrying out its gender mandate. For example, it should engage in raising awareness around provisions of the Election Code of Conduct among candidates, political parties and their supporters, with a view of creating an environment that is tolerant of inclusive participation and that encourages a free and fair electoral process.

***g) The National Gender and Equality Commission (NGEC)***

The National Gender and Equality Commission (NGEC) was established in 2011, under Article 59 (4) of the Constitution that allowed it to be heaved off the Kenya National Human Rights Commission and thereby legalized through the enactment of the National Gender and Equality Commission Act (2011). As the chief parastatal monitoring body for promotion of gender equality, it bears a major responsibility to enforce and ensure compliance and expose non-compliance in respect to leaders' performance in advancing gender equality of all gender-related issues. It is not only mandated to oversee implementation of the constitutional obligations on gender equity but also the inclusion of marginalised groups. The NGEC also has powers to investigate violations relating to its mandate.

According to its self-assessment, the NGEC credits itself with having i) conducted both court and legislative initiatives to implement the two-thirds gender rule; ii) initiated in 2014 the consultations on how to facilitate implementation of the two-thirds gender rule in the 2017 general elections, leading to the eventual amendments to the PPA; iii) filed a case in 2013, challenging IEBC's criteria for allocating elective seats from party candidate lists; iv) Enjoined in 2013, in the legal case of the National Gender and Equality Commission vs. Independent Electoral and Boundaries Commission & another [2013], in which it argued that the party lists submitted to the IEBC did not meet constitutional requirements, including the two-thirds gender rule. Since the 2013 elections had already been conducted and the statutory time limit for submitting party lists had passed, the court chose not to nullify the existing party lists but instead asked IEBC to publicise the parties that had qualified to nominate members to the legislature so that individuals could bring their own challenges. But these party lists were never published. The court also tasked IEBC to establish and publicise criteria for admissibility of party lists.

During the 2017 elections, NGEC deployed election monitors in various parts of the country to collect information on the level of participation of women voters and other marginalised groups. The commission plans to use this information to determine challenges facing women voters or women candidates in the elections. Due to budget constraints, the NGEC could not recruit or deploy a sufficient number of observers during the election, and has had limited breadth of information to work from in its reporting.

The NGEC initiatives to-date are hardly adequate. NGEC is charged with a core gender watchdog and accountability role, which it has poorly performed in the last seven (7) years of its existence.

### 3.9 Civil Society Accountability/Watchdog Institutions

This category includes the Kenya Women's movement, which has for over the past three decades, played significant roles in promoting women's and gender rights. Not only has it been a key watchdog and an accountability mechanism for holding public officials to account but it has also been an important vehicle for building the capacity for asserting rights as electors of political leaders and as candidates seeking access or influence in public decision-making positions. Furthermore, the movement has taken the role of developing gender responsive governance norms as evidenced by its initiative that developed the 2011 National Women's Charter to serve as an accountability tool to hold both female and male political leaders accountable.

The media remains a powerful and important mechanism of holding leaders accountable, for example, through Opinion Polls, as well as by 'naming and shaming'. Media acts as both an executor and as a protagonist in promoting equal participation of men and women in elections. Media can also be an accomplice to gender-based discrimination by portraying stereotypical sensational images of women. According to Matekaire (2003) the media plays a significant role in determining how women in politics and decision-making are viewed and perceived by society in general. The media not only plays an important role in shaping the values of society but also reflects those values. The media is a chronicler of events, an informer, an educator, a transformative space and a tool to change society. Women in politics play a vital role in ensuring the democratic governance of the country and, therefore, their contribution to this processes needs to be analysed in the appropriate context by the media.

Here again, the challenge has been not only to harness the change of patriarchal mind-sets operating in this sector but also to constantly persuade them to create a better balance between their core commercial objective and their social responsibility to provide to disseminate what promotes the public good, including the matter of gender equality and democratic governance. In Kenya significant progress has been made in this direction in the last three decades, but more remains to be done.

The religious sector could become a very influential accountability instrument as well as an important vehicle for developing high level of ethical standards in governance. The challenge here, however, is the highly patriarchal nature of this institution that is deeply embedded in the doctrine that provides the code of conduct within and outside this institution.

On the whole, the Civil society sector has a responsibility not only to lobby and to put pressure on state and other non-state public institutions to enforce/implement existing norms and policy guidelines for democratising and engendering governance and its outcomes but also to take gender-specific actions that speak to the institutional cultures and norms that undermine women's capacity to deliver; be accountable and also hold others to account. This sector thus needs to spearhead concerted and sustained civic education to combat the cultural values, norms and mind-sets that undermine women's effective participation in leadership and perpetuate gender inequality in division of labour, power and allocation of resources.

### **3.10 Kenya Women's Journey: Negotiating Rights and Space for Equitable Participation in Governance: 1963-2017**

The post-2010 legal, policy and institutional gains discussed in the first part of this chapter are a central part of the Kenyan women's journey in the struggle for rights and participation in governance structures and processes.

This journey has a long history dating from the pre-colonial and colonial Kenya which has been well documented elsewhere by feminist historians and requires no repetition here. But the final year of transition to post-colonial era deserves mention, as it is here that we see the first Kenyan woman, Priscilla Ingasiani Abwao, participating alongside the team of five Kenyan men in the last stage of the independence constitution negotiation process at the 1962 Lancaster Conference in London. The Colonial governor had picked her for the delegation in her capacity as the first African woman to sit in the Legislative Council (LEGCO). Little is known of the role she played in the constitutional negotiations and in the undemocratic governance structures of the colonial government's LEGCO. But she is said to have been a principled woman and an advocate for women's rights (Lichuma 2017). Save for Abwao's presence at the constitutional negotiation process of 1962, women of Kenya were completely excluded from the entire first constitutional making and negotiation process. Despite Abwao's presence at this crucial independence negotiation conference, she seems to have been unable to secure the inclusion of gender and women's rights in the 1963 Constitution.

The 1963 independence constitution of Kenya provided for and legitimized patriarchy and discrimination against women in favour of personal laws. Thus, section 82 (4) of the first constitution of Kenya allowed discrimination in respect to marriage, divorce, burial, property ownership and devolution of property on the death of a spouse. It is also significant that the first post-independence parliament was an all-male parliament.

During the period 1963-2010, Kenya was governed by the independence constitution which had, in the intervening fifty-two years, been amended over thirty-nine times in a direction of entrenching authoritarian and patriarchal mode of governance. For every amendment made before 1991, human and gender rights became more eroded to the point where by 1991 no meaningful gender rights and freedoms were left in the old constitution. Despite this, the Kenyan women's resolve and steadfastness in the struggle for gender justice and right to participate in governance processes and to gain voice and visibility remained unshaken.

The twenty years struggle of constitutional reform (1990-2010) culminated in the promulgation of the 2010 Kenya Constitution. The role of women within and outside the State in the development of a progressive legal policy as well as institutional norms and frameworks that support gender equality, rights and social justice has been enormous. Without doubt, this twenty years long struggle for constitutional reform was a key part of the women's journey towards gender equity, equality and justice. The gender-responsive content of the 2010 Constitution, owes a lot to the gender champions that blazed the trail and provided leadership and other support to the

women's movement that lobbied for the rights and other democratic gains in the 2010 Constitution.

Arguably, the most outstanding gain to-date that both women and men of Kenya have reaped from their struggles was a legal framework that comprehensively provides for women's rights as human rights, democratic governance values and principles, including human dignity, equity and equality, social justice, inclusiveness, economic, social and cultural rights, which are entrenched in the Bill of Rights in Chapter 4 of the Constitution. Women were specifically granted the right to confer citizenship to their foreign spouses and children born outside Kenya with non-Kenyan men. The Bill of Rights essentially provides that every person is equal before the law and has the right to equal protection and benefit of the law; equal treatment; and equal opportunities in political, economic, cultural and social sphere. The 2010 Constitution also created a bicameral parliament and a decentralized governance structure that created forty-seven County governments, each with a position for a woman only county representative. This brought a significant number of women into public leadership space.

The Constitution also provides for equality of rights in marriage, employment, matrimonial property; rights to inheritance, land ownership and access to education. The Constitution outlaws discriminatory customary practices and women are guaranteed equal parental responsibility. Both public and private institutions are required to comply with the gender and women's rights constitutional principles. The constitution thus provides massive space for both women and men to exercise rights and obligations; basic freedoms, as well as develop and embrace core democratic values of leadership and governance.

In addition, the State is expected to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. The State is further required to "take legislative and other measures to implement the principle that not more than two-thirds of members of elective bodies shall be of the same gender".

As noted earlier in this chapter, riding on the accountability of the 2010 constitutional provisions, the combined power of women parliamentarians and gender champions outside parliament successfully negotiated and secured enactment of the enabling legislation that have given implementation impetus to the 2010 Constitution. These legislations include: i) Marriage Act (No. 4 of 2014); ii) Employment and Labour Relations Court Act (No. 20 of 2011, revised edition 2014); iii) Protection against Domestic Violence Act (No. 21 of 2015); iv) Basic Education Act; v) Matrimonial Property Act (No. 49 of 2013); vi) Micro and Small Enterprises Act (No 55 of 2012); vii) Treaty making Ratification Act (2012); viii) The Prohibition of Female Genital Mutilation Act (2011); ix) Law of Succession Act (2012); x) Citizenship and Immigration Act (2011); xi) National Gender and Equality Act (2011); xii) Counter-Trafficking in Persons Act (2010) and xiii) Government Policy on Sexual and Gender-Based Violence (2017) which provided implementation guidelines for the Sexual Offences Act of 2006.

The Constitution has thus provided massive space, for both women and men, to exercise rights

and obligations, basic freedoms, as well as develop and embrace core democratic values of leadership and governance. What the Constitution does not and could not provide is the necessary political will to uphold the rule of law and the desire and the moral fibre to act responsibly in the exercise of one's rights, with due recognition of the rights of others. It also did not and could not provide a formula of how to banish patriarchal mind-sets that constantly undermine efforts to implement the constitutional norms of gender equity and equality.

Notably, these critical legal standards of gender equity and equality have not been completely met. For example, Parliament has yet to pass legislation that would bring its two houses – the National Assembly and the Senate – in line with the Constitution's 'two-thirds gender rule'. Amendments to the Elections Act and the Political Parties Act (PPA) have improved the regulatory environment but remain inadequate, lacking meaningful incentives and enforcement mechanisms. Compliance among political parties and the parliament continues to be problematic despite Supreme Court rulings, mandating implementation of the two-thirds rule. The manner in which patriarchal forces in Parliament have repeatedly blocked or undermined the implementation of the two-thirds gender rule speaks of the patriarchal and hegemonic values that prevail in the Kenyan government institutions. This institutional culture has undermined not only the progress in increasing women's numbers in Parliament but also the possibility of transforming the governance culture.

In respect to the quest for Kenya women's political representation, the journey for the first five decades after Kenya attained her independence, the struggle for gender equality, quite understandably, focussed on the need to increase the numbers of women in public decision-making, especially political institutions (Nzomo 1991, 1992, 1993, 1994, 1996, 2002)

The quest for the attainment of the UN minimum standard threshold of one third female representation in political governance institution has yet to be met in Kenya. The patriarchal governance is largely blamed for this slow progress. In the latest (2017) elections, the second to be held since the promulgation of the 2010 Constitution, women still comprised less than the minimum UN requirement of 30 per cent women in Parliament. As of 2018, the total female representation in the bicameral parliament in Kenya stands at 26%. The National Assembly comprises 19.7% and Senate 26.5 %. Even that number has been made possible because of the affirmative action using both the party quotas and seats reserved for women.

NDI and FIDA-K (2017) analysed the performance of women politicians in the 2017 elections as compared to the 2013 elections, taking into account Kenya's political, legal, and cultural environment. In this context the Report identified and documented the challenges encountered by women and the lessons learnt from this election. An analysis of the aspects that shaped the outcomes of both the 2013 and 2017 elections indicates that most of the factors that undermined women's success were non-legal and were mostly a reflection of patriarchy and hegemonic masculinity in access to and ownership and control of resources, capacity to inflict violence, gender stereotyping, etc. It was noted that the political space remains largely androcentric, making it difficult for women to fully partake in politics. Religion, which is predominantly patriarchal in its views on gender relations, is one of the instruments that have

been used to legitimize women's exclusion and under-representation in political decision making. According to Tripp (1999: 6):

The prohibitive cultural attitudes against women's involvement persist among both men and women. These are reflected in voting patterns, media coverage of female politicians, and even in blatant attempts to suppress women's assertion of their political rights and views.

That said, the 2017 elections did represent a step forward for women's representation, albeit an incremental one. Compared to the elections in 2013, more women won seats at all levels, except for the presidential race, which remained exclusively male. For the first time, in 2017 three women became governors and three became senators compared to none in 2013. More women were also elected to the national and county assemblies (23 members of the National Assembly in 2017 vs. 16 in 2013 and 96 members of County Assemblies in 2017 vs. 82 in 2013). Women running as independent candidates were also elected for the first time. While these are positive changes, it is important to note that women comprised just 9.2 per cent of the 1,835 elected individuals in 2017, a marginal increase from 7.7 per cent in 2013.

Thus, the key challenge in moving forward to promote gender equity and justice in respect of political representation is not an absence of legal and policy norms, but a reflection of non-compliance with these norms. This lack of compliance has been the main challenge since the passage of the 2010 Constitution. Most notable has been the repeated failure of the Parliament to enact broad implementing legislation for the "no more than two thirds" gender rule, while the Executive has done little to hasten the process or apply pressure. Court decisions mandating legislative compliance to this constitutional rule have, in some cases, encouraged delay and, in others, have gone unenforced. National laws related to political parties and elections also have significant implementation gaps that facilitate non-compliance and encourage non-enforcement. The constitutional provision for Recall of non-performing MPs has faced similar challenge of MPs acting with impunity.

This outcome speaks of the need for the development of a democratic governance culture that would facilitate elected bodies, and indeed, all political institutions in Kenya to undergo further reforms, in particular to provide not only for gender equality principle but also for precise enabling mechanism(s) for the implementation of a sustainable engendered agenda.

The above analysis indicates that the next stage of the gender equity journey in Kenya entails a paradigmatic shift away from the narrow narrative focused on the attainment of the magical 33%-50% threshold (critical mass) of women (as a homogenous category) in decision-making positions as an end goal, towards a perspective that views numerical presence as a means rather than an end in itself, bearing in mind that a critical mass without critical actors (both men and women) is inadequate. Thus, the paradigm shift should involve a move towards a greater focus on critical acts and actors rather than a focus on critical mass; less focus on formal/descriptive gender equity and greater focus on substantive equity and equality.

In this respect, the next stage of the journey should combine the quest for more numbers, along with a

conscious effort to recruit and sustain a group of critical actors/gender champions comprising women (and men) committed to spearhead the transformative change from patriarchal and hegemonic gender relations to power relations based on meaningful/ substantive rather than simply formal equality. As Childs and Krook (2007) have noted, it is not really numbers that matter but rather, women's commitment and feminist consciousness of gender injustice. Numbers are important only to the extent that they are convertible to transformative action. In Parliament, for example, this implies that if politics is to be transformed in the legislative arena, gender champions should seek to change conditions of unequal power relations; patriarchal institutional culture and unequal access to economic resources.

### 3.11 Conclusion

This chapter has demonstrated not only the challenges women face in accessing public decision-making positions, but also the bigger challenge of attaining transformative power. The central argument of this chapter has been that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired goals of equity, equality and social justice. I have made the case that the major challenge that undermines progress is patriarchal social-cultural values and hegemonic masculinities which pervade gender relations and governance structures and processes.

The chapter has shown that women's access to governance institutions does not necessarily lead to capacity to implementing a feminist agenda. Instead, as several scholars have noted, there is need for the emergence of critical actors, both women and men that have the commitment and the conviction of taking on the role of gender champions within and outside the State; and can sustainably push for gender-responsive governance, in a consistent and sustainable manner. In this context, one of the ways of assessing performance is the extent to which critical actors are able to set an agenda for change and follow through the implementation of actionable gender equality policies, followed by tangible outcomes. And as noted earlier, the development of legal and policy institutional frameworks, however progressive, is on its own inadequate in the absence of the willingness to transform normative frameworks into actionable programmes for engendering governance. Thus, the journey towards gender equality and social justice remains unfinished until critical actors and gender champions emerge to effectively contribute and sustain the process of eliminating patriarchal and hegemonic governance structures, values and processes that undermine the achievement of sustainable equity, equality and social justice for all.

Moving forward therefore, I would propose that there is need for scholars to continue to provide intellectual leadership by providing evidence-based knowledge and strategic thinking that goes beyond numbers and focuses more on the structural impediments that stand in the way of both attaining numbers as well as implementing positive transformative change. Scholarly analysis also needs to create greater understanding of the role of individual women's multiple and diverse identities and experiences (just like men) that may contribute to sustaining patriarchy and hegemonic masculinity.

The overall strategy will, however, need to be multifaceted and strategically phased out, with short, medium and long-term goals. Making gender equality a reality in Kenya, therefore, requires not only a conducive normative framework but also the collaborative efforts of relevant state and non-state actors. These include all state organs such as the Parliament, the executive and the judiciary, as well as statutory commissions responsible for gender issues, such as the IEBC, the ORPP, the office of the Attorney General (AG), the NGECE and related institutions.

Furthermore, whereas the entire society should take responsibility for transforming and democratizing governance, elected, nominated and appointed leaders and other public officials employed by the taxpayers, both women and men, bear special responsibility to represent and deliver on mandates delegated to them. That responsibility entails, inter alia, democratizing and de-masculinising political institutions to make them responsive to gender equality and justice, including creating an enabling institutional and policy environment for equally effective participation of women and men and de-feminizing the responsibility for representing and achieving gender equality in parliament, so that it becomes a shared responsibility between male and female MPs who should all be held accountable for their contribution to this mandate.

In the short term, Parliament needs to enact progressive legislation that include specific mechanisms for meeting the two-thirds threshold in the National Assembly and Senate, as has been done at the County level. It should amend the Elections Act to facilitate full implementation of the inclusion principles in compliance with Article 100 of the Constitution. The IEBC and ORPP should play a greater role in providing guidelines to political parties to ensure compliance with the two-thirds gender rule. Civil society and the NGECE should continue to provide comprehensive civic education to citizens. Concerted and sustained civic education is necessary to combat the patriarchal cultural values, norms and mind-sets that undermine women's effective participation in leadership and that perpetuate gender inequality in division of labour, power and roles within households. Special training needs to be provided to key implementers, including political parties on how to implement the affirmative action regulations. Similarly, the Media personnel should continue to be sensitized on gender responsive reporting, especially in respect to cases of gender-based violence in the electoral context and outside it.

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## CHAPTER 4

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# WOMEN'S PARTICIPATION IN CONSTITUTION MAKING AND ITS NEXUS TO THE CONSTITUTIONAL TEXT: THE CASE OF KENYA'S 2010 CONSTITUTION

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NANCY BARAZA

### 4.1 Introduction

This chapter argues that there is a nexus between women's participation, the normative character of the constitution-making process and the resultant constitutional text. This is evidenced by the nature of the review process leading to the adoption of the 2010 Constitution of Kenya. The 2010 Constitution is the product of a highly participatory bottom-up process in which women and ordinary Kenyans for the first time participated in its making. "Having been given this opportunity to define their country and their future through a new constitution, the Kenyan women did not disappoint" (Ghai et al. 2002). They deployed all manner of methods and strategies not only to define the nature of the review process but also ensure the normative character of the new Constitution. Ghai argues that through women's contribution, "a significant milestone was realised with the entrenchment of the affirmative action principle into the review law" which ensured that a critical mass representation of women in the process was achieved (Ghai et al. 2002).

Several features characterised women's engagement. As early as 1992, women's movements and women politicians became critical actors in shaping both the process and the content of the debate on constitutional reform. Alongside this debate, "feminist activism in social and political life also translated into other more gradual efforts at legal change" (Ghai et al. 2002). Women had begun by "engaging in the democratisation process generally, and later on in the shaping of the constitutional reform process and outcomes" (Ghai et al. 2002).

As a result of gender advocates' unrelenting campaigns, several provisions in the constitution which address gender equality, discrimination and gender representation were eventually included. Their achievements also include the two-thirds gender rule, which is perhaps "the best deal women got out of the 2010 Constitution" (Ghai et al. 2002). In large measure, the rich normative character of the Constitution 2010 reflects "the importance and effectiveness of women's tenacity and collective action" (Ghai et al. 2002). The former Chairman of the Constitution of Kenya Review Commission (CKRC) Yash Pal Ghai rightly notes that Kenyan women and feminist activists influenced the shaping of the constitutional reform process and the outcomes of the constitution. They did this by "consistently advancing a gender equality agenda and women's rights throughout the process" (Domingo et al.). Today, there is wide consensus that the women and "women's participation influenced the wider normative content as

well as advancing very concrete objectives relating to women's rights and maintained the overall momentum behind the constitutional reform process" (Domingo et al. 2017).

There is overwhelming evidence that the participation of women in process formulation and the drafting of the constitution impacts on the normative character of both the process and the constitutional text. However, this area remains underexplored. Recent mainstream scholarship has generally focused on participatory constitution-making without exploring the nexus between women's participation, the process and the normative character of the final constitutional text. Using Kenya's experience, this chapter aims at filling this gap.

The chapter seeks to answer several relevant questions which include: How did ordinary women, women's movements, feminist leaders and women politicians gain and exercise influence to achieve gender equality gains in the final constitutional text? How did they navigate what was a highly contested process of institutional change and political negotiation that had dominated Kenyan politics for almost two decades? What are the entry points that women effectively used in participation? In a nutshell, how did they focus the 'woman question' in the entire constitution-making process and in the constitutional text?

Radical legal feminist approaches propounded by Catherine Mackinnon (See Mackinnon 1983) are relevant to the discussion in the chapter. These approaches have the potential to explore the 'woman' questions that are unique to women and are ordinarily taboo. This is because they are borne out of women's experiences of exclusion and are likely to upset the status quo (See Mackinnon 1983). In the Kenyan case, women were "keenly aware of the strategic and political value of legal reform and that legal change is a profoundly political exercise. Law, including constitutional law, is a site of normative contestation, with potentially transformative impact" (Domingo et al. 2017: 26).

Katherine Bartlett argues that feminist legal theory, method, and analysis are by nature critical and constructive; thus they are useful to critique dominant liberal assumptions. Liberal assumptions about constitutions and the law are an essential project for women in constitution-making and general law reform because they underpin women's marginalisation. According to Bartlett, the 'woman' question asks about "the gender implications of a social practice or rule: have women been left out of consideration? If so, how might this omission be corrected?" (Bartlett 1990: 829). The chapter is based on the authors personal experiences as a commissioner at the CKRC which made it possible to travel around the country soliciting views from Kenyans and her involvement in the women's movement as well as analysis of secondary texts.

The chapter has several parts. It commences by examining two relevant typologies of constitution-making. The first one is the classical liberal model, which originated with the American constitution and which has been replicated around the world, including the Westminster model (or Lancaster model) that yielded Kenya's Independence Constitution. The Chapter then delves into the second model, which is the more recent bottom-up typology and which is participatory and more inclusive. Moreover, it will illuminate how this model was adopted in the Kenyan constitution-making process that yielded the 2010 Constitution and examine the normative character of the 2010 Constitution, connecting the same to women's participation.

The chapter also explores the philosophical debates around women's participation in constitution-making and the normative implications of the participation. Further, the chapter outlines how the women of Kenya participated and notes the methods that they engaged in and influenced both the process and the constitutional text. It notes the entry points for women and captures their resilience and tenacity. The chapter then concludes by noting that there is a necessary nexus between women's participation, the nature of the review process and the normative character of the constitutional text.

#### 4.2 The Lancaster Process vs. Participatory Process: An Overview

Although there are several typologies of constitutions and constitution-making, two of them are singled out for the purpose of this chapter. The first one is the classical liberal or top-down model which ushered in Kenya's Independence Constitution and the bottom-up or participatory mode of constitution-making which ushered in Kenya's 2010 Constitution. The traditional liberal constitution-making model has roots in the American type of constitution making employed in 1787 during which a small group consisting mostly of wealthy, property-holding white males gathered in Philadelphia to draft a written constitution for the United States, replacing the treaty-like *Articles of Confederation*. Believing that "secrecy was necessary for reflection and compromise, they did not invite the public, either to observe or to participate in their deliberations" (Bartlett 1990: 361).

When the American constitution was made, the nature of polity and society subjugated women's status by rendering "females irrelevant outside the boundaries of the household. Consequently, it completely kept women away from the process" (Norton 1988: 11). Abigail Adam's pleas capture this exclusion to her husband, John Adam to remember women, stating that "[I]n the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favourable to them than your ancestors." Adams ignored his wife's pleas. The resultant American constitution is a classical liberal document that guarantees individual rights but sustains all the liberal assumptions of freedom, equality and human dignity. All these have been faulted, mostly by feminists, for paying lip service to women and succeeded in marginalising them.

As in the American process, the Kenyan Lancaster process did not involve women and, therefore, did not have the benefit of women's voices. There was only one woman delegate who, in her own words, did not meaningfully participate in the negotiations. The Independence Constitution failed to guarantee the human rights of women and the majority of citizens, resulting in the ensuing oppression and marginalisation of women. Yash Ghai *et al.* rightly argue that:

... the Independence Constitution completely ignored women's issues and occasioned continued discrimination of women in public and private laws. Subsequent numerous amendments to the Independence Constitution carried out by male political elites to perpetuate themselves in power, did little to improve women's political, social and economic situation (Ghai *et al.* 2002).

During the recent process, Kenyan women's vision was clear, that a critical mass of women's

representation in decision-making institutions such as Parliament and the Local Authorities, the then County Governments, would de-masculine the deeply embedded institutional male political culture and replace it with a more democratic culture. At a practical level, this would “translate into influencing policy and programmatic actions to be responsive to the needs of poor women and marginalised people in the allocation of national budgets” (Ghai et al. 2002).

### 4.3 The Nature of the 2010 Constitution

Like most classical liberal constitutions, the aim of Kenya’s Independence Constitution was primarily to fulfil an institutional and procedural role, with focus on the establishment of democratic institutional mechanisms and regulation of the balance of power between the different branches of government. It paid a “minimalist role in addressing issues of social injustice and exclusion of the majority of the citizens from governance” (Elkins, Ginsburg and Blount 2008: 361).

To the contrary, the Constitution of Kenya 2010 is a

... transformative constitution, deeply grounded in values of equity, equality, non-discrimination, and respect for human dignity, social justice, and participatory governance. It is a progressive text which advances women’s participation in the political, social and economic life and establishes significant gains on women’s rights and gender equality. It creates an ambitious Bill of Rights that contains specific gains in relation to women’s rights which are also justiciable. The Constitution is grounded in a new national vision of social inclusion and economic development for all while attempting to address some of the past social injustices. The 2010 Constitution also establishes a set of values and principles trumping any discriminatory law, practice or action, including relating to customary norms and tradition (Domingo et al. 2017).

The Constitution entrenches affirmative action measures which compensate for historical inequality and discrimination, which is considered one of the major victories for women. Further, the constitution “sets up an institutional framework of checks and balances, including through strengthened judicial review, something women activists actively lobbied for” (Domingo et al. 2017). In a nutshell, the Constitution potentially provides an enabling institutional architecture for the realisation and protection of women’s rights and gender equality principles. Such was the extent of its reform in favour of gender equality that it was referred to informally as “the women’s constitution” (Tripp, Lott and Khabure 2014: 20). Clearly, this is a pure women’s touch in the Constitution.

Justice Isaac Lenaola of the Supreme Court of Kenya (who was a Commissioner in both the ‘People’s Commission and the CKRC), recalls that women played important roles, both in the informal and formal phases of the constitution making. He argues that “women opened up space in a way that no one ever imagined”. (Interview)

#### 4.4 Philosophical Debates around Participatory Constitution-Making in Context

According to Ghai, the last two decades have witnessed an increasing number of constitutional reform processes taking place, particularly in Africa. He goes on to claim that:

While most constitutional moments are essentially a negotiated process between competing political forces, very few countries have gone beyond this and through the interactive and inclusive process of indeed making their constitution. Kenya is an example of countries in which the ordinary people have been involved in the making of their constitution, and especially women who hitherto have not had the opportunity to participate. (Ghai et al 2012)

At least 110 countries around the globe have been engaged in writing new constitutions or making significant revisions of old ones. In many of these countries, issues of gender equality have been a central concern in the constitutional process. Women have been active participants in these constitutional projects, and they “have worked for the inclusion of a broad range of constitutional provisions and mechanisms to promote gender equality” (Williams 2009: 1). Women’s participation in drafting constitutions leads to more equitable legal frameworks and socially inclusive reforms, laying the groundwork for sustainable development and peace. (USIP 2018). Women’s participation in drafting constitutions leads to “more equitable legal frameworks and socially inclusive reforms, laying the groundwork for sustainable development and peace. Commitment to a gender-sensitive constitution on democratic grounds also has an impact on the resulting constitutional culture and practices in the longer term.” (USIP 2018).

Vivien Hart notes that “one of the most striking innovations in the constitution-making practice of recent decades is that norms of democratic procedure, transparency and accountability that are applied to daily political decision making are now also demanded constitutional deliberations” (USIP 2018). Hence, constitution-making is no longer a matter of legal expertise alone or elite-driven. New models of constitution-making now embrace popular participation, meaning that constitutional reforms must be primarily founded on extensive consultation with the people (USIP 2018). As noted rightly by J. Nehru:

... constitution-making cannot be done by the wisest lawyers sitting down in a conclave. Constitutional review can only be effectively done when political and psychological conditions are present, and the urge and sanction comes from the masses (USIP 2018).

From the perspective of non-elite groups such as women who have historically been marginalised in such processes, today’s constitutional reform offers the possibility of challenging those rules that either confirm or contribute to their exclusion and discrimination from access to decision-making roles, power, and control of resources. (USIP 2018: 1).

## 4.5 Normative Values of Women in a Participatory Constitution-Making Process

Harnessing the potential of women during the founding of new constitutional order and setting in place mechanisms to correct and prevent their alienation from public life should also enable their subsequent involvement in politics and as such enrich democratic practice. In time constitutional recognition of women as equal citizens will also change the mentalities, both of women and men. Evidence from South Africa suggests that following the country's adoption of its 1996 constitution, its guarantee of gender equality began:

... to inform the intimate relationships even of individuals living with little formal attachments to courts or legal culture — even in sub-cultures that generally rejected gender equality the men understood that their status was changing and women were to be treated differently (See Higgins 1996).

According to di Umberto and Giovanni Allegretti, “a participatory constitution-making process is not only a possibility but in many cases a necessity, that is., a natural and convenient way to create the final enactment of a constitution”. In this view, the construction of areas of social dialogue around a constitution guarantees a specific harmony between popular sovereignty and its exercise in the stage of its elementary use: that is to say, in the creation of its supreme expression (Higgins 1996). Vivien Hart states:

in a changing world, constitutional practice is also changing. Twenty-first-century constitutionalism is redefining the long tradition of expert Constitution making and bringing it into the sphere of democratic participation” (Hart 2003: 5).

Ifweoma Owosuyi argues that the “process by which a constitution is made is so crucial for the framing and legitimating of the constitution that political elites and the state institutions should not wholly control the process”. From the perspective of non-elite groups such as women, constitutional reform offers the possibility of “challenging those rules that either confirm or contribute to their exclusion and discrimination from access to decision-making roles, power, and control of resources” (Owosuyi 2016). The optimistic expectation is that women participating equally in constitution-making should “result in more legitimate constitutions which set the tone for future political interactions” (Owosuyi 2016). This participation further empowers women to “pursue their own interests, in their own words and with their self-chosen tools, in their country's constitution” (Suteu 2017).

Women's voices influence the final contents, and raise awareness and discussion, especially on formerly taboo 'private' issues. Such participation also “empowers women by bringing those who may have been politically inactive into a nationwide discussion of society's goals and values, and women's participation adds to constitutional legitimacy” (Suteu 2017). According to Tamaru and O'Reilly (2018), participation should also “empower women to pursue their own interests, in their own words and with their self-chosen tools, in their country's constitution”.

Yash Ghai (2011) observes that:

... newer constitutional texts from participatory processes tend to be more detailed and ambitious in terms of placing limits on the exercise of political power (variable, through different checks and balances, political accountability and judicial review mechanisms); and, typically, through the expansion of rights and entitlements – going beyond more traditional political and civil rights to include social and economic and special group rights. The latter reflects, in many cases, more effective voice and presence in reform processes of non-elite groups, and the fact of the normative ascendancy of the rights of vulnerable, excluded or minority groups (women, children, ethnic and cultural minorities, people with disability, LGBT groups).

Saunders (2002) notes that women’s organisations also “provide avenues through which the larger population of women may be reached”. Arguably, women are likely to be interested in a constitutional framework that gives status to fair economic and social policies in relation to, for example, health, housing and education and imposes accountability for performance. Women are likely to know that efforts need to be made to present constitutional issues in a form that people can understand and, equally importantly, will attract their interest. All forms of media should be employed. When dealing with a process that includes all sectors of society, particular communication strategies for particular groups may demand different approaches, within each medium (See Saunders 2002).

A 2015 research carried out by the Overseas Development Institute (ODI) by Pilar Domingo *et al.*, found substantial evidence that “women’s political voice has resulted in gender-responsive legal and policy reform” (Domingo *et al.* 2017: 15). These gains include, but go beyond, “women’s presence in formal political positions and are often connected to women’s social mobilisation and their collective organisation around gender justice” (Domingo *et al.* 2017: 15). Prominent formal legal gains through women’s political actions include the recognition of gender equality in new constitutions, provisions for temporary measures (e.g., quotas) to redress historical discrimination, legal recognition of women’s inheritance and property rights, and their right to be free from sexual and gender-based violence. “Through collective bargaining women’s unions have also secured improvements in women’s labour rights such as wages, work environment and access to social security” (Domingo *et al.* 2017: 15).

#### **4.6 Entry Points for Kenyan Women’s Role in the Constitution and the Constitution-Making Process**

Women’s engagement took varied but coordinated forms. They participated as members of the constitutional commissions and committees at various levels. They participated as citizens providing their views and perspectives on issues to be included in a new constitution during the outreach processes, and they came together under the umbrella of the women’s movement to lobby and push through their demands. “Some women’s organisations, as well as individual women, also made written submissions to give in-depth analyses of the provisions they wanted to see in a new constitution” (Domingo *et al.* 2017: 3).

The different women's skills were "harnessed in the interest of ensuring the women's agenda was entrenched in Kenya's constitution" (Domingo et al. 2017: 3). Awareness creation, training and capacity building were at the core of the initiatives that were adopted by the Kenyan women. Numerous awareness creation, training and capacity building forums targeting women leaders at different levels, were held at national and grassroots levels. Women devised clear information sharing mechanisms at the different levels to ensure they were well informed and were able to articulate the affirmative action principle. "The women's diversity, such as age, experience, ethnicity, party membership and social status became an added advantage, enabling women to access and lobby support from all sectors of the society and stakeholders" (Domingo et al. 2017: 3).

Women activists used an extensive range of strategies for engagement at the formal political level, through social mobilisation, networking, and advocacy and through the use of law and the courts to advance a "relatively coordinated agenda on women's empowerment and gender equality" (Domingo et al. 2017: 3).

They also used media skills to communicate with women not directly involved in the process. The women's movement provided civic education to key interest groups, as well as holding context-specific dialogue with key gatekeepers, such as religious and community leaders, local judges and dispute resolution arbiters to enable sensitisation on many of the issues (Domingo et al. 2017: 15).

#### ***a) Influencing the Structure and Normative Content of the Review Processes***

The constitutional review process started to take shape in the late 1990s when the legal framework for formal structures for the review process was put in place. "These processes included the 'Safari Park' Consultation Sessions I, II, III and IV" (Domingo et al. 2017: 15). At this stage, notable women who included Hon. Martha Karua, Hon. Phoebe Asiyo Mrs Hilda Orimba, Hon. Zipporah Kittony, Hon. Lady Justice Abida Ali-Aroni (now Justice of the High Court), Hon. Catherine Nyamato, Dr Nancy Baraza, Hon. Jael Mbogo, Hon. Adelina Mwau, Tabitha Sei, Hon. Lady Justice Martha Koome, Hon. Julia Ojiambo, the late Mrs Jane Kiano, the late Mrs Jane Ogwapit, Prof. Jackline Oduor, Prof. Maria Nzomo, Ms Jane Ogot and Prof. Wanjiku Mukabi Kabira positioned themselves strategically to ensure that no consultations excluded women. (Kabira, 2012)

It was at these consultations that "women negotiated, under the leadership of the Women's Political Caucus, for both their participation in the process and the inclusion of the structures that would facilitate the review of the constitution" (Domingo et al. 2017: 15). As a result of their participation the women, to their credit, came up with the District Strategy and Constituency Level Structures in order to ensure maximum participation of the people in the constitutional review process.

The law to govern the review of the constitution thereafter ensured that women were represented at all of these structures. The institutions nominating delegates to the National Constitutional Conference, including the Local Councils, the Religious and other interest groups, and the

Non-Governmental (NGO) Council were mandated to ensure at least 1/3 of their nominees were women. This brought women to “the centre” of the Constitutional Review Process, “and even the media moved women’s issues to the front page and on the editorial pages (Kabira and Kimani 2012: 842-849). As a result, a critical mass of women’s representation in all the structures, including the Constituency Consultation Committees (3Cs) and the National Constitutional Conference, (NCC) was achieved (Kabira and Kimani 2012: 842-849).

Women also ensured that the contents of the legal framework included issues that were dear to them and the greater society. Women ensured that they contributed towards the framework and its contents, from the first CKRC Act of 1998 to the 2000 Act. The driving principles included: gender equity; equal citizenship; equality and affirmative action to overcome the discrimination or hardships suffered in the past; good governance based on democracy; separation and devolution of powers; the rule of law and constitutionalism; respect of human rights and fundamental freedoms, among others (Nunow 2004: 12).

The CKRC Act required specific values and principles to be reflected in the new constitution. Two of these are of particular interest to women: gender equity and parity, and regional and international co-operation to support democracy and rights (Nunow 2004: 12). The mandate of the Commission included various aspects which aimed at the protection of the rights of women, such as:

- institutions to promote respect for human rights and gender equity as an indispensable and integral part of the enabling environment for economic, social, religious, and cultural development;
- the right to citizenship, ensuring gender parity in the conferment of that right;
- elimination of socio-cultural obstacles that promote various forms of discrimination and recommendation of improvements to secure equal rights for all;
- ensuring the rights of the child and recommending mechanisms that will guarantee protection thereof;
- treaty making and implementing powers to strengthen the observance of Kenya’s obligations under international law (which would cover the Convention for the Elimination of All Forms of Discrimination Against Women and the Beijing Plan of Action (Nunow 2004: 12).

These principles were reflected in the composition of the organs of review. As regards the membership of the National Constitutional Conference, the Commission was bound to accord priority to gender equity, but the Act specifically required, as a minimum, that at least one of the three representatives from each country should be a woman; and ensuring representation of women’s organisations as part of civil society (Nunow 2004: 12).

## ***b) Mapping and Identifying Issues***

In 1998, the Kenya Women's Political Caucus (KWPC), a coalition of women's organisations brought together to mobilise collectively around the issue of gender equality and affirmative action, was set up. This became a crucial actor in the early stages of negotiating space for women's participation in the constitutional reform process (See Kabira). Women formed many teams, for example, the National Women's Negotiating Team, Affirmative Action Committees, Women's Coordinating Committees, Women's Consortium on the Constitution, Technical Committees, and other teams (See Kabira 2012). As stated by Professor Wanjiku Kabira in her seminal treatise "Time to Harvest: Women and Constitution-making":

For many of us women leaders, our focus had been ensuring those women's interests were taken on board the process and in the body and soul of the new constitution. As we used to say during the constitution-making process, we breathed the constitution – the water and food had the taste of a draft constitution, and even roses smelt like the draft constitution. We were involved in negotiating the law for the review process, in collecting the views from the public, collating the views and in the drafting of the new constitution (Kabira 2012)

## ***c) Women's Influence within the Legal Structure for Constitution-Making***

Once the Constitution of Kenya Review Commission (CKRC), chaired by Professor Yash Pal Ghai was constituted, intensive preparation of the structures to facilitate a people-driven process was put in place. Then, massive civic education and mobilisation of the citizenry were done. The Commission visited the 210 constituencies in Kenya to listen to the views of the people (Kabira 2012). As indicated earlier, women had ensured that out of three delegates from the districts, one was a woman. Women's organisations had a slot to nominate women delegates (Kabira 2012).

The organ for the constitution-making process was the Commission, established under s. 17 of the CKRC Act. The primary functions of the Commission were:

- to facilitate civic education;
- to collect the views of the people of Kenya on proposals to alter the constitution and draft a bill to that effect;
- to carry out research studies, and evaluations to inform the Commission and by extension the people of Kenya;
- to examine and make recommendations on the choice between unitary and federal system of government, the character of the executive organ, the judiciary, the Constitutional Commissions, institutions and offices, as well as the local government;
- to make recommendations on property and land rights, citizenship, culture, succession and transition;

- to make recommendations on foreign affairs;
- to examine the merits and demerits for a bicameral legislature, the necessity of directive principles of state policy, public accountability and the possible creation of new check and balance institutions, in particular the ombudsman.

Women commissioners in the CKRC who included Prof. Wanjiku Kabira, Dr Nancy Baraza, Abida Ali-Aroni, Alice Yano, Phoebe Asiyu, Salome Muigai, and Kavetsa Adagala had the difficult task of bringing the ‘woman’ question to the centre of discussions in the Commission. This was not easy, as some of the commissioners were not convinced that the issues of women were severe constitutional issues. The writer remembers some agitated male commissioners complain that women commissioners were embarrassing them by talking about women issues all the time. This happened for example, when during a consultative meeting with the Lancaster constitution veterans at Mombasa Beach Hotel the writer questioned the late Hon. Martin Shikuku, one of the veterans, if he thought that the absence of women at the Lancaster House Conference impacted on the independence Constitution. Some of the veterans thought this was an irritating question and looked quite embarrassed. It took some time and much effort to entrench the idea that women issues are worthy of constitutional concerns.

Regarding civic education, the women commissioners took their legal mandate very seriously under the CKRC Act to conduct quality civic education which took into account the gender question. Through the preparation of civic education materials that included women’s issues, the Commission ensured inclusivity. However, in some constituencies, it was not thought that women should be included in the public sphere. Women commissioners had to literally protect women to enable them to participate in civic education.

As noted by Stephanie Diepeveen, throughout the hearings, [women] commissioners emphasised the rights of women, the youth, persons with disabilities and the elderly to engage in political discussion (Diepeveen 2010: 231-258). They emphasised equal participation by men and women, a view which was repeatedly challenged through commotions and noise. (Diepeveen 2010: 231-258) One man in Lurambi constituency of the then Western Province suggested to Commissioner Nancy Baraza (the writer) amidst laughter and clapping, ‘A kitchen is your office, your Honour’ thus inciting Commissioner Baraza to refute the validity of his perspective by asserting, ‘gender equity, it is real, and it is happening’ (Diepeveen 2010: 231-258).

The implementation of the public hearings was premised on the assumption that opening up political dialogue to the various peoples within Kenya could create an arena for Kenyans to construct a consensual picture of ‘the Kenya we want’ (Diepeveen 2010: 231-258). Where women’s participation was threatened by cultural demands and sheer women bullying by male participants, women commissioners had the sense to note the cultural attitudes and ensured that special spaces were availed for women, away from the men, to make their contributions on the constitution that they would want. This was common in Muslim areas of the country. This would not have been possible had the women commissioners not understood the feminist methods of data collection which allow women to make their voices heard.

Throughout the process, women commissioners ensured that synergy was maintained between the commission and the women outside, drawing from the ideas of women actors outside the commission. They ensured the content of civic education materials would capture the voices of women at the constituency level, which was the source of citizen's views. They ensured that information generated through the collection of views was carefully managed and preserved, as well as the language of the text during the drafting exercise.

Lenaola J. Strongly believes that the views that the CKRC received were very comprehensive and that this was entirely influenced by the women commissioners, whose very presence around the country encouraged other women to stand up and have a voice. As a result, in every place that the Commission went, women were powerful about what they considered to be injustices committed against women. What was notable about the women's role at the Commission was that they were able to capture the most nuanced aspects of the people that they visited.

The writer recalls how Prof. Yash Pal Ghai would keenly listen to the women commissioners as they narrated their experiences in the remote areas of Kenya which they had visited. These included heart-rending encounters with people living in abject poverty; experiences of people living near starvation in most neglected areas such as Ileret who had never seen their member of Parliament (MP) since independence and neither had they ever seen a doctor in their entire lives while their only clinical officer had passed away three years earlier and they had had no replacement since and death for them is an everyday occurrence; the women of Msambweni some of whom had no hands and arms because crocodiles had attacked them as they fetched water in crocodile-infested rivers. Most of the homes in the area were littered with graves of the victims of crocodile attacks. All these encounters went into the CKRC draft to form the Bill of Rights, Devolution and provisions on financial management, among others.

At the end of the collection of views, the CKRC produced its first draft constitution in 2002. The immediate response to the Constitution of the Kenya Review Commission (CKRC) Draft by the people of Kenya was that it was the best constitution in the whole world. Leaders said it was the best thing that had happened to Kenyans after many years of struggle to have a new constitution (Diepeveen 2010: 231-258).

#### ***d) Shaping the Constitutional Text: 'Bomas'***

Women knew that the National Constitutional Conference of 2003-2004, or the 'Bomas' was a critical forum for them, for this was where the constitution was going to be made. This was the site of vicious and sometimes rancorous political contestations and women ensured that their gains were not lost in the political 'wars.' Indeed, Maria Nzomo's paper on Women in Politics that highlighted the need for the 30 per cent critical mass, the National Conference in 1992, the endorsement of the critical mass theory, women's negotiations; the legislative framework and the CKRC entrenchment of women's views in the CKRC 2002 Draft had resulted in so many gains that those who were at Bomas had to guard and expand them (Diepeveen 2010: 231-258).

Women organised themselves strategically and ensured strong presence at all critical commit-

tees. These included the Committee on Representation, Legislature, Devolution, Bill of Rights, and several Constitutional Commissions among others. From the Commission, Dr Nancy Baraza and Salome Muigai served as Rapporteurs for the Bill of Rights, (which never became a contested chapter throughout the harmonisation process), Prof Wanjiku Kabira for the Committee on Devolution, Alice Yano for the Legislature, Kavetsa Adagala for the Committee on Culture, Phoebe Asiyo for the Representation of the people and Abida Ali-Aroni for the Committee on Transition (See CKRC Report). Other women ensured maximum attendance of the committees that they deemed crucial for women.

The role of the rapporteurs was to ensure proper recording and management of information as well as to provide reports to the Conference. This was important as the women rapporteurs ensured that the women's gains in the 2002 draft were not distorted or lost. The Bill of Rights was frequented by religious people and culturists who were wary of any 'drastic' provisions that could upset their positions. Despite much debate, a provision on rights to abortion was lost, but instead, we had the current article 26(4) which permits conditional abortion.

The campaigns by Christians under the leadership of Archbishop Njue of the Catholic Church succeeded in entrenching the provision of "life starts at conception" to the discomfort of the medical participants who had put up a spirited fight against it (See Article 26 of Constitution 2010). Another interesting provision in the Bill of Rights which had not been captured in the CKRC 2002 draft is the recognition of 'dress' as a ground of discrimination at the behest of Anne Njogu, who, on her way to the Bill of Rights tent, was accosted because she, according to her accusers, 'was dressed in a short dress' (See Article 27 of Constitution 2010).

Other women outside the Commission were also busy monitoring the process from outside. They met every Tuesday and Thursday at the *Nyama Choma* Place at Bomas, the place where the national Conference was being held. They met to share what was happening in the various committees, to educate themselves on some particular issues, for example, mixed member proportional representation, Devolution, Affirmative Action, among other issues. They met to map out their strategies at various committees and also to give feedback and share with other women. Women's Political Alliance also organised some of the meetings as did the Women's Political Caucus, the Federation of Women Lawyers (FIDA) and the Collaborative Centre for Gender and Development (CCGD), among others (Kabira 2012). This vigilance ensured that the women's gains were safeguarded at all times.

### ***e) Building Strategic Alliances***

Women activists used their political acumen to build strategic alliances and coalitions. This included lobbying male politicians and key power holders – and working at different levels and across parties. Networking aimed to achieve support and to shift mind-sets and discourse on gender norms and discriminatory practice. This required on-going internal discussions to strategies in relation to the priority forums, committees, and audiences at the different stages of the reform process – and the issues that required argumentation and evidence. An acute under-

standing of their own resources, technical knowledge, and political negotiating skills resulted in a targeted deployment of individual activists and collective action strategists to different forums and audiences (Kabira 2012). For instance, during the time of the merger negotiations between the parliamentary commission and the people's commission, it was evident that the numbers of commissioners to serve on the merged commission was critical. Women were aware that should there be disagreements on the number and composition of the commission, women representation would be the first casualty.

Women deployed Professor Wanjiku Kabira, Nancy Baraza, Phoebe Asiyo, and Abida Ali-Aroni, among others, to undertake delicate shuttle diplomacy to lobby critical members of the Parliamentary Committee. They did so, sometimes late into the night. They managed to convince leaders such as Raila Odinga, Gitobu Imanyara, William Ruto and Farah Maalim among others, to ensure that composition of the membership of the merged commission took into account the one-third critical mass. Indeed, there were serious attempts to give women representation a paltry number, which these women resisted. At some stage, the writer was compelled to resist William Ruto's proposal to give only five slots to women, calling the offer 'obnoxious' and unacceptable (Kabira 2012). As a result of this effort, seven women out of twenty-seven commissioners were appointed. Although seven did not meet the 30% critical mass threshold, it was strong enough to push the women's agenda.

#### ***f) Reaching out to the Media***

Women's organisations also drew on their media skills to communicate with women not directly involved in the negotiations process on the constitutional drafting. Media Gurus such as Rosemary Okello were at hand to facilitate the necessary linkages between women and the media. At each national consultation, the Federation of Women Lawyers in Kenya (FIDA) produced a weekly bulletin with updates on the constitutional reform and the role women were playing in the developments. The movement understood that in order to gain wider support for their goal, they needed to frame affirmative action in a way that would be easy for the general public to accept. They thus worked to frame it in development terms – they highlighted how the government had used affirmative action to help other categories of people, such as those living in poorer states. This moved the understanding of affirmative action from being a threat to the status quo to something that was positive and about helping oppressed and marginalised groups (Domingo et al. 2017: 7).

#### ***g) Offering Intellectual and Philosophical Direction***

Over a period of time, women in various sectors had been addressing the issue of gender discrimination. Those in the academia such as Prof. Maria Nzomo, Prof. Wanjiku Mukabi Kabira and Professor Patricia Kameri-Mbote had identified, published and disseminated knowledge on crucial areas of women's marginalisation and the law. The areas identified included women and citizenship; women and access to land; women and domestic violence women and politics; women and their social, cultural and economic rights (Kameri-Mbote et al. 1995: 80). Women

organisations such as FIDA had carried out extensive research in areas of domestic violence, gender discrimination, political and socio-economic rights of women as well as the vexing issue of the women's second-class citizenship (FIDA Annual Report 2010). Similarly, Prof. Maria Nzomo's scholarship on Affirmative Action became the driving intellectual force for women.

Women activists in social and political life had acquainted themselves with the international normative framework to advance a Kenyan agenda of gender equality. FIDA, for instance, had presented shadow reports to the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Commission on Human and People's Rights, in particular to bring international and regional attention to the situation of women in Kenya and the lukewarm support by the state towards Kenya's obligations (FIDA Annual Report 2010). Awareness had been created in women about the international standards required of the State to protect their human rights. They were determined to have nothing short of that.

Aware that no meaningful contribution to the process would be achieved without a proper understanding of matters constitutional, they started off by ensuring that they were educated. Constitutional law scholars such as the late Prof. Okoth Ogendo and Wachira Maina, a celebrated constitutional law expert, were looped in at the onset to make women understand, in the simplest way possible, what a constitution is, how it is made of and by whom and what the women's role in the process should be (FIDA Annual Report 2010). Prof. Patricia Kamere-Mbote offered useful induction of the Commissioners at the CKRC on various feminist theories and feminist scholarship, which became handy as tools for confronting the stereotypes, the retrogressive cultural practices and attitudes that had subjugated women in the past.

Prof. Christine Murray from South Africa (who later became one of the members of the Committee of Experts (COE) gave useful lessons to commissioners on the human rights perspectives in constitution making. Hon. Miria Matembe, the influential feminist and former Minister for Ethics in Uganda, (and who had participated in the Ugandan constitution making process), gave handy tips on how to pass the women points across, should the commissioners meet with resistance. She stated, "I had to jump on top of tables to make the point in many instances where such issues were ignored and faced the danger of being ignored. You must do the same," she advised.

Feminist lawyers worked across a number of spheres. First, through engagement of specialist civil society organisations such as FIDA and the Coalition on Violence Against Women (COVAW), in collaboration with other human rights bodies such as the Kenya Human Rights Commission and the International Commission of Jurists, feminist lawyers contributed critical technical legal support to the constitutional reform process. They engaged with the reform process at critical stages of text formulation, supported concrete text on women's rights and gender issues and contributed to advancing more general propositions on strengthening checks and balances, accountability and judicial review mechanisms. Their efforts, combined with those of women lawyers in academia, were a fundamental piece of feminist strategy in engaging with the constitutional reform process (FIDA Report 2010: 26).

## 4.7 Overcoming Constitutional Miscarriages: Restarting the Review Process in 2008

The 2005 Referendum was lost. Women were disappointed, but they did not give up. In charting a way forward for the constitutional review process, a Multi-Sectoral Forum was established in 2006. Its mandate was to map the progress of the constitutional review process. The women's movement vigilantly lobbied for an Affirmative Action principle in the membership of the Forum (Kabira 2012: 14). The Multi-sectoral Forum collapsed, but women continued to lobby with key institutions and individuals to ensure delivery of the constitution to Kenyan citizens (Kabira 2012: 14). After the 2007 post-election violence which almost took Kenya to the brink, the constitutional review process was revisited. In compliance with the National Action for Community Organisation, Rehabilitation and Development (ACCORD) Agenda 4, the Constitutional Review Process was jumpstarted in 2008 with the Kenya Review Commission Committee (COE) (Kabira 2012: 14).

Women representation at the COE was once again honoured, with Atsango Chesoni serving as the vice chairperson and Njoki Ndung'u and Christina Murray serving as members. One of the critical roles of the COE, as outlined in the Constitution of Kenya Review Act 2008 was to review the existing draft constitutions and identify the issues already agreed upon and those not yet agreed, and through a consensus building process come up with a resolution on the contentious issues, and deliver the New Constitution through a national referendum, thus bringing the entire Constitution Review process to a logical conclusion. Women's groups lobbied vital stakeholders, including MPs and members of COE to ensure that women's agenda was not categorised a contentious issue and hence opened up for debate and further negotiations (Kabira 2012: 14).

Atsango Chesoni understood the importance of women working together both inside and outside of the formal process when it came to her role in the Committee of Experts. She later observed that;

... [y]ou must always have the people who beat the drum from the inside and those who beat it from the outside. It is not sufficient to have Professor Christina Murray, Njoki Ndung'u and I in [the Committee of Experts]. We require somebody to beat the drum from the outside". (Tamaru and O'Reilly 2018: 16)

Chesoni appreciated the importance of collaboration between women inside and outside the process (Tamaru and O'Reilly 2018: 16). Thus, the presence of Atsango Chesoni and Njoki Ndung'u as experts in the Committee of Experts was vital as they continued to safeguard the gains made by women as they embarked on the harmonisation of the Bomas draft, the Wako draft, and other drafts to formulate the constitution of Kenya 2010. From the outside, women continued to keep a keen eye of the harmonisation process to ensure that the women's gains were not lost (Tamaru and O'Reilly 2018: 16).

A successful referendum was held, and Kenyans promulgated the new Constitution on 27<sup>th</sup> August 2010. Women managed to retain most of their gains in the Constitution which, no doubt provides a laudable legislative framework for the realisation of the aspirations of the women of Kenya in all spheres of life. It is an egalitarian constitution that takes into account all people, including the hitherto marginalised ones such as the aged, persons living with disability, the youth and the minorities all of whom had been part

and parcel of the women's agenda. As observed by Lenaola, whether within the Commission or outside, women fused the women's agenda with the agenda of all the marginalised people. In his view, without them, the story would probably be different for persons living with disability, the aged, the Ogieks, the citizens in Ileret and Budalang'i, the poor, the youth and the rest.

## 4.8 Conclusion

This chapter has demonstrated that women's participation in constitution-making has an impact not just on the process but also on the outcome. The women of Kenya displayed resilience, vigilance, tenacity, intellect, laughter, joy, tears, cleverness and team-building. They were able to strategize, build alliances, lobby, debate, persuade and convince everyone who would advance their cause. The constitution-making process was fraught with intrigues, treachery, betrayal, violence among other *mala fides*, yet the women never gave up. As Professor Wanjiku Kabira, one of the most engaged women in the entire process rightly notes:

... the course of the long journey towards a new constitutional dispensation was full of may dramatic moments, some shocking. These included resistance to proposals by women at most states and more particularly in parliament. There were moments of tragic-comedies moments when women in this country have laughed, cried, negotiated, and strategized together. Sometimes they just shared their thoughts, hopes, and aspirations. There were tense moments too; moments where many went home in pain – pain in the chests, in the head, in the heart, on the back, everywhere. (Kabira 2012)

There is no doubt that their presence and contribution to the process and the drafting of the constitution gave Kenya the 2010 Constitution that guarantees individual rights and fundamental freedoms for all citizens. Unlike the independence constitution which facilitated women's and other marginalised sections of the society, the 2010 Constitution is inclusive and egalitarian. This is because women's participation brought into the process a normative value system that embraces equality and inclusion.

The diverse methods and strategies that they deployed ensured that the voices of the majority were heard and considered in the final text. There is, therefore, a necessary nexus between women's participation, the nature of the constitution-making process and the resultant constitution. The long-fought-for affirmative action principle is entrenched and protected and the rights of the marginalised guaranteed. Women's economic, social, cultural and political rights are guaranteed as well as equality and non-discrimination principles which are critical for the enjoyment of these rights. Women can now own and access land. Implementation of this robust Constitution, however, remains a challenge. This once more calls on the Kenyan women's sustained vigilance and collective action. Their resilience in the whole process shows that women have the power to change the mainstream. They did in the making of the Constitution of Kenya 2010. They can do it in many other ways.

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## CHAPTER 5

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# GENDER EQUALITY: INTEGRATION OF WOMEN IN THE JUDICIARY IN KENYA

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### 5.1 Introduction

Gender equality remains a contested notion to-date despite decades of sustained mushrooming of human rights advocacy. For years gender equality has been elusive even with progressive constitutions and strong-worded normative legal frameworks for gender equality at international, regional and national levels. Globally progression and implementation of women's rights has faced bottlenecks and resistance in socio-political and economic spheres. Galligan et al., while mapping under-representation of women in the legal profession and the underlying reasons, paint a grim picture of the situation that existed in Europe:

In the civil codes of the grand legislations women were systematically denied civil rights, and were legally subordinate to their fathers and husbands. They had no access to higher education and to the professions as they were considered unsuitable due to perceived gender characteristics, and it was presumed that they would jeopardize status, prestige, and income level of the professions (Galligan et al. 2017: 18).

Women in the Americas got the "right to vote in 1920 as an initial step towards recognizing women as individuals capable of possessing human rights on equal footing with men" (Miller 2008: 7; See Harper 1922). The miniscule progress in the political sphere did not, however, translate into instantaneous socio-economic advancement. Even after women acquired suffrage rights, their rights of access and participation within the educational framework were still in limbo. For instance, women were still discouraged from undertaking certain courses that were deemed to be masculine such as engineering, law and medicine. This explains the absence of women in the earlier years as well as their insignificant numbers presently at the apex of these professions. The perception of women in the legal profession confirms patterns of masculine praxis in society, despite similar entry credentials.

The current legal profession structure in Kenya is influenced by the colonial legacy and the practice as it was in the pre-colonial period informed by the global trends. Kenya was colonized by Britain and became a protectorate in 1897 and thus the British imported their culture and practice of law "as obtaining in England at that period, which largely excluded women" (Digby 1992:

195-215). That is what was used and what influenced the legal profession in post independent Kenya to a large extent. There were no female judges/magistrates in the legal system established by British settlers in Kenya. The first female to serve in the Kenyan Judiciary, Effie Owuor, was appointed in 1971 (See Effie Owuor Curriculum Vitae).

The profession was male-dominated and even the training was skewed such that few women were willing to apply to join because of the general perception associated with such careers as not suitable for women. This also goes a long way to explain why in post-colonial Kenya, few women were in the legal profession. The judiciary plays a pivotal role in a country's political, social and economic lifeline. It symbolizes justice and fairness and is thus expected to embrace the principle of gender equality within its rungs.

There are more male Judges than female and this is informed by the belief that law is a profession for males; is male oriented and conforms to the biases that existed in society in the pre-colonial and colonial periods and has persisted in the post-colonial periods. These biases are entrenched in the law and the legal system and often serve male interests as feminists have found (See Mckinnon 1987; Smart 1992). Feminists assert that the law is male having been made by a predominantly male legislature. Like in all other professions, women's triple gender roles often disadvantage them. This is exacerbated by the environment at the legal workplace, which hinders women's advancement to higher positions in the profession. This makes it imperative to examine and establish the status of women in the legal profession in the wake of growing gender equality advocacy that has been witnessed across the continent and globally and its impact in Kenya.

This chapter interrogates women's position and their status in the legal profession with a focus on the judiciary. It aims to provide a better understanding of gender justice, make the case for advocacy and propose policy recommendations. It will provide an exposé of the initiatives made to reform laws in the justice sector from independence to the post 2010 Kenya Constitution and their impacts through a gender and feminist lens. Feminist and gender advocates postulate that men and women should enjoy the same rights. However, the reality and experience show that women's rights are often downplayed on account of patriarchy making their realization difficult.

### ***a) Theoretical Framework***

Women suffer oppression because of their exclusion and the ideology of sex stereotyping that makes people believe that women are less capable of leadership than men (Okin 1989). Conditions under which women live lack legitimacy as they are insufficiently represented in processes where decisions that affect their lives are made without their input. The state is under an obligation to improve these conditions by providing legal mechanisms to include those who have been systematically excluded in national systems. This is the central argument in liberal feminism, a theoretical approach that this paper is grounded upon – mainstreaming women's rights within the legal and social systems. This approach demonstrates that social and legal structures foster inequality between men and women and are responsible for women's subordinate status in society.

The exclusion of women in the judiciary must be understood within a gender system that promotes inequality between men and women in favour of men. This has, in turn, led to marginalization and under-representation of women in this critical institution that is expected to administer justice to all (Adam 2000). To this end the chapter adopts the liberal feminist approach that advocates for legal mechanisms to remedy the situation. In this context analysis of the Kenyan laws is undertaken to establish or decipher to what extent the law works to ensure women's inclusion and elimination of discrimination against women in the justice sector, specifically in the judiciary.

The liberal feminist approach is used to catalyse the analysis and discussion in this respect through the rights discourse and adherence to the law in the implementation process and thus remedy the situation. The focus on equal rights and individual choices is significant in identifying ways in which the law could be used to promote women's access to resources such as education and employment in the legal profession such as the judiciary (Martinez & Renn 2002). Our argument is that patriarchal paternalistic laws steer women into socially preferred ways of life.

### ***b) State of Women in the Judiciary***

Women have been under-represented or conspicuously absent for decades globally in male-dominated professions such as law and thus the problem is not unique to Kenya. Women were late to enter the legal profession right from training and this is explained by the problems that were then prevailing across the globe. In pre-colonial Kenya, the modern judiciary was non-existent but Kenyans had their own medium of settling their disputes, which was informed by traditions of the various communities. This medium also excluded women. Codified laws were foreign to the population and were only introduced by the colonial master as imported from the motherland, Britain. When Kenya became a British Protectorate, by virtue of the reception clause of 12<sup>th</sup> August 1897, common law doctrines of equity and the statutes of general application became applicable in Kenya as long as the local circumstances could permit.

English Acts of Parliament were also applicable for administration of justice. For effective administration of justice, the colonial master created institutions in the image of the colonizing country. These institutions needed to be managed by those who already “understood the English legal system and thus professional lawyers were imported from the United Kingdom to be judges and magistrates in the newly created court structures” (Cotran 1983: 49-61).

Men who were appointed by Her Majesty in accordance with the British governance system administered the judicial institutions. Like in other countries colonized by Britain, the legal system created was dualist in nature. As Cotran (1983: 49-61) puts it, the English courts administered English law while the other parallel system of courts administered justice to the indigenous people. In other words, the colonial masters allowed the locals to use their own customs to inform administration of justice on issues that affected them. This was meant to allow a peaceful co-existence with the colonizers and give a window for Africans to practise their customs and traditions alongside the received law. Even though the court system allowed both customary law and the received law to co-exist in the legal system, those who dispensed justice were men.

During the colonial period, lawyers who practised or served in the judiciary were all trained outside the country, as there were no training facilities for lawyers in Kenya. There were few Kenyan law practitioners, all of whom had received their legal education outside the country, either in Britain or India (Task Force on Kenya School of Law 1994: 1). The Kenya School of Law (KSL) was established in 1953 to provide law training, initially for articled clerks and afterwards for law graduates during the vocational stage of their legal education (Task Force on Kenya School of Law 1994: 6). A trainee lawyer served under an experienced lawyer bound by a written contract. It was not until 1961 that an attempt was made to institutionalize legal education through Advocates Ordinance No. 34 of 1961 at the instigation of the Denning Committee Report on legal education.

This Committee was appointed by the Lord Chancellor of Great Britain to consider facilities that were necessary for the training of lawyers educated in the United Kingdom to make them fit to practise in African countries and also to consider the form of assistance that could be given to African countries in providing legal education locally to their inhabitants. The Denning Committee was the first structured attempt to address the challenges, which the legal education in East Africa was grappling with. The Report became an important policy document on legal education for the region. It advocated for, inter alia, the opening of legal practice to persons trained in local law. As a result of the recommendations of the Denning Committee, a Faculty of Law was established at the University College of Dar-es Salaam in 1961 (Task Force on Kenya School of Law 1994: 7). The Faculty was to provide training leading to the award of the Bachelor of Laws degree within East Africa. Prospective lawyers in Kenya had to be trained in Tanzania.

When this opportunity opened for Africans to study law, only men benefited to a large extent. Women were largely left out for some time. Societal perception at the time was that law was a masculine course, not designed for women. Colonialists, with their Victorian inclinations deprived women equal opportunity to education with men, an ideological notion that mirrored African beliefs. When the education space eventually opened for women, it was limited to courses and programmes deemed 'easy' for women to do, such as nursing, schoolmistress and secretarial (Chege and Sifuna 2006: 24). These were essentially non-traditional male courses. Bank et al (2007: 364-365) affirm that there was a long tradition of female education being traditional, related to women's future work as wives, mothers, teachers, nurses and secretaries. Women were expected to learn more about cooking, sewing and childcare. This explains the paucity or absence of women in the legal profession in colonial Kenya.

The first Kenyan female to have studied law at the University of Dar es Salaam was Hon. Lady Justice Effie Owuor (Retired Judge of the Court of Appeal). During this period, the University of Dar es Salaam was the only higher education institution in East Africa that had a law school. In 1970, the University of Nairobi's (UoN) Faculty of Law was established to offer law courses locally and admitted its first students the same year. The establishment of the UoN Faculty of Law meant that more avenues were opened for people interested in studying law in Kenya. Some of the pioneer students of the University included women within the judicial service rungs: Hon. Justice Joyce Aluoch (formerly of the Court of Appeal in Kenya and more lately the International

Criminal Court), Hon. Pamela Uniter Kidula (retired Chief Magistrate), Hon. Justice Roselyn Nambuye, Hon. Justice Mary Angawa (retired) and Hon. Justice Sarah Ondeyo (retired).

From the time the UoN Law Faculty was established to-date, the number of women entering the legal profession has steadily increased. Currently, there are more females in the legal profession serving as prosecutors, corporate secretaries, academicians and judicial officers compared to the first four decades of independence. During colonial and the first ten years of independence, few people were in the profession as the study of law was not affordable for most parents since the course was only offered outside the country and the colonial authorities actively discouraged people from studying abroad (Task Force on Kenya School of Law 1994: 7).

The number of students admitted to study law from 1970 to 1980 was small. The numbers were restricted and only extremely brilliant students made it to the University to study the course. The course was perceived as tough and difficult, thus not suitable for women. One of the pioneers interviewed on 9<sup>th</sup> July, 2010 via phone for this paper said that even parents were reluctant to allow their daughters to study law.

They preferred courses such as education and nursing that would then make them qualify as teachers or nurses, courses considered as feminine. This attitude limited women's upward mobility in national institutions. This was not unique to Kenya. For example, the Americans witnessed resistance to women's admission in law schools or the legal profession in the 1920s right through to the 1970's (Bowman 2009: 3). The Americans in the first instance did not believe in female lawyers and even law firms were reluctant to hire women and when they were hired, they were not put on mainstream work such as litigation and took too long to be taken in as partners. They merely served as associates. This confirms women's struggles to join professions traditionally perceived as suitable for males only. Just like in America, it took a while for women to be integrated into legal practice and the judiciary in Kenya.

The opening of higher education programmes, including law, created spaces for women to seek placement in these institutions and study whatever courses they desired as long as they had the requisite qualifications. This initiative accelerated women's entry to the legal profession. The few first female lawyers in Kenya had the support of their families to study law or were encouraged by other non-family members who identified their capabilities in the legal profession. Law and policy did not restrict entry into the legal profession, as had been the case in Europe and America (Martin & Jurik 2006; Anleu), but the patriarchal system and norms prevailing made a number of women shy away from joining the profession that had been labelled as a male domain. Some people, including parents, would tell their daughters not to study law as they would scare men out of marrying them and thus they would remain unmarried. All these false notions dissuaded a number of women from studying law but those who dared to go against the norms excelled and earned the respect of the same society that had scowled upon them.

One of the early students of law I interacted with, through an interview on 20<sup>th</sup> July 2018, said that their admission in 1976 was the seventh admission at the UoN and out of a total of sixty (60)

students only sixteen (16) were female. They all graduated on 14<sup>th</sup> December 1979. It was also revealed that many ladies who were pursuing a degree in law had defied their parents' and society's expectations by shunning 'feminine' courses. It is important to briefly discuss the qualifications that were required then to serve in the justice system. The qualification for a magistrate or judge in colonial Kenya mirrored what was expected in Britain. The minimum qualification to join law school has always been competitive and the grades pegged high compared to other courses. Both males and females selected are highly qualified and competent to undertake the course. While female admission in the 1970s was relatively low, the numbers have exponentially increased since the late 1990s.

Current male and female admission is almost at par and in some instances females' enrolment exceeds that of males. A close look at the existing law schools reveal that the number of females is almost at par with that of males (50:50) with some schools having more girls in class. Nairobi has 50%; Strathmore 60%; Egerton 50% and Moi 54%. The same situation is replicated at the bar training level at the KSL. Statistics of the Kenya School of Law Enrollment 2011 -2016 reveal that the ration is almost 50:50 and in some instances the number of females is slightly more than their male counterparts.

Both male and female students must undertake undergraduate bachelor of law courses and upon successful completion of the degree, they qualify to join the KSL for a postgraduate diploma in law. This is their entry to the Bar as advocates of the High Court of Kenya. Even though the completion rate at the KSL is almost the same, fewer females are absorbed into active law practice as compared to males. The relatively high attrition rate of females can be attributed to the conception of law as a male course or profession unsuitable for women. This further explains why females are highly concentrated in the lower levels of the judiciary. There are also fewer females at the apex in other aspects of the legal profession, including academia and the justice sector such as the Office of the Director of Public Prosecutions (ODPP) and Office of the Attorney General (OAG).

The introduction of a system of formal qualifications in education and professional orders has translated into women having the opportunity to demonstrate their capability to not only meet the set criteria, but to also excel in it. Excellence in formative legal education has, however, not translated into women occupying higher positions in the judicial service. It is surprising that at the entry point of education and career in the legal profession there are many females, yet their progression to the higher echelons is abysmal. It is thus important to interrogate women's integration in the judiciary to establish the underlying reasons for their under-representation at the apex of this critical institution dispensing justice. Although qualifications for entry into the judiciary, at face value, make it open to both males and females without restriction, the fact that progression of women within the career is slow calls for scrutiny of the causal factors. The qualification to serve at the lowest rank of the judiciary is a minimum two years' experience in practice. The judges' qualifications are set out in Article 166 of the Constitution. The Judge must have a degree in law from a recognized university or be an advocate of the high court of Kenya

or possesses an equivalent qualification from commonwealth jurisdiction, have fifteen years' experience as an academic, judicial officer, legal practitioner or such experience in any other relevant legal field.

A close scrutiny reveals that the educational and professional qualification as lawyers and subsequently for service as a judicial officer does not have any legal barriers as evidenced by the admission to the University and the KSL presently. At face value it appears that the equality and non-discrimination hurdles have been removed through formal legislation and recruitment policies, opening doors for women to enter the service. However, the reality is that many women are still not at the higher rungs of the judiciary. They are concentrated at the base of the pyramid. If the qualifications do not put any restriction and people are only admitted to serve upon application and successful interview processes, what could be the underlying problem? What is it that holds women from participating or effectively being promoted to serve in the higher ranks of the judiciary? What deliberate attempts are made by the government to promote gender equality considering it has a constitutional and international obligation to promote gender equality within her jurisdiction? The question that behoves them all is what other mechanisms, besides legal and policy measures, have been put in place to ensure women are integrated meaningfully into the judiciary?

## **5.2 Constitutional and other Legislative Frameworks for Integration**

The society's resistance to gender equality prompted feminists, human rights activists and gender equality advocates to push for attitudinal change and law reform for recognition of women's rights as human rights. The winds of change that blew through Europe and America slowly found their way into Africa through the colonial conquest and the urge to bring to an end the imperialism and liberate Africans from white rule. While it is largely accepted that women and men struggled for the liberation of their countries from colonial rule, the women's quest for rights on an equal footing with men was lost immediately after independence. In the 1960s women were just getting into mainstream education and most of the advocacy to get them into schools was largely done by the missionaries.

Leadership changed but the structures and practice inherited did not change in favour of women. This served as a wake-up call for women and so the push to demand for their entitlements gained root with the formation of women's movements and organizations in Kenya such as the Maendeleo Ya Wanawake Organization (MYWO) in the 1960's to push for women issues immediately after independence. Over time other movements came and the most powerful one that took root in the 1980s was the Federation of Women Lawyers (FIDA-K). Women also sought to advocate for elimination of cultural practices that hindered girls from pursuing education and vouched for boarding schools for girls.

Such interventions were eye openers and with increased demand for education of girls, the demand for more rights and spaces to canvass those rights grew. This culminated in the demand for law reform that recognized equality between men and women. While the Independence Con-

stitution had a provision on equality and non-discrimination, women were systemically denied civil rights and discriminated against in personal law matters and citizenship. Through these concerted efforts, various legislative and policy frameworks promoting gender equality in Kenya are now in place as discussed below.

The Constitution of Kenya was subjected to various amendments from independence until it was completely overhauled through the promulgation of the 2010 Constitution. The Independence Constitution was not as progressive as the 2010 Constitution in terms of promotion of the gender equality principle in all spheres. While the Independence Constitution recognized the equality and non-discrimination on all grounds, it was silent on sex.

It was not until 1997 when the Inter Parliamentary and Political Group (IPPG) pushed for an amendment that outlawed discrimination on the basis of sex to entrench formal equality. Formal equality has however been criticized for presuming that the male is the norm (Fenwick). Mackinnon, in particular, questions the idea of women wanting to be the same as men to get what a man gets simply because he is a man (Mackinnon). On paper one can safely aver that formal equality is now effectively entrenched in our Constitution but its actual realization is still a mirage as will be shown in details in the next section.

Article 27, Constitution of Kenya, provides broadly for equality and non-discrimination and to be more specific, Article 27 (3) stipulates that men and women have the right to equal treatment, including right to opportunities in political, economic, cultural and social sphere. This means that men and women should be accorded employment opportunities in the judiciary without distinction. On the face of it, the law expects those tasked with recruitment to embrace this principle in practice. This principle has forced those in power to ensure that overt bias is not exhibited at the recruitment stage. This principle is bolstered by Article 27 (6) that makes it mandatory for government to adopt affirmative action measures to redress any disadvantage suffered by individuals or groups because of past discrimination. Women in the judiciary, especially those in the superior courts, have been few in number because of subtle and overt discrimination that exists in the system for recruitment and promotion. This has affected women's numbers given that in the old system of appointments of judges, the sourcing was not competitive. The President, on recommendation of the Judicial Service Commission (JSC), picked individuals for appointment. There were no formal interviews as is the case presently.

Article 27 (8) has buttressed Article 27 (6) by explicitly making it mandatory that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. This is a caveat to the appointing authority in the judiciary that equity must be observed in principle. All these provisions have helped to eliminate structural discrimination, which in turn has served to increase the number of females serving in the judiciary both in the subordinate and superior courts. The increase in numbers is critical in terms of a strengthened judicial branch that is gender responsive and also in changing perceptions about women's position in society as well as access to justice for women. While gender parity has not been achieved, the gap is closing at all levels slowly and consistently, compared to the past.

The Constitution has provided a strong framework for accountability for those in power and expanded *locus standi* by allowing anyone to go to court to defend the constitution in case of any breach thereof or to force compliance. This has boosted litigation strategies for promoting women's rights, including those serving in the judiciary, especially where appointments are concerned. The issue of litigation will be revisited in the next section.

The Constitution has also created independent Commissions that help in monitoring the implementation of its provisions. These include the Commission for the Administration of Justice (CAJ), the Kenya National Commission of Human Rights (KNCHR), the Judicial Service Commission (JSC) and the National Gender and Equality Commission (NGEC). Of special interest in our analysis is the NGEC that monitors gains on gender equality and non-discrimination through consistent reporting to national, regional and international bodies. It keeps the government in check on her commitments related to these principles, including requiring that additional measures be taken to ensure compliance. Similarly, JSC has a direct bearing on the discussions here as a body tasked with the appointment of magistrates and judges to serve in the judiciary.

The JSC has strived to appoint magistrates and recommend the appointment of Judges by the President in accordance with the Constitutional provisions. Even though the appointments have not fully met the threshold of two-thirds gender principle in some cases, there is good will to integrate more women in the judiciary at all levels.

The Employment Act 2007 makes a clear provision of protection from discrimination in employment. Section 5 (3) prohibits discrimination on many grounds, including sex and pregnancy, among others. These are grounds that have hindered women from advancement and sometimes, irrelevant considerations have attached to their recruitment or promotion. By outlawing such practices, the Act provides significant protection from all aspects of discrimination in employment, which employers such as the Judiciary must embrace.

The Judicial Service Act (JSA) was enacted to make provision for the judicial services and administration of the judiciary; to make provisions for membership and structure of the JSC; to appoint and remove judges and discipline other judicial staff; to regulate the Judiciary Fund and the establishment, oversee the powers and functions of the CAJ; and any other connected purposes. This Act operationalizes Articles 171, 248, 252 and 253 of the Constitution by establishing the JSC and providing for its elaborate functions (JSA 2011: S13). One of the objectives of the Act, among many others includes: to uphold, sustain and facilitate a judiciary that is independent, impartial and subject to the provisions of the Constitution and the law (JSA 2011: S3 a). This provision gives credence to the supremacy of the Constitution and thus, JSC in performing its functions, must not only uphold, but also adhere fully to the constitutional provisions, including the two-thirds gender principle in matters relating to appointment to judicial service.

Article 171 (2) (d) of the Constitution is very specific on women's representation in the judiciary and explicit on positions where a woman must be represented, more particularly, of the repre-

representatives of the High Court and Magistrates Court to the JSC, one must be a woman. Similar requirements pertain to representation of the Law Society of Kenya (LSK) and the public where the representatives in both cases have to be one male and one female, according to Articles 171 (2) (f) and (h). This sets the standards for gender parity within the institution. Article 172 (2) (b) of the Constitution, read together with Section 3 of the JSA, requires that in the recommendation of candidates for appointment to the judiciary, the Commission must be guided by the need to promote gender equality.

The National Gender Equality Act (NGEA) of 2011, a predecessor of the National Equality and Development Act 2003, established the NGEC whose key function is to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution (NGEA S8). Its other mandate is the furtherance of the equality principle by ensuring compliance with international treaties that Kenya has ratified in relation to equality and non-discrimination of special interest groups and women among others. It is required to facilitate and advise on the integration of equality and freedom from discrimination in all national and county policies, laws and administrative regulations in all public and private institutions.

The judiciary, being an arm of the government is under the Commission's watch on matters related to discrimination in employment and other related matters within its mandate. The Commission requires every state organ to file quarterly reports to show how they are implementing the gender equality principle as well as the interventions taken by the institutions to promote gender equality. This is a mandatory requirement and is usually integrated in the performance contract signed by the head of each institution with the relevant body. Judiciary is not exempted from it. In this respect the institutions are expected to forward gender disaggregated data to help inform processes needed at national, regional and international bodies as may be, from time to time, required.

The National Policy on Gender Equality and Development (NPGED) is one of the first policy initiatives to integrate gender in all aspects in 2000. Its broad objective was to guarantee men and women in Kenya equality before the law and also equal access to economic and employment opportunities. As part of the objectives, it also provided for enhanced measures to guarantee equality and fairness in access to employment opportunities in both the formal and informal sectors. Under the aegis of NPGED the Commission on Gender and Development (CGD) was established as per the National Commission on Gender and Development Act of 2003 to spearhead gender mainstreaming in the government for the realization of gender equality and equity in all aspects of development. This served to infuse the principle of gender equality across the spectrum and has had positive effects, too, in the judicial service.

### 5.3 Interventions for Integrating Women in the Judiciary

The inequality in women's representation in all spheres of life has been an issue of global concern. Various interventions were made through international, regional and local strategies. International influences had a role to play in pushing for the integration of women not only in the judiciary but in all sectors.

#### **a) Initiatives and Actors**

Various international normative structures have had impact on the interventions through the obligations they expect governments to observe and comply with, particularly upon ratification, in the case of treaties. Such instruments include the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action (BDPFA) (Declaration et al.); the Constitutive Act of the African Union (CAAU) (African Union); the Solemn Declaration of Gender Equality (SDGE) (African Union); and the Maputo Protocol on the Rights of Women of Africa, among others. As demonstrated in Chapter 5 of this book, women spoke with one voice from Copenhagen to Beijing, catalysing the agenda for women's human rights. Frameworks at the international and regional level put pressure on governments to promote gender equality and account for their actions or inactions under the relevant treaty bodies through regular reporting. These pressures have cajoled governments to put in place legislative, policy and other mechanisms to ensure the realization of gender equality in all spheres including in the judiciary.

The campaigns for gender parity at the global and regional level, increased awareness levels at the national level and awakened consciousness and boldness to demand for spaces for women in all spheres of life at the national level. The cross-cultural dialogues and the sharing of experiences with women from other jurisdictions catalysed new demands for women's integration in the judiciary. Women began to question the paucity of women in key institutions such as the judiciary and sought pragmatic solutions to the problems. For instance, the Global Women's Conference held in Nairobi in 1985 (*A/RES/40/108. Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women*) became an eye opener for many women in the country. The 1995 Beijing Conference built on the Nairobi Conference, pushing the women's agenda to the next level and demanding commitment and accountability by governments on women's rights.

External pressure also led to policy shifts in advocating for women's rights and recognition of the gender principle. Some donors backed only programmes that infused the promotion of gender equality as a condition precedent to getting support. The government rolled out programmes for affirmative action as well as gender, prioritization of girls' education and elimination of practices that hindered the advancement of women. Post 2010 institutions such as NGECE were set up to look into lingering concerns relating to gender issues in the country and ensuring gender was mainstreamed across all sectors in government. All these cumulatively can be said to have contributed positively towards women's recruitment and promotion in the judiciary within a larger discourse for engendering all spheres.

External pressures contributed to the law reforms witnessed in Kenya from the 1980s to 2010, culminating with the development of a progressive Constitution that currently serves as the point of reference on the gender principle as well as general equality and non-discrimination. The judiciary is a major beneficiary of the constitutional provisions that support the Bill of Rights. The focus of donors on the justice reforms brought considerable changes in the justice sector.

The Governance Justice Law and Order Sector (GJLOS) Reforms Programme was the precursor to such reforms. It was the government's first sector-wide approach, bringing together stakeholders in governance and justice, including donors, civil society and the private sector. GJLOS was a sector-wide reform in the priority areas of governance, ethics and integrity, including the fight against corruption; respect for human rights in government institutions; access to justice, particularly for the poor, marginalized and vulnerable; crime prevention, police reforms and penal reforms; enhanced public prosecutions and legal services to the public; and reformist-led capacity building with a focus on attitude and culture change (GJLOS 2006: 11). Areas of interest for this article are issues of access to justice, tackling discrimination and paying attention to women's rights. GJLOS was committed to shared-values, which include rights'-based reforms and gender responsiveness, among others. Institutions that have supported judicial reforms include the World Bank and the United Nations Development Programme (UNDP).

Affirmative action is a principle that has been applied in Kenya. At the educational level, the University allowed the admission of girls with one point less than the boys, thus increasing the number of females on the campus to pursue different courses, including law. This is important, as the university is the major training ground for professionals whom employers recruit in the labour market. The paucity of female lawyers and women in the judiciary in the colonial and post-colonial period up to 1980s was attributed to their low numbers. The Kwach Committee recommended the increase of legal manpower, which increased opportunities for women to serve in the judiciary (Committee of the Administration of Justice 1998: 9-12).

A Task Force on Judicial Reforms reporting just before the 2010 Constitution recommended the establishment of an expanded and well-empowered and independent JSC. This Task Force took cognizance of the gender inequality in the judiciary and recommended that the judiciary makes a commitment to the principle of gender parity in line with Agenda Item 4 of the Kenya National Dialogue and Reconciliation and the official Government policy (Task Force on Judicial Reforms 2010: 106). The Report presented gender disaggregated data to support the assertion on gender imbalance in the judiciary then. The Report applauded the gender equity at the Magistracy level but decried the imbalance at the High Court, the Court of Appeal and the Kadhi's Court. It recommended that the JSC should ensure that there is gender parity in appointments at all levels in the judiciary in accordance with the proposed Constitution, and that a deliberate progression towards gender parity be pursued in the appointment of judges and magistrates, Kadhis and other judicial staff (Task Force on Judicial Reforms 2010: 107).

This Report provided a basis for increasing the number of female judicial staff to help in closing the gender gap in recruitment and promotion.

Table 1 shows the composition of judicial staff hierarchically as at 2010. It reveals that females were under-represented or conspicuously absent at the superior court ranks. This was before the Constitution of Kenya 2010 was promulgated. The scenario has since changed as will be shown later in the discussion.

Table 1: Gender Parity in the Judiciary

Designation	Male	Female
Chief Justice	1	-
Court of Appeal Judges	11	-
High Court Judges	27	18
High Court Registrar	0	1
Chief Court Administrator	1	0
Magistrates	168	109
Kadhis	17	0
Paralegal Staff	1865	1531

Source: *Final Report Task Force on Judicial Reforms 2010*

The Executive Decree on 10th October 2006, followed by a circular from the Secretary to the Cabinet dated 7<sup>th</sup> November 2006 (often referred to as Muthaura Circular) to the effect that at least 30% of new employees recruited into the public service should be women, played a great role in entrenching affirmative action (Government of Kenya: 30). This Presidential Directive of 2006 on appointments in the public service laid the foundation for affirmative action in Kenya. It was firmly entrenched in the Constitution of Kenya 2010. Institutions, including the judiciary were required to look into gender considerations when employing or promoting staff. During the National Rainbow Coalition (NARC) administration between 2003 and 2007, the judiciary witnessed changes that increased the number of females serving as judges. More women were appointed based on the affirmative action directive that was not in any legislation but the circular letter.

The role of the women’s movement and their activism cannot be gainsaid. The women’s movement contributed a lot to the development in the agenda that shaped the law reforms during the constitutional review process. They worked with one voice regardless of party affiliation, tribe, class or any other inclination to push for women’s rights inclusion in the Constitution at the various stages of the reforms. Their steadfast advocacy and vigilance bore fruit as evidenced by the progressive provisions relating to women in the 2010 Constitution. More particularly, the elaborate provisions on the equality and non-discrimination in Article 27, including affirmative action and the two-third gender rule, have a direct bearing on the topic under discussion.

Litigation as a strategy has also been used to push for the appointment of more females into the judiciary as judges. Civil society organizations such as FIDA-K and the Centre for Rights Education and Awareness (CREAW) have been vigilant in watching out for the respect of and compliance with the two-thirds gender principle in appointments to the judiciary.

They have filed a number of cases against JSC and the government for failure to adhere to the principle in appointing judges. For instance, a suit was filed to stop the swearing-in of the judges of the Court of Appeal. There was also a case filed challenging the gender composition of the Supreme Court (*FIDA-Kenya & 5 Others vs. Attorney General*). In this case the Judicial Service Commission had recommended to the President the appointment of five persons as Judges of the Supreme Court, namely one woman and four men. It was contended that the JSC recommendation to the President had violated the constitution and fundamental rights of women in not taking into consideration the correct arithmetic of the Constitutional requirement on gender equity and therefore, did not meet the threshold of Art 27. The Court in dismissing the petition stated thus:

...That the purpose of Article 27 (8), in our view is to provide or place a future obligation upon the State to address historical or traditional injustices that may have been encountered or visited upon a particular segment of the people of Kenya...We think the rights under Article 27 (8) have not crystalized and can only crystallize when the State takes legislative or other measures or when it fails to put in place legislative measures, programmes and policies designed to redress any disadvantaged within the time set by the Fifth Schedule to the Constitution 2010. Government may proceed step by step and if an evil is particularly experienced in a particular area, it is required to address it through policies, programmes and legislative process. (*FIDA-Kenya & 5 Others vs. Attorney General*: 51)

The upshot of the decision was that the two-third gender principle could only be realized progressively, which in my view, was a wrong interpretation of the Constitution. Once a law is put in place it is up to the court to make a declaration of its violation or otherwise when the court is called upon to make a deliberation. The court had the opportunity to uphold the constitutionally protected rights of women that had been violated but it chose not to. The court took cognizance of the efforts made by the petitioners in defending the Constitution and encouraged them to be vigilant and keep the State and the legislature in check until the women, all women of Kenya are accorded full recognition and their capabilities appreciated. This case is important for creating the first space for the ventilation concerns about human rights under the 2010 Constitution. It demonstrated that women would not just sit back and watch their rights being violated. It also put the authorities on notice of women's resolve to protect and promote their rights in every space when violations occur.

In the *National Gender and Equality Commission vs. the Judicial Service Commission*, a similar case was filed again in 2017 to stop the swearing in of a Supreme Court Judge by NGEC, which will be discussed in detail in the next section. It is interesting to note that the time stipulated under the Fifth schedule for putting in place laws to implement rights in the Bill of Rights (referred to in the FIDA case in 2011) had long lapsed by the time NGEC filed its suit. The government was required to have put in place legislation to operationalize certain provisions in the Constitution within five years of its promulgation. No legislation has been put to operationalize the two-third

gender principle to date, despite the numerous suits against the government. This is a tacit acknowledgement of the lack of commitment on the part of the government to implement this particular constitutional provision. The court orders directing the Executive and Parliament to pass legislation have been ignored. Despite the hurdles, civil organizations have not relented.

Other strategies devised, though not formal, have included offering training for women short-listed for interviews for judgeship. FIDA-Kenya prepared the candidates before the interviews. A number of women who went through such training succeeded in the interviews and were hired. This also helped to increase the number of women being employed as judges.

The Kenya Women Judges Association (KWJA) has made other interventions possible. KWJA is a non-profit, non-partisan; non-governmental organization whose membership comprises female judicial officers. Its ideals and vision are anchored on the values of gender equity and equality, social justice and fair representation (See KWJA Website). Among its many objectives include: to promote the advancement of women in general through fair administration of justice; to keep under review all aspects of discrimination on gender basis and to work actively towards the eradication of all forms of discrimination against women in the administration of justice and to promote by means of fair administration of justice all matters of family unity, child survival and development and in any other way to protect the sanctity of the family. In line with its objectives, KWJA was instrumental in routing for women's recruitment in the judiciary long before the two-thirds gender principle was entrenched in law. The KWJA has strategic engagement and alliance from within and outside the judiciary and Kenya, which they have used as platforms to push the women agenda forward to the relevant authorities.

The Constitution 2010 has progressive provisions that mandate every institution to observe the two-thirds gender principle on appointment and elective positions. It is interesting to note that most administrative posts such as the position of Registrar in most courts, from the subordinate courts to the Supreme Court are occupied by females. These are also positions of leadership that prepare women for ascension further up the leadership ladder.

### ***b) Importance of Presence and Numbers***

Female presence in large numbers is critical in the judiciary at all levels. It is expected that female presence will make a twofold difference in access to justice. One, hopefully female lawyers will have shared experiences as women in terms of the treatment of female litigants who appear in their courts. Two, it is also expected that in terms of jurisprudence they would be in a better position to infuse life into the constitutional provisions and international instruments on gender equality on issues that come before them for deliberation. The mere fact that women are judges serves an educative function and helps to shatter stereotypes about the role of women in society (Wilson 1990: 507-522). For example, female judges have often spearheaded some of the decisions that uphold women's right to equality and non-discrimination, especially where there are competing rights.

In the criminal branch of the judiciary, the presence of female judicial officers has brought radi-

cal changes in the implementation of the 2006 Sexual Offences Act (SOA), especially in rape and defilement cases in terms of the perception of women and sexuality in the criminal justice system. In courts where female judicial officers preside over sexual violence cases, the sentences against accused persons have been stiffer and convictions have been entered as opposed to where male officers are presiding. They do not use language disparaging victims, thus encouraging victims to be more open and to speak with confidence. For example, in *Martin Charo vs. Republic*, a male judge in sexual violence case once rubbished the presentation of a sexual act with a minor as an offence and proceeded to shift the blame on the female complainant by suggesting that she presented herself as an adult and enjoyed having sex with the accused person. He ignored the fact that the complainant was a minor and even if she consented to sex, such consent was untenable in law. He proceeded to acquit the accused person ignoring the law. This is sheer camouflage of patriarchal leanings towards sexual violence against women as something that is normal and women can always fake it to fix a man.

In contrast where female judicial officers have presided on sexual violence cases, in most instances there have been convictions or convictions upheld on appeal. In *Republic vs. Martin Okelloh* the accused person was charged with defilement of a young girl and the female presiding magistrate convicted and sentenced him to serve life imprisonment. Upon appeal against the conviction and sentence, the presiding female judge Justice R.E. Aburili upheld the conviction. In *Republic vs. SMK* Hon. Lady Justice R. K. Limo upheld the sentence and conviction for life of the accused person for incest with a female minor. These examples suffice to illustrate a trend that reflects the impartiality of female judicial officers in the implementation of the SOA.

Victims of sexual violence should not be subjected to secondary victimization by the court or the accused person. In most cases the female judicial officers have upheld the law. This is not to say that they are impartial but they commiserate and try to uphold the law as stipulated. They can also relate with the situation without necessarily making the victim re-live the ordeal and bring a perspective, which is different from their male counterparts. This resonates with Wilson's assertion that as far as judicial decision-making is concerned, women view the world and what goes on in it from a different perspective than men; and women judges, by bringing that perspective to bear on the cases they hear, play a major role in introducing judicial neutrality and impartiality into the justice system (Wilson 1990: 507-522).

Another notable area where female judges have made an impact is on affirmative action and the two-third gender rule, even though implementation of such decisions has not been effectively applied by either the executive or the legislature (See *Centre for Rights to Education and Awareness (CREAW) vs. Attorney General & Another*). Women are part and parcel of the society we live in and, therefore, have a right to inclusion in all aspects of life in society as a matter of fact. Getting women to serve in the judiciary is not a favour or a privilege but a matter of right. BDPFA stipulates that the population of any given country comprises girls and boys, women and men and, therefore, both sexes must be represented in a democracy for a true reflection of the societal diversity. By extension, women's representation in the judiciary on equal footing with

men is important so as to bring their perspectives to judging of all categories of cases involving males and females. A deliberate effort should be made by those in authority to ensure that women are meaningfully represented at all levels in the judiciary.

## **5.4 Achievements and Challenges**

As discussed in the preceding sections, the Kenyan judiciary traces its roots to the colonial and post-colonial period. The events happening during the two phases shaped the justice system. The post-colonial Judiciary recruitment was done through advertisements and invitations to attend interviews. Promotion was by way of recommendations through section/station heads and approval by the JSC. During the two phases males dominated the judiciary and the number of females at the superior courts only increased post 2008. The appointment of women judges and magistrates has been slow over the years and one of the reasons was failure to prioritize it.

### **a) Achievements**

Post-2010, the number of women serving in the judiciary has grown exponentially with more women taking up key leadership and strategic positions of influence within the judiciary. For instance, the JSC has a fair representation of females from the judicial rungs. For instance, the representative from the Supreme Court and the High Court and Magistrates Courts are females while a male represents the Court of Appeal. This is a first score for women given that the positions are elective and members have to choose their representative through a competitive process. This is more so, as the number of males in all these cadres of the judiciary is greater than that of females. So if it is a question of tyranny of numbers, then males would be the representatives. The explanation given for the choice of women as representatives is that the judicial officers have begun to appreciate the values women bring to leadership and given them opportunities.

For the first time in history a female, Nancy Baraza, was appointed Deputy Chief Justice in 2011, a creation of the 2010 Constitution. This appointment was in compliance with the constitutional provision where if a man is appointed in a key position of an institution, the deputy should be a woman and vice versa. This provision opened up room for women to serve in key leadership positions within the judicial ranks. Since the formation of the Kenya Magistrates and Judges Association (KMJA) two female judges have served as its Chairperson. The current chairperson is female, something that was not easy to come by in the previous two decades.

In 2003 there was only one woman serving in the Court of Appeal which at that time was the highest court of the land. Today there are more female Judges in the Court of Appeal. The Court has twenty-two judges and seven of them are women (State of the Judiciary and Administration Annual Report 2016-2017). The Supreme Court, which is presently the highest court in the land, has seven judges out of whom two are women. The position of the Court Registrar has since independence been occupied by males until the change of guard briefly in 2013 when a female magistrate was elevated to serve in the position. The position was renamed Chief Court Regis-

trar under the 2010 Constitution and females have since occupied the post. The current occupier of the office is female. This is a powerful position in terms of hierarchy in the judiciary and the officer is tasked with the overall administration and operations of the judiciary.

More women are occupying key strategic positions in the leadership of the judiciary. While there has never been a female President of the Court of Appeal, females hold other top positions. For instance, the Principal Judge of the High Court is female. The Head of the Anti-Corruption Court is a female and the representative of Subordinate Courts to the JSC is also a female. The JSC is a top organ of the judiciary and this female representative got this position through a competitive election. Similarly the current President of the Kenya Judges and Magistrates Association is a female who was elected from a membership pool.

Female judges have also served in courts beyond national jurisdiction in international institutions such as the ICC and as distinguished members of the UN and African Union various Committees. Justice Joyce Aluoch served as the Judge of the ICC and was also elected as the Deputy President of the Court (Justice Joyce Aluoch CV). She is the first Kenyan to have served in that capacity, in recognition of her outstanding performance as a judge. She also served as a Judge of the International Tribunal for Children's Rights, Canada, Great Britain, and Bosnia and Herzegovina. Other positions in which she served include Vice Chair and Member of the United Nations Committee on the Rights of the Child, New York and Geneva; and Chair of the African Union Committee of the Experts on the Rights of the Child.

The female Judge who scored a first on all fronts of the legal profession, Lady Justice Effie Owuor excelled in her career. Her notable achievements other than being the first female appointee as a Magistrate, High Court Judge and Court of Appeal Judge in Kenya include being a Judge of the Special International Judges for the Miami World Conference for a Healthy Planet; Kenya's Good Will Ambassador to UNICEF; Founder member and Chair of the KWJA; Chairperson of the National Task Force on Laws Relating to Children; and the Task Force on Review of Laws Relating to Women in the 1990s, among others. These pioneer females in the Judiciary did not disappoint and did a sterling job in a male dominated environment. These are no mean achievements.

Under the leadership of these pioneers many women joined the judiciary, with Lady Justice Joyce Aluoch and Lady Justice Effie Owuor, acting as their role models. Through their intervention, the KWJA was formed specifically to look into issues affecting the female staff within the judiciary and act as a springboard to push for the women agenda in the country. They were also able to influence a number of national issues such as spearheading law reforms in relation to women and children which benefited women of all ranks.

There are female judges heading divisions within the Judiciary as Principal Judge, for instance. A female judge presently occupies the Principal High Court Judge position. The Principal Judge of the Employment and Labour Court is a woman and so is the Head of Family Division.

Notable were the appointments of two female Muslims to serve as judges in the Court of Ap-

peal. Justice Fatuma Sichale was appointed Court of Appeal Judge in 2011 and Justice Jamila Mohamed was appointed to the same Court in 2012. This was the first time in Kenyan history that such appointments were made. It is important to note here that there are Kadhi's Courts in Kenya that handle cases related to personal law of Muslims such as marriage, divorce, and dissolution of property upon death and no female serves or has ever served in these Courts.

Female judges have contributed to the development of jurisprudence that impacts on gender equality and thus helped in upholding women's rights in line with the ideals and vision of the KWJA on issues of gender equity and equality, social justice and fair representation. For instance, in the case of the *Centre for Rights to Education and Awareness & 8 Others vs. the Attorney General and three Others* in which the petitioner questioned the constitutionality of the Presidential appointment of County Commissioners the court held that there were 47 County Commissioners appointed by the President, and only 10 out of the 47 were women. This was contrary to the constitutional requirements at Article 27 (8) therefore, violated the non-discrimination provisions of Article 27; and the appointments failed the test of constitutionality by disregarding the national values set out at Article 10 (b) and the principle contained in Article 27 (8) of the Constitution on the two thirds gender principle. Lady Justice Mumbi Ngugi held:

...it is important that anything that is done in order to implement the new constitution is done so as to faithfully accord with the provisions of the constitution. It will do great damage to the hopes of Kenyans for a new dawn should the country continue on the well-trodden path of disregard for the provisions of the Constitution. (*Centre for Rights Education and Awareness & 8 Others vs. Attorney General and three Others: 20*)

The Judge thus infused life into the constitutional provisions by upholding the gender equality principle.

In the case of *Milka Adhiambo Otieno & Another vs. the Attorney General & 2 others*, the court also reaffirmed the constitutional provision on gender equality. The respondent had failed to ensure gender parity within the Kenya Sugar Board. Lady Justice Aroni Ali, Justice S. J. Chitembwe and H.K. Chemitei stated:

...Kenya being a democratic country, its people in enacting the new Constitution appreciated the inequalities of the system and put measures in place to curb the same. That being the case all subordinate legislation including the Sugar Act must comply with the provisions of the Constitution 2010. The issue of affirmative action was well within the minds of the drafters of the Constitution and there was arguably the need to bridge the historical imbalance. (*Milka Adhiambo Otieno & another vs. Attorney General & 2 others: 9*)

Another notable decision by a female Judge on equality and non-discrimination that eased the burden of women on registration of birth of children born out of wedlock is *L.N.M vs. Attorney General & 3 others*. The petition was about the rights of children born outside marriage and

the circumstances under which the biological father's name should be inserted into the child's birth certificate. The petition questioned the constitutionality of Section 12 of the Registration of Birth and Deaths Act. The Court held that the said section was unconstitutional and declared that all children born out of wedlock shall have the right and or liberty to have names of their fathers entered in the births registers and directed the Registrar of Births and Deaths, within 45 days of the judgment, to put in place mechanisms to facilitate the entry into the birth registers of the names of the fathers.

This decision is critical for children who want to know their runaway fathers by inserting their names in the Child's birth certificate. It also aids in getting such parents to assume parental responsibility, which is only feasible where documentation is available, thus removing the stigma and discrimination associated therewith. It also eases the burden of mothers of children born out of wedlock by imposing responsibility on all parents for children regardless of the marital status of their biological parents. In *Zak and Another vs. the Attorney General and Another* Lady Justice Mumbi also held that the Children's Act imposes parental responsibility for children on both their biological parents, whether married or not at the child's birth.

Similarly in *National Gender and Equality Commission vs. Independent Electoral and Boundaries Commission and Another*, the court created a good precedent on affirmative action. This case was on IEBC's role and responsibility in the creation of party lists for special seats for the 2013 elections and whether political parties had complied with Article 90 of the Constitution. IEBC had failed to meet its obligations to conduct and supervise this process. The court ordered the IEBC to create a programme, in conjunction with the constitutional and statutory commissions and political parties with the aim of developing policies and measures geared towards increasing the participation of women, the youth, and persons with disabilities among others in the political processes. A female judge was on the bench that delivered this decision.

In *Rose Wangui Mambo and 2 others vs. Limuru Golf and Country Club* the court found that certain by-laws were in violation of both constitutional and CEDAW provisions on equality and non-discrimination. The case was challenging a resolution by the Board of Directors of the club to amend part of the Club's by-law, a decision which discriminated against female members, contrary to the constitution. The Club had excluded female members from participating in the Golf Club's General Election terming it 'a male only affair'. This amendment, locking the ladies out, had been made only three days before the election date thus disenfranchising women members. The Court affirmed that the Bill of Rights binds all state organs and all persons, whether they are public bodies or juristic persons. The judge held that failure by Parliament to enact the legislation was a notable violation of the rights of women to equality and freedom from discrimination.

Kenyan women have made tremendous achievements in the judicial service as highlighted above. They have excelled in academics leading to their appointments to senior positions; some of them are pace setters having been the first to break the norms across the rungs of the judiciary. Despite these achievements, challenges still abound and therefore, women still need to

devise strategies to combine their professional experience and political considerations to get to the higher echelons of power in the judiciary. Women are still under-represented in top ranking positions on the higher court benches and other senior positions in the legal profession.

### **b) Challenges**

The under-representation of women in the judiciary is not unique as it is a reflection of what happens in other spheres of life in a country. The reasons for the under-representation are varied and range from socio economic to political factors. While it is notable that the number of females studying law and joining the legal profession is steadily increasing, the majority of the women, particularly in the judiciary, are concentrated at the magistracy level, as we have pointed out above.

The society is highly phallogentric as can be discerned from the judicial history right from the colonial period to-date. From the colonial to the independence period no woman has ever served as a Chief Justice. What was happening in Britain greatly influenced our legal structure and culture, and did not recognize or allow women to participate in the administration of justice. Besides, appointments were not competitive and despite the requisite qualifications being gender neutral, they were influenced by political patronage from the appointing authority. The Chief Justice position is perceived to be a male preserve even when it is open to competition. The two instances (2011 and 2016) when there has been an opportunity to apply for the position, highly qualified female candidates offered themselves for the position of Chief Justice but none succeeded.

Lady Justice Roselyn Nambuye, a Judge of the Court of Appeal unsuccessfully applied for the Chief Justice position has this to say:

The appointment of females as judges and magistrates has been slow over the years and contributes to the reduction of a pool from which a selection can be made. (Kakah 2017)

Appointments to these superior courts, though currently competitively done through interview processes, are still influenced by masculine expectations, which view the qualifications, as secondary to being a man showing that the playing field is not level. The under-representation in the higher rungs of the judiciary may be attributable to the horizontal segregation in the institutions. The question is why the law and justice institutions are not able to build up a pool of women at the requisite level to allow their appointments in key offices? Secondly, from the available pool, there exist many women who are capable and equal to the task and so it is not a question of numbers but the lack of commitment or political will to place women in such positions as that of the Chief Justice.

Table 2: Position of Chief Justices since the Colonial Period to 2018

	Name	Period	Gender
1	Sir Robert William Hamilton	1906-1920	M
2	Lt. Col. Jacob William Barth	1920-1934	M
3	Sir Joseph Sheridan	1934-1946	M
4	Sir John Harry Barclay Nihill	1946-1951	M
5	Sir Horace Hector Heame	1951-1954	M
6	Sir Kennedy O'Connor	1954-1957	M
7	Sir Ronald Ormiston Sinclair	1957-1962	M
8	Sir John Ainley	1962-1968	M
9	Mr Justice Kitili Mwendwa	1968-1971	M
10	Sir James Wicks	1971-1982	M
11	Sir Alfred Simpson	1982-1985	M
12	Mr Justice Chunilal Madan	1985-1986	M
13	Justice Cecil Henry Ethelwood Miller	1986-1989	M
14	Justice Robin Allan Winston Hancox	1989-1993	M
15	Justice Fred Kwasi Apaloo	1993- 1994	M
16	Justice Abdul Majid Cockar	1994-1997	M
17	Justice Zachaeus Richard Chesoni	1997-1999	M
18	Justice Bernard Chunga	1999-2003	M
19	Justice Evans Gicheru	2003-2011	M
20	Justice Dr Willy Mutunga	2011-2016	M
21	Justice David Kenani Maraga	2016--	M

Source: [www.judiciary.go.ke](http://www.judiciary.go.ke) accessed 25 July 2018

The Constitution of Kenya 2010 created the Office of Deputy Chief Justice, a position that has been held by three females since its establishment. The first lady to have held the post was Justice Dr Nancy Baraza and two other females have occupied the office since its inception.

Table 3: Deputy Chief Justices since 2011

	Name	Period	Gender
1	Lady Justice Dr Nancy Baraza	2011-2012	F
2	Lady Justice Kalpana Rawal	2013-2017	F
3	Lady Justice Philomena Mwilu	2017-	F

The practice has been that whenever an office requires a Principal person and a deputy, in most significant institutions the Principal person has often been a man and deputized by a female. In rare cases does one get a female head such as was in the case of the Salaries and Remuneration Commission that was the first key independent institution to be headed by a female in the wake up to the 2010 Constitution. While a female has always headed the Gender Commission, it is

presumed that gender is synonymous to women and so you often find more women applying for the position and the appointing authority ultimately prefers them. The Office of the Chief Justice should not be restricted to males only but looks like history is repeating itself from colonial times to independence. One would thus say that if the law were not categorical on the issues of gender balance at the apex of the judiciary, then women would not be holding even the position of Deputy Chief Justice. It is critical that society actively promotes female leadership in the judiciary to break the force of perceived norms. The fact that at the top level the President and his Deputy are male is a point to what could be if law had not mandated women’s engagement in the judiciary.

It is also noteworthy that since the creation of the Court of Appeal, no single woman has served as its President. While before 2010, the Court was the highest in the land and therefore, the president of the Court would ordinarily be the Chief justice, now that there is a Supreme Court headed by the Chief Justice who is male, a female should be the President of the Court of Appeal. However, this is not the case, yet there are more females now serving in that Court compared to the period before 2010.

The Principal Judge of the High Court has also been male all along until June 2018 when a female Judge was elected to that position. Lady Justice Lydia Achode is the current Principal Judge of the High Court upon her election to the position in June 2018.

Cognizance is taken of the fact that the positions of the President of the Court of Appeal and the Principal Judge of the High Court are elective and thus the election is a reflection of what happens in any general election in Kenya, where females are rarely elected to serve in key positions in the National Assembly, the Senate, County Assemblies, as County Governors or as President.

It is also important to note that most heads of the Law Society of Kenya, the body that regulates the conduct of the advocates in the legal profession since independence have been men, with only one break that saw a female advocate take the mantle. Raychelle Omamo took the leadership of the Law Society of Kenya for one term in 2001-2003.

Since then no woman has held the post to date. They serve as Deputy Chairpersons. This is a narrative that affects most institutions in Kenya, including the judiciary and needs to be interrogated further.

Table 4: Distribution of Staff:

Category of Staff	Male	Female	Total
Judges	75	45	120
Magistrates & Legal Officers	287	255	542
Judicial Staff	2119	1703	3822
Total	2481	2003	4484

Source: *State of the Judiciary Report 2012-2013 Page 142*

Table 4 reveals that males comprise 55.4% of the total work force while females are pegged at 44.6%. This shows that in terms of employment the judiciary is almost closing the gender gap, but the number of females serving as judges is still relatively low compared to the magistracy.

Table 5: Distribution of Judges by Gender and Court:

Court	Male	Female	Total
Supreme Court	5	2	7
Court of Appeal	15	7	22
High Court	48	37	85
Employment & Labour Court	8	4	12
Environment and Land Court	21	13	34
All Courts	97	63	159

Source: *State of the Judiciary and Administration of Justice Annual Report 2016-2017 Page 129*

Table 6: Employee composition by Gender:

Cadre	Male	Female	Total	%
Judges	92	67	159	2.8
Magistrates & Kadhis	264	206	470	8.4
Judicial Staff	2540	2450	4990	88.8
Total	2896	2723	5619	100

Source: *State of the Judiciary and Administration of Justice Annual Report 2016-2017 Page 142*

Table 6 shows progress in terms of an increase of numbers in female recruitment in some rungs of the judiciary but it is dismal in others. More needs to be done to ensure the gender gap is closed at higher levels, especially in the Supreme Court where only two females serve and there has been no attempt to increase the numbers.

Even when an opportunity presented itself in 2016, when justice Tonui retired, a male judge replaced the retired judge. Ordinarily, in the spirit of gender equality as stipulated in the Constitution, one would have expected a female appointment so as to balance the gender equation in the Supreme Court in filling the vacancy.

This was not the case despite attempts by the NGEC to file a Petition to stop the swearing in of the Judge to enforce compliance with the gender parity principle (*National Gender and Equality Commission & Another vs. Judicial Service Commission & 2 Others*). The Constitutional Court dismissed the petition on grounds that there was no breach of the two-thirds gender principle as contemplated by the Constitution and that NGEC's had only an advisory role. What's more, its advice is mandated by Statute and the Constitution, therefore, was not binding on the JSC, an independent Constitutional Commission. It is notable that the judge took cognizance of the importance of the principle in the following words:

...It would have been ideal to recommend a woman for appointment, but that is not to say an ideal situation is the same as a clear breach of the Constitution or the law on the two thirds gender. (*National Gender and Equality Commission v. Judicial Service Commission: 41*)

While from a constitutional standpoint one clearly sees non-compliance with the two-thirds gender principle, the Court in this instance failed to uphold the non-conformity by the JSC. Suffice it to say, the rights of individuals are not only ensured by the guarantees set down in the formal documents such as a constitution or legislation but by ordinary remedies available against those who unlawfully interfere with them. The courts are regarded as the vanguard for the protection of fundamental rights and the only institution that can guarantee the impartial determination of violations. The Court's decision in this matter did not provide the requisite remedy for the violation of the constitutional provision and chose to fall back on status quo, thus failing to close the gender gap.

While the position of the DCJ went to a female, to keep the number of women at the Supreme Court at two is non-compliant with the two third gender principle. An observation of the family division and children's courts in Kenya reveals a high representation of females in those courts. The assignment of female judges to those divisions reflects societal perception that women judges are involved in an extension of their traditional gender roles as nurturers and better empathizers. This is in addition to the horizontal gender segregation in the judiciary at the high levels. The statistics in the tables above illustrate that women are highly concentrated at the subordinate courts as opposed to the higher courts. The number of females and that of males in subordinate courts are almost at par and stands at 2450:2540 respectively, almost reaching 50:50 as stipulated by the African Union Constitutive Act. There is need, however, to increase the number of female judges serving in the higher courts for purposes of balancing representation.

There are also great challenges in entry and acceptance within the judiciary that are incidental to flaws in the appointment and recruitment procedures. Before 2010, appointments would be through consultation with the JSC and then the President would appoint the respective persons to the post. In such scenarios, men benefited more as they had more connections and political contacts. Research shows that women do not make career contacts at the same rate as men do (Beaman et al 2018) which explains the lack of women in top positions in institutions such as the judiciary. Network-based dissemination of job information invariably places women at a disadvantage, regardless of similar productivity levels. (Mortensen and Vishwanath 1994: 187-201).

Gender stereotypes, norms and roles, like in many other spheres of life in patriarchal societies, play a significant role in hindering the full and equal participation of women in the judiciary. Women are implicitly excluded from certain offices and courts as a result of socio-cultural interpretations of the role of women in society. Socio-cultural and, in some cases, religious precepts constrain women's full and equal participation. For instance, female judicial officers in Kenya are normally placed in magistrates' courts and family courts, while male judicial officers are placed within the higher courts and presumable courts handling non-domestic matters. Currently, there are no female Kadhis because of religious reasons. Gendered assumptions relating to women's societal roles, for instance, as primary caregivers, have impacted the manner in which they are treated in terms of appointments and promotions within the judiciary (See Hunter 2015: 119-141).

Balancing work/life commitments is problematic for women in all professions and this is one of the reasons women do not get to higher ranks in most institutions such as the judiciary. Women play pivotal roles in a country's economy through reproduction and production. Reproduction is a natural role a woman cannot run away from, yet she is vilified, too, for carrying it. Without females reproducing there can be no replacement in the labour market when death occurs or the older generations retire. As such, women have to juggle the reproduction role with that of production. Promotions for women and men at face value are the same. However, there are some subtle rules that apply to women such as gender stereotypes. There is the wrong perception that women who have young babies cannot work effectively, yet child rearing is a responsibility for both father and mother.

Women have to make sacrifices at the home front and this could result in more absenteeism from work, which employers see as a liability, yet it is a necessity. Balancing this work-family conflict is a challenge. If a woman wants to excel in her work, the home front suffers, and vice versa. The judiciary as an employer is not free from these biases and often fails to promote women citing underperformance without digging into the deeper reasons for these. Sometimes, without consultation, an employer can make decisions such as not considering a woman for a higher position because she has young children who need her care and attention. While such considerations may be noble, in a phallogocentric society they always work against women's career progress.

Harassment, blatant and implicit discrimination, and opposition that female judicial officers face, in most cases, informs women's reluctance to join the judiciary. Socio-cultural pressures, reinforced through incessant systemic and systematic disenfranchisement, have also made women unwilling to enter judicial service. Training and education on gender equality and non-discrimination would ensure the integration of practices promoting gender and cultural sensitivity in the judiciary. Both male and female judicial officers would subsequently be able to amply discharge their responsibilities while increasing women's participation.

## 5.5 Conclusion

Female matriculation in law schools across the country has considerably increased over time. As a matter of fact, since the establishment of the UoN School of Law and the mushrooming of other Law Schools, the ratio between male and female students has steadily moved towards evening out. This progress cannot be used as a ground for complacency, since, in spite of this positive development from post-colonial Kenya, women still remain largely under-represented at the highest rungs and over-represented at the lower levels in the judiciary. Most female judicial officers are present within the base of the job pyramid – in particular magistrate's courts – and courts deemed to reflect how the society views women, for instance children's courts and family division courts. The number dwindles as one looks towards the apex of the pyramid. Religious courts such as the Kadhi's court do not allow women's participation. In essence, socio-cultural biases, reinforced by phallogocentrism and patriarchal culturalism have guaranteed the documented exclusion of women.

The realization of substantive gender equality remains a mirage, despite efforts to ensure equal and full participation. The 2010 constitutional framework was a promising step towards Kenya's domestication and municipal enforcement of international principles and standards on equality and non-discrimination. Kenya, being a party to a plethora of international instruments promoting equality and non-discrimination, is under an obligation to ensure that the judicial space is open to both men and women on equal footing. The 2010 Constitution, lauded as one of the most progressive globally, requires the implementation of substantive equality in the judiciary.

Nonetheless, women continue to face several barriers which contribute to their exclusion, including: gender stereotypes, subtle discrimination, flaws in appointment, recruitment and promotion procedures, harassment, lack of training, gender-biased education curriculum, and lack of political goodwill. All these factors, which are not exhaustive by any stretch of the imagination, also inform women's reluctance to join the judiciary and by extension their paucity therein. Where the direct legal policy or ideological barriers or restrictions on women's participation do not exist, a serious deficit of gender diversity persists as seen in the Kenyan judiciary. Experience indicates that simply removing such barriers and increasing the number of women who study and practice law will not in, and of, itself bring about meaningful improvements in the number of female judicial officers at the higher courts of jurisdiction. The elimination of such barriers should be combined with attitudinal change towards women's leadership position in the society and embracing gender diversity to reflect the societal composition as well as categories of cases and those who are tasked with the duty to administer justice.

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Zak and Another v. Attorney general and Another [2013] eKLR.

## CHAPTER 6

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# PUBLIC INTEREST LITIGATION AND WOMEN'S RIGHTS IN KENYA: THE DOUBLE EDGED SWORD

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AGNES K. MEROKA-MUTUA

### 6.1 Introduction

The struggle for gender equality has historically employed a number of different strategies, such as picketing and mass demonstrations; the use of various media sources to highlight or amplify issues; lobbying; as well as advocacy. The courts have also played an instrumental role in so far as women's rights are concerned. In Kenya public interest litigation has been a useful strategy that women rights advocates have relied on in seeking to ensure that women enjoy the rights provided for in the Constitution. In this way, public interest litigation plays an important role in ensuring that the Constitution is implemented. While there is no universal definition of public interest litigation, it may be defined as that litigation which focuses on addressing issues that are of relevance to the public in general (Bhuwania 2017). This is a definition drawn from one of the core characteristics of public interest litigation - that is, the strategic use of law to promote the interests of the public in general.

Consequently, public interest litigation is identifiable by analyzing its aims and objectives, as well as the ways in which it uses legal strategies in order to achieve those aims and objectives. With regard to its aims and objectives, the important thing is that such litigation must ultimately be aimed at addressing issues that are of concern to the public or society as a whole, rather than the interests of specific individuals or groups. On the other hand, the strategies used in public interest litigation ought to be clearly capable of having an impact on issues that are of relevance to the public, thus for instance, some cases may not solely seek to obtain legal remedies for the parties concerned, but a broader goal may be to use the interest generated in the litigation to give attention to issues that may ordinarily have been ignored or marginalized (particularly by policy and decision-makers).

Public interest litigation also follows particular procedural rules, and these are further identifying markers of such cases (Bhuwania 2017). Thus, from a procedural perspective, public interest cases can be instituted by persons who do not have a direct interest in the issues being litigated, hence dispensing with the need to show *locus standi*. Further, such cases may be done *pro bono*, particularly because many of these cases deal with victims who may not otherwise have the financial means to institute cases in court. It should be noted that this does not necessarily mean

that public interest cases do not require financing, but rather that such financing is not likely to be met by the persons who would benefit from the litigation. In addition, public interest cases can be conducted by lay individuals, who do not necessarily have legal training, meaning that any person can bring such cases directly to the courts without having to involve lawyers.

As we have seen already, the aim of public interest litigation is to address issues that are of concern to the public. One such issue is the promotion, protection and guarantee of the fundamental rights and freedoms provided for in the Constitution. This chapter will analyze how public interest litigation has been used in the context of the right to gender equality which is provided for under the Bill of rights, and it will demonstrate some of the gains that have been achieved through such litigation. It will also discuss how public interest litigation has resulted in a number of challenges and drawbacks that have affected the right to gender equality. It will also demonstrate how public interest litigation has the capacity to reveal incisive lessons which are of great significance to the women's movement and women's rights advocates.

The aim of this chapter, therefore, is to analyse how public interest litigation has been used in Kenya with regard to women's rights, and to demonstrate that although a primary aim of public interest litigation is to use law strategically in order to promote human rights, it also bears great potential in strengthening the work of women's rights advocates and the women's movement. This is an aspect of public interest litigation which may easily be overlooked, yet it is important after such cases come to an end to reflect and to take stock of the lessons learnt, given that the overall aim of such litigation is not purely to obtain a legal remedy but to address questions of public interest in a manner that may result in social justice. Public interest litigation with regard to women's rights can provide key insights into the way in which patriarchy operates; the strengths and weaknesses in the women's movements and lessons which can inform the work of women's rights advocate. Thus, by historically charting the development of public interest litigation in Kenya, this chapter will demonstrate some of the gains that have been achieved in promoting the rights of women through such litigation, while at the same time highlighting the specific lessons for the women's movement and women's rights advocates which have been revealed as a result of public interest litigation.

The chapter begins with a discussion of how public interest litigation developed in Kenya during the post-independence period, when generally courts were bound by the English common law principle on *locus standi*. The following section discusses the gender dimensions of public interest litigation during the post-independence period, and the lessons for the women's movement and women's rights advocates. The next section discusses public interest litigation under Kenya's current Constitution, focusing on the provisions which now make it easier for public interest cases to be brought before the courts and analyses how this liberalization of public interest litigation has impacted upon the struggle for gender equality.

## 6.2 The Development of Public Interest Litigation in Kenya: Learning from Wangari Maathai

This section will discuss the way in which Kenyan courts dealt with the issue of public interest litigation before 2010, when the current Constitution was promulgated. It will use the *Wangari Maathai vs. Kenya Times Media Trust Ltd*, (the Wangari Maathai case) to demonstrate the challenge posed by the English common law principle of *locus standi*. In discussing the development of public interest litigation in Kenya, it will be demonstrated here that such litigation, more than being concerned with obtaining legal remedies, is concerned with securing the public interest, which is an objective that can be achieved even where a legal remedy is denied. It is also important to reflect on the gender dimensions of this case and specifically to highlight how, through public interest litigation, much was learnt about the dynamics of the women's movement in the country.

It is interesting to note that the use of PIL during this period was more effective and achieved the overall intended purpose, which was to engage the public interest in the conservation of Uhuru Park. Further, the *Wangari Maathai case* was litigated at a politically significant time in Kenya, which was at the height of the struggle for political and constitutional reforms. We shall see in this section that aside from achieving the aim of ensuring that Uhuru Park was safeguarded, the case also highlighted the need for reforming the structure of governance in the country so as to ensure independence of the three arms of government. In particular, the case highlighted the ways in which the executive arm of the government interfered with the work of the judiciary and in turn, how this negatively impacted upon the enjoyment of fundamental rights and freedoms. In this way therefore, the *Wangari Maathai case* was instrumental in demonstrating the need for political reforms through the constitutional review process.

As we will see later, this is in contrast to the use of PIL post the 2010 period, with particular regard to the gender equality provisions under the Constitution, whereby several PIL cases have been brought before the courts, but the overall public intention of ensuring the implementation of these constitutional provisions is yet to be achieved. The difference in outcomes may be as a result of how PIL was used strategically in the *Wangari Matthias case*, without necessarily seeking to simply obtain a legal remedy through the courts. In the more liberalized post 2010 period, PIL has not been used as strategically as in the *Wangari Maathai case*, and focus has been on obtaining relief through the courts, rather than using the court process strategically as a stepping stone towards achieving the greater intended purpose.

In Kenya public interest litigation has a fairly short history, which is steeped in the country's struggle for democratization and constitutional reforms. The Independence Constitution did not provide much space for this kind of litigation, and for a long time, the courts applied the English common law principle of *locus standi*, which requires that an individual seeking relief from the courts should be able to demonstrate that she has suffered injury to a right or interest recognized in law, and that such injury has been occasioned by the actions or omissions of the parties mentioned in the suit either as defendants or respondents. This common law rule

necessarily limited public interest cases which, as we have already pointed, have the objective of addressing issues of relevance to the public and such issues would transcend the interests of the individuals who bring these cases before the courts.

This point is demonstrated in the *Wangari Maathai case* whereby the plaintiff instituted a suit seeking to bar the defendant from constructing the Kenya Times Complex at Uhuru Park. Uhuru Park is a recreational space, and is also an important landmark in Kenya's capital city, Nairobi. Its name, Uhuru, simply means Freedom. Aside from being used for recreational purposes, it is also used for significant political and religious events. Wangari Maathai equates the park to Hyde Park in London or Central Park in New York (Maathai 2008: 184). The subject of the suit was, therefore, a public space, which was of historical, political and environmental significance to the people of Kenya. The defendant filed a preliminary objection, seeking to strike out the plaint on two grounds: first, that the plaintiff could not disclose a cause of action against the defendant and secondly that the plaintiff lacked *locus standi* to institute the suit. This was based on the English common law rule illustrated above, that requires one to show the legal injury they have suffered (and hence they have *locus standi* to institute the suit) and that such injury is as a result of the defendant's actions (the cause of action). The defendant's argument was that the plaintiff's case lacked both of these ingredients. The court agreed with the defendant that Wangari Maathai could not demonstrate that at a personal level, she had suffered or would suffer a legal injury if the defendant constructed the proposed tower in Uhuru Park, and the suit was struck out.

Although Wangari Maathai lost the legal battle, the case was instrumental in bringing to light the fact that the public space was under threat. It attracted both national and international attention. It also led to conversations around the issue, and in terms of strategy, Wangari Maathai relied on the media to give publicity to the suit. She wrote many and extensive letters to the various persons in public office, up to and including the then president of Kenya, Daniel arap Moi; engaged foreign investors and donors such as the World Bank; and organized peaceful demonstrations to protest the proposed development on Uhuru Park. Many Kenyan citizens began to speak out against the proposed project and even professional organizations such as the Architectural Society of Kenya condemned it. Eventually, many of the investors who were interested in the project began to pull out, leading to the scaling back of the proposed development. The project stalled for two years and eventually, it was cancelled in 1992. Moreover, in 1999 when the Environmental Management and Co-ordination Act (EMCA) was passed, a provision was included in section 3 (3) which essentially allows for a person, who alleges that his entitlement to a clean and healthy environment is being or is likely to be contravened, to apply to the High Court for redress. This provision in the law was included as a direct result of ruling in the *Wangari Maathai case* (Mehta 2011: 3).

What we see, therefore, is that although the courts relied on a strict application of the English common law rule, even when it was clear that the people of Kenya would suffer the loss of a significant landmark, the strategies that Wangari Maathai used were effective in achieving the

objective - which was to save Uhuru Park. We already noted that one of the characteristics of public interest litigation is that it is not simply concerned with obtaining legal remedies, but rather, that in the event relief is not obtained through the courts, the litigation generates so much media interest, shedding light on an issue which might otherwise have remained unknown to the public. This, in itself, is an important outcome of such litigation which allows for the overall objective of achieving wide public interest.

It is also significant to note that this case was tried at a time when the struggle for democratization, political and constitutional reforms and the re-introduction of multi-party politics was gaining momentum (Maathai 2008: chap.9). The government was, therefore, under close scrutiny with citizens speaking out against the dictatorial and authoritarian regime which routinely and systematically abused the fundamental rights and freedoms of individuals. The international community and donor agencies took note of these issues, which were widely reported in the local media, and it was this combination of factors that also significantly contributed to the saving of Uhuru Park (Maathai 2008: chap.9).

Since the decision in the 'Wangari Maathai case', courts adopted a more lenient approach to the application of the *locus standi* principle. See for instance the 2001 decision in *Albert Ruturi, J. K. Wanywela & Kenya Bankers Association vs. The Minister of Finance & The Attorney-General and the Central Bank of Kenya [2001] 1 EA. 253 Nairobi High Court Misc. Civil Application No.908 of 2001*, where the court held that if one could show minimal person interest in a matter, this was sufficient to sustain a public interest suit (Africog et al.)

Similarly, the *Njoya & 6 Others vs. Attorney General & Another* (the 'Njoya Case'), was another landmark case in Kenya, whereby the courts had to deal with the issue of *locus standi* yet again. The matter was brought before the courts in 2004 during the constitutional review process. Some of the remedies sought by the applicants in the case included a declaration that some sections of the Constitution of Kenya Review Act which was passed by Parliament in 1997 to provide the legal framework for the constitutional review process vitiated the constituent power of the people of Kenya; a declaration that the same Act was unconstitutional to the extent that it allowed the National Constitution Conference to discuss and adopt a draft Bill to alter the Constitution; and a declaration that the draft Bill adopted by the National Constitutional Conference did not reflect the views of Kenyans (*Njoya & 6 Others vs. Attorney General & Another*). The public interest objective in the 'Njoya case' was to ensure greater participation by the people of Kenya in the constitutional review process.

The respondents raised a preliminary objection to the suit on five grounds, one of which was that the applicants could not demonstrate that they had suffered or were likely to suffer injury to any of the rights enjoyed by them personally. On this issue of *locus standi*, the court held that it was the primary duty of the court to uphold constitutionalism, and that this duty could not be effectively discharged if the courts refused to hear matters brought before them on the grounds that the applicants could not demonstrate that they had a personal stake in a case that is of interest to all Kenyans. The court, therefore, prioritized the substantive issues which the case

was concerned with, rather than the procedural technicalities that the respondents had raised. Concerning the constituent power of the people, the court held that the right by the applicants and all Kenyans to adopt and ratify a new Constitution through a national referendum is the centre-piece of a people driven constitutional review process and was, therefore, fundamental to the comprehensive review of the Constitution by the people of Kenya. The court's decision here ensured the participation by all Kenyans in the constitutional review process, and as we shall see, this was fundamental in ensuring that the voices of all Kenyans, including the marginalized categories such as women were heard and taken into account.

It should be noted that as at 2004, when the *Njoya case* was brought before the courts, the struggle for democratization in Kenya had culminated in the changing of political regimes by the election of Mwai Kibaki as President in the 2002 elections. Following this change in political regimes, the expectation among Kenyans was for constitutional reforms, which would lead to political, social and economic reforms. This was a landmark ruling, given the history of the courts, whereby they generally relied on technicalities to dismiss cases that raised political questions (Juma and Okpaluba 2012). Thus, public interest litigation in Kenya was at once spurred by the country's dictatorial past, and limited by the same dictatorial legacy that seemed to interfere with the independence of the judiciary. It has evolved even as democratic space in the country has increased, and has played a key role in bringing about desired political and constitutional reforms, as demonstrated by the 'Njoya case'.

### **6.3 The Gender Dimensions of Public Interest Litigation during the Post-Independence Period**

The gender dimensions of public interest litigation during the post-independence period are worth considering. Both the 'Wangari Maathai case' and the 'Njoya case' had consequences for the women of Kenya.

The 'Wangari Maathai case' demonstrates the problematic link between the women's movement and the ruling political regime as well as the fragmentation and polarization within the women's movement. As a woman, it was not easy for Maathai to challenge the then ruling regime. In fact, she faced personal attacks, with Members of Parliament branding her a wayward woman, and one MP went as far as saying that Maathai had "repudiated her husband in public and could therefore not be taken seriously, and further that her behaviour had damaged his respect for all women" (Maathai 2008: 191). The same MP stated that "he did not see the sense at all in a bunch of divorcees coming out to criticize such a complex" (Maathai 2008: 191). The fact that this case was brought to the courts by a woman influenced the manner in which the politicians and the ruling regime responded to the issues raised. Rather than address the issues raised in the case, they also turned to personal attacks that sought to belittle Maathai on the basis of her sex.

It must be noted, that in the 'Njoya case', such personal attacks were not witnessed, even though he also took to court issues of great political significance, which challenged the then ruling regime. The 'Wangari Maathai case' demonstrates that one's gender matters with regard to questions that touch on

political processes and governance. For Maathai, it was a hostile political environment in which she was operating, and being a woman, this made her even more vulnerable. It is problematic that the issue of Maathai's gender and her marital status came up at all. After all, this was a case that concerned the environment, thus to use the fact that she was a woman to try and demean her is a clear indication of the patriarchal nature of Kenya's political system at the time, and the resulting subjugation of women.

However, what is even more problematic is the fact that the women's movement (Taylor 1989; Johnston and Klandermans 1995) failed to support Maathai and to defend her from the onslaught that she faced on the basis of her gender. Following a speech by the then President Moi, in which he suggested that Maathai was not a proper woman because she would not respect men and be quiet, and further wondered why the women of Kenya had not spoken out against her, being the wayward woman that she was, the Maendeleo ya Wanawake openly spoke out against her (Maathai 2008). They criticized Maathai for having belittled the President, held rallies to denounce her, and suggested that she had gone astray (Maathai 2008). The fragmentation in the women's movement was clear. It was not merely disunity or difference of views on processes and strategies for the attainment of gender equality, but rather there was a lack of philosophy undergirding the movement and consequently the various actors within the movement did not have the shared goal of advocating gender equality.

On the one hand, there was a branch of the women's movement led by Maathai herself that was concerned with issues of social justice, which ultimately would lead to a better world not just for women, but for everyone. There was another branch of the women's movement, led by Maendeleo ya Wanawake, that was openly affiliated to the ruling regime and was, therefore, impotent to challenge its excesses in the exercise of political power. Respect, protection, and promotion of the rights of women seemed not to be an issue that the government or indeed the political classes took seriously and there also seemed to be little that the women's movement was doing to address this.

The 'Njoya case', on the other hand, opened up the space for increased participation by women in the constitutional review process. The national referendum entailed carrying out civic education, educating the public on the provisions of the proposed Constitution and building the confidence of the public. For women this was an important exercise that allowed them to not only to receive education on the provisions of the proposed Constitution, but also to give their feedback and express their wishes and aspirations. Wanjiku Kabira documents the way in which women from all over the country engaged with the Constitutional Review Commission, and eventually how their aspirations were captured in the Constitution, particularly with regard to provisions on Economic and Social Rights (Kabira 2012).

## **6.4 Public Interest Litigation under Kenya's Current Constitution**

So far we have seen that the democratization of Kenya's political system and constitutional reforms led to increased space for public interest litigation to be conducted. The promulgation of the current Constitution in 2010 has further liberalized Kenya's legal system with regard to public interest litigation. The following provisions in the Constitution stipulate and safeguard the right to institute public interest cases: Article 22 (1) provides that "every person has the right

to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened”; Article 258 provides that “every person has a right to institute court proceedings claiming the Constitution has been contravened or is threatened with contravention”.

Furthermore, Article 22 (2) paragraph (c) provides that “a person acting in the public interest may institute proceedings under Article 22 (1)”, while Article 22 (3) provides that:

... the Chief Justice shall make rules providing for the court proceedings under Article 22, and such shall satisfy the following criteria: the rights of standing are fully facilitated; formalities relating to the proceedings, including commencement of the proceedings are kept to the minimum and if necessary the courts shall entertain proceedings on the basis of informal documentation; that no fee shall be charged for such proceedings; while observing the rules of natural justice, the court shall not be unreasonably restricted by procedural technicalities.

In 2013, the then Chief Justice, Willy Mutunga developed the rules envisioned under Article 22 (3) (Constitution of Kenya: Protection of Fundamental Freedoms: Practice and Procedure Rules).

## **6.5 The Gains Made in Promoting Women’s Rights through Public Interest Litigation on Social and Economic Rights**

Since the liberalization of Kenya’s legal system insofar as public interest litigation is concerned, there have been many cases brought to court pursuant to Articles 22 and 258. Many of these cases have resulted in direct gains for women, even where they addressed human rights in general and did not focus on gender specific issues. This is so, particularly with regard to economic and social rights, which are provided for under Article 43 of the Constitution. Article 43 (1) provides that:

*... every person has the right to: the highest attainable standard of health, which includes the right to health care services, including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and to education.*

The courts have passed a number of decisions relating to Article 43 rights, and it is worth mentioning a few of them here, given the impact they have had in promoting the rights of women in Kenya. We will focus on the right to health and the right to adequate housing, where courts have developed jurisprudence that significantly protects and promotes these rights, which, in turn, has a positive impact on the rights of women in the country.

### **a) The Right to Health**

With regard to the right to health, the *POA & 2 Others vs. Attorney General* Case is of great significance. This case was instituted by persons living with HIV in order to challenge the con-

stitutionality of Section 2, 32 and 34 of the Anti-Counterfeit Act of 2008. The purpose of the Act was to protect intellectual property rights by dealing with counterfeit goods. Section 2 of the Act provided a definition of counterfeit goods, which included generic medication. Such a definition would have an adverse effect on people living with HIV, who relied on the use of generic anti-retroviral medication in order to manage the illness. Section 2 of the Act, if applied to generic medication, could have the impact of limiting importation of life saving generic medication into the country, and this would inevitably affect the petitioners' right to the highest attainable standard of health care, and further that if they could not enjoy the right to health, this would have an adverse effect on their right to life. Section 32 created offences relating to counterfeit goods, which included, *inter alia*, being in possession of such goods and the manufacture and produce counterfeit goods, and the importation of such goods. Section 34 provided that:

*... the owner of an intellectual property right who has valid grounds for suspecting that the importation of counterfeit goods may take place, may apply to the Commissioner in the prescribed manner to seize and detain all suspected counterfeit goods which are: (a) goods featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that right has been applied; and (b) imported into or enter Kenya during the period specified in the application.*

Read together, these Sections potentially could affect the importation and possession of anti-retroviral drugs in Kenya.

In making its determination, the court took into account the social-economic context of HIV and AIDS in Kenya. The court noted that HIV and AIDS pose a serious threat to the life and health of those who are infected, especially women and children. It further took into account statistics indicating the numbers of infected persons, and the impact that anti-retroviral drugs have in reducing the deaths caused by AIDS. The court further noted the impact of AIDS related deaths to the country's economy, pointing out that 1.8 million children had been orphaned as result, while also further noting that there is a higher prevalence rate of infection among women than among men. The court found that the Act prioritised the protection of intellectual property rights in dealing with the issue of counterfeit goods, rather than focusing of issue of quality and standards. The intellectual property rights held by individuals were given primacy over the public interest in life-saving generic medication, but it was important that these individual intellectual property rights give way to the fundamental rights and freedoms held by the petitioners and others in the general public living with HIV and AIDS. The court, therefore, held that the enforcement of the Act, with regard to access to life saving generic medication, would be a breach of the petitioners' constitutional rights.

Notably, this case addressed issues that affect women, and these were noted when the court took into consideration the social-economic context of HIV, and by prioritising the fundamental rights and freedoms of persons living with HIV over individual intellectual property rights, the court played a key role in ensuring that issues which affect women are effectively addressed.

In the case of the AIDS Law Project v Attorney General & 3 others (2015: eKLR), the matter before the court concerned the constitutionality of section 24 of the HIV and AIDS Prevention and Control Act, 2006. The rights which were litigated in this case were the right to privacy and the right to non-discrimination on the basis of gender. In fact, the right to health was not specifically mentioned in this case, however, it is important to note that the courts have adopted the principle of the inter-relatedness and indivisibility of human rights (The East African Centre for Human Rights: 6–7). This essentially means all human rights are inter-related, so that they necessarily inform and influence each other. Thus, in determining human rights cases, courts must not look at rights in isolation, but must understand them in the broader context of how they related to other human rights provided for under the Constitution. In this case, therefore, the right to privacy which was the primary issue that the court decided upon was necessarily related to the right to reproductive health provided for under Article 43 of the Constitution.

Section 24 of the HIV and AIDS Prevention and Control Act provided as follows:

*(1) A person who is and is aware of being infected with HIV or is carrying and is aware of carrying the HIV virus shall— (a) take all reasonable measures and precautions to prevent the transmission of HIV to others; (b) inform, in advance, any sexual contact or person with whom needles are shared of that fact. (2) A person who is and is aware of being infected with HIV or who is carrying and is aware of carrying HIV shall not, knowingly and recklessly, place another person at risk of becoming infected with HIV unless that other person knew that fact and voluntarily accepted the risk of being infected.*

*(3) A person who contravenes the provisions of subsection (1) or (2) commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.*

*(4) A person referred to in subsection (1) or (2) may request any medical Practitioner or any person approved by the Minister under section 16 to inform and counsel a sexual contact of the HIV status of that person.*

*(5) A request under subsection (4) shall be in the prescribed form.*

*(6) On receipt of a request made under subsection (4), the medical practitioner or approved person shall, whenever possible, comply with that request in person.*

*(7) A medical practitioner who is responsible for the treatment of a person and who becomes aware that the person has not, after reasonable opportunity to do so— (a) complied with subsection (1) or (2); or (b) made a request under subsection (4), may inform any sexual contact of that person of the HIV status of that person.*

*(8) Any medical practitioner or approved person who informs a sexual contact as provided under subsection (6) or (7) shall not, by reason only of that action, be in breach of the provisions of this Act.*

The petitioner argued that this provision was discriminatory against persons living with HIV, and in particular women. This is because pregnant women are compelled to undergo HIV testing when attending ante-natal clinics, and therefore, women are more likely to find out their HIV status and thus fall victim to section 24 of the Act. Further, given the stigma surrounding HIV and AIDS in Kenya, the provisions of section 24 of the Act fell afoul of constitutional right to privacy provided for under Article 31 of the Constitution by requiring persons infected with HIV and who are aware of their positive status to reveal such information to persons with whom they have sexual contact; and where the infected persons fails to disclose their HIV status to person with whom they have sexual contact, a medical professional who is treating the infected person can then disclose such information to the sexual contact of the infected person. However, where a person discloses their HIV under section 24, there was no corresponding duty upon the person who receives such information not to disclose it to others. Such a violation of the right to privacy was only likely to increase the stigma surrounding HIV, and in particular women were likely to bear the brunt of such stigma, given that they are more likely to discover their HIV status during pregnancy.

The court upheld the petition, stating that section 24 was both vague, overbroad, lacking in certainty and was likely to contravene the right to privacy as provided for under Article 31 of the Constitution.

### ***b) The Right to Housing***

With regard to the right to housing, it is first important to note that this is a question which affects mainly those living in the informal settlements, and also living below the poverty line. In the context of informal settlements, the right to housing often competes with the right to property, and the issue has come before the courts when property owners wish to evict squatters from land to which they hold title. Of course, the gender dimensions in this context are visible: from a feminization of poverty perspective, women are less likely to hold a secure title to property, and more likely to live below the poverty line. Moreover, in the context of evictions, the head of household principle may be applied, meaning that it is the men who are likely to receive compensation for evictions as household heads rather than the women.

There have been a number of decisions in this regard, with some, such as the 'Charo case' (The East African Centre for Human Rights 2010: 27) adopting a conservative approach in dealing with the issue of competing rights, so that the right to property is upheld over the rights to housing. However, in several other instances, the courts have taken a balanced approach, seeking to uphold the right to property, but at the same time seeking to ensure that the right to housing is not violated. The courts in the Mitu-Bell, (The East African Centre for Human Rights 2010: 32), Satrose Ayuma (The East African Centre for Human Rights 2010: 8), Susan Waithera (The East African Centre for Human Rights 2010: 27), and Ibrahim Sango cases relied on International Law provisions that provide for the right to housing in order to develop jurisprudence on how this right ought to be enforced in Kenya's specific socio-economic context, whereby the right to housing competes with the right to property.

Thus, the courts have found that while indeed the right to property ought to be protected, this must not be at the expense of human dignity. Consequently, evictions of squatters must be done in a humane manner, which complies with International standards and guidelines. Further, the courts have also directed the state to come up with national guidelines setting out how evictions should be carried out in a manner that does not violate the right to housing. The courts noted the need for such guidelines given the inhumane manner in which forced evictions are often conducted, which includes, giving insufficient or no notice of intended evictions; conducting evictions during the night or during unfavourable weather conditions; demolition of structures occupied by residents as means of forcing them to vacate the property; failing to provide alternative land where persons evicted can be resettled. The courts in these cases further noted that marginalized and vulnerable categories including women, children, the elderly and persons with disabilities bear the greatest brunt of forced evictions in Kenya. Ideally, national guidelines on evictions should address these issues, so that evictions are done in a manner that takes into account the fundamental rights and freedoms of those affected. On the issue of the right to housing therefore, the courts have significantly developed jurisprudence to fill the gap that has been created by the lack of legislative provisions. The decisions made by the courts in the context of the competing property rights, on the one hand and housing rights on the other, which reflect their willingness to protect and promote the right to housing.

## **6.6 The Gains, Challenges and Lessons Learnt through Public Interest Litigation Specific to Gender Equality**

So far, we have discussed how public interest litigation in the context of cases relating to fundamental rights and freedoms, but not necessarily specific to gender equality, has impacted upon women's rights in Kenya. In this section, we now look at public interest litigation that has addressed specific gender concerns. We shall analyse not only the gains made or challenges faced, but more importantly, the lessons that such litigation provides for the women's movement and women's rights advocates in the country.

### **a) The Need to Use Public Interest Litigation more Strategically**

The Constitution of Kenya contains a number of provisions which protect and promote the right to non-discrimination on the basis of gender. These provisions provide optimism that the situation of women in the country will be greatly improved. Several cases have been brought before the courts seeking to ensure the implementation of these provisions.

One of the very first public interest litigation cases under the current Constitution is the *Centre For Rights Education And Awareness (Creaw) & 7 others vs. Attorney General* (2011: eKLR), whereby the petitioners went to court in order to challenge the nominations which the then President Mwai Kibaki had made for the positions of Chief Justice, Attorney General, Director of Public Prosecutions and Controller of Budget. The basis for challenging these nominations was that they contravened several Articles of the Constitution, including Article 27 which pro-

vided for non-discrimination on the basis of gender. The petitioners argued that the nomination of four men, while excluding women altogether, was a violation of Article 27. The petitioners also argued that in making the nomination for the position of Chief Justice, the Judicial Service Commission was not involved, contrary to Article 166 of the Constitution, and further that the President failed to consult the then Prime Minister, Raila Odinga, and this was in contravention of Section 24 (2) of the Sixth Schedule, which provided that the President would appoint the Chief Justice, subject to the National Accord and Reconciliation Act and after consultation with the Prime Minister, and approval by the National Assembly.

The court upheld the petition, citing the number of constitutional provisions which it violated, including the failure to have any women among the nominees. It should be noted, however, that this case generated quite a lot of interest, not because of the gender issues it raised, but primarily because of the issue of the power sharing arrangement between the President and the Prime Minister at the time. Moreover, it was not clear what the primary objective of this case was, whether it was to prevent the process of the appointment of the presidential nominees or whether it was to address the issue of gender inequality and ensure that constitutional provisions around gender discrimination are upheld. However, it is still a gain that at least a woman was appointed to the position of Controller of Budget in 2011.

Since the Creaw case, however, public interest litigation around gender equality has in many instances failed to address the primary objective of ensuring that constitutional provisions which protect and promote the rights of women are implemented, as is discussed below.

In 2011, the *Federation of Women Lawyers, Kenya (FIDA-K) & 5 others vs. Attorney General & Another* case (2011: eKLR) was brought before the courts. This case challenged the composition of the Supreme Court of Kenya, following the appointment of only two women out of the seven positions as judges of the court. The petitioners argued that this composition did not reflect the one third gender rule provided for under Article 27 (8) of the Constitution. The court dismissed the petition, holding that the purpose of Article 27 (8) was to create a future obligation upon the state to address historical injustices that may have been encountered by a segment of the country's population. The court also held that the provisions under Article 27 (8) had not yet crystallized, and would only crystallize when and if the government puts in place the required legislative and other measures to implement the two thirds gender rule.

In the 2012 Supreme Court Advisory Opinion (2012: eKLR), the Attorney General went before the Supreme Court seeking an advisory opinion on whether "Article 81 (b) as read with Article 27 (4), Article 27 (6), Article 27 (8), Article 96, Article 97, Article 98, Article 177 (1)(b), Article 116 and Article 125 of the Constitution require progressive realization of the enforcement of the one-third gender rule or requires the same to be implemented during the [first] general elections [under the new constitutional dispensation]". Parliament had failed to put in place legislative measures to ensure the implementation of Article 81 (b). It was further evident, that without such legislative measures being in force, it was unlikely that women would be elected to these positions in the numbers envisioned under the Constitution. Consequently, the Attorney

General moved to the Supreme Court seeking the advisory opinion. He argued that the provisions of Article 81 ought to be phased out and progressively realized in order not to result in an absurd outcome should the electorate fail to elect at least one-third of women to the National Assembly and to Senate.

The court agreed with the position taken by the Attorney General, and advised that the provisions under Article 81 (b) were not subject to immediate realization. The court further stated that

*... we have come to the conclusion that the expression 'progressive realization', as apprehended in the context of the human rights jurisprudence, would signify that there is no mandatory obligation resting upon the State to take particular measures, at a particular time, for the realization of the gender-equity principle, save where a time-frame is prescribed. And any obligation assigned in mandatory terms, but involving protracted measures, legislative actions, policy-making or the conception of plans for the attainment of a particular goal, is not necessarily inconsistent with the progressive realization of a goal.*

This advisory opinion informed the conduct of the 2013 elections, whereby the one third gender rule was not implemented. By 2017, Parliament had still not enacted legislation to give effect to Article 81 (b), and yet again, the one third gender rule was not implemented.

In both these cases, the court determined that the realization of the provisions on gender equality was subject to the International Law principle of progressive realization, but the way in which the principle was applied was erroneous. Under International Law, non-discrimination and equality in accessing opportunities in the political, economic, social or cultural spheres of life is of immediate realization ((The East African Centre for Human Right, A Compendium on Economic and Social Rights Cases under the Constitution of Kenya, 2010).

In 2016, the *National Gender & Equality Commission & another vs. Judicial Service Commission & 2 others*, the 'NGEC case' (The East African Centre for Human Right, A Compendium on Economic and Social Rights Cases under the Constitution of Kenya, 2010) was brought before the courts, again seeking to challenge the constitutionality of the composition of the Supreme Court. The issues for determination were similar to those in the FIDA-K case. In 2016, three positions in the Supreme Court fell vacant after the retirement of the Chief Justice, Deputy Chief Justice, and one judge. Only one woman was appointed to the position of Deputy Chief Justice. The other two positions were filled by men, and thus the gender composition of the Supreme Court remained as it had earlier been - five men and two women. The petitioners argued that this composition was contrary to the one third gender rule set out under Article 27 (8) of the Constitution. The court yet again dismissed this petition, holding that it was without merit, because arithmetically, two thirds of 7 is 4.66, rounded off to the nearest whole number that would be 5; and one third of 7 is 2.33, rounded off to the nearest whole number that would be 2. Consequently, the gender composition of the Supreme Court was within the constitutional provisions.

The court applied a restrictive approach in reaching this determination and did not delve into why the numbers matter and the substantive difference it would make which is something we have seen the courts do in other public interests suits, particularly with regard to the right to health and the right to housing, which were discussed here earlier.

Notably, these Supreme Court decisions on the two thirds gender rule constitute the greatest claw back in the implementation of constitutional provisions on gender equality. Be that as it may, there have been public interest cases on gender equality that have been determined favourably, such as *the Centre for Rights Education and Awareness (CREAW) and 8 others vs. Attorney General & another* case, (Centre for Rights Education & Awareness (CREAW) & 8 others v Attorney General & another [2012] eKLR) which questioned the constitutionality of the appointment or deployment of 47 County Commissioners by the President, whereby out of the 47, only 10 were women. This was contrary to Article 27 of the Constitution and contravened the one third gender rule. The court noted that it was the duty of state to prove that there were no qualified female candidates for appointment as County Commissioners, and in fact the respondent had admitted that there were at least sixteen women who had so qualified. In departing from the determination of the court in the Supreme Court Advisory Opinion and in the FIDA-K case discussed above, the court stated as follows:

... In matters of appointment or election to office in order to achieve gender equality and equity, there is no qualification of the state's obligation as there is no outlay of resources required and which is shown to limit or inhibit the realisation of this right.

However, these cases in and of themselves, have not achieved the overall objective of ensuring that gender equality provisions under the Constitution are fully implemented. There are still no legislative provisions to give effect to Article 27 (6), 27 (8) and 81 (b) of the Constitution.

The use of public interest litigation in the context of the constitutional provisions around gender equality needs to be strengthened. The above cases point to the need to use public interest litigation more strategically, with the focussed objective of achieving the implementation of the constitutional provisions on gender equality. The idea behind public interest litigation, as we saw earlier in the 'Wangari Maathai case', is not simply to obtain reliefs through the courts, but to use the litigation in such a manner that even if reliefs are not obtained through the courts, the issues of public interest are still addressed. As we already saw, Wangari Maathai did not merely rely on the court process, but used other strategies such as creating attention through the media and lobbying various interest groups such as donors and investors, as well as picketing. Thus, the impetus behind public interest litigation ought not to be the attainment of particular legal remedies but despite the absence of those remedies to raise wide public interest. This is the lesson here, and it raises the question as to how public interest litigation can be used more strategically, so that its aims and objectives are achieved even where reliefs through the courts are denied.

Indeed, lessons from the 160 Girls' Project (*C K (A Child) through Ripples International as her Guardian & next friend*) & 11 others vs. Commissioner of Police / Inspector General of the National Police Service & 3 others) indicate how momentous such a task would be. In this particular case, the petitioners were minors who had experienced sexual violence, and the police had failed to effectively investigate and/or charge the perpetrators. The issue before the courts was thus whether, in fact, the conduct of the respondents resulted in the violation of the right to access to justice for the petitioners.

Further, the petitioners sought, but were denied, orders of mandamus:

*“directing the 3rd respondent together with his agents, delegates and/or subordinates to formulate the National Policy Framework envisioned by Section 46 of the Sexual Offences Act, 2006 through a consultative and participatory process, ensuring its compliance with the Constitution and to disseminate, implement and widely and regularly publicize the National Policy Framework, and Make and/or cause the National Policy Framework in (a) above to be made a mandatory component of the training curricular at all police training colleges and institutions;*

*directing the 3rd respondent together with his agents, delegates and/or subordinates to implement the guidelines provided in the Reference Manual on the Sexual Offences Act, 2006 for prosecutors, Sections 27-36, excepting section 34;*

*directing the Respondents to regularly and/or account to the Court, for such period as the court may direct, on compliance and/or implementation of the orders sought.”*

While the declaration that the constitutional rights of the petitioners had been violated by the respondents was in itself a victory, the broader public interest was to ensure that legislative provisions aimed at reducing instances of sexual violence against women and girls was actually not achieved through the reliefs provided by the court.

The 160 Girls' Project, therefore, relies on the media interest generated through the court process to carry on the work beyond the courtroom of ensuring that this public interest objective is met. Some of the initiatives that have been started under the Project include media campaigns; public education and awareness creation; engaging with the respondents and working consultatively with them beyond the adversarial set up of the litigation process (See the Project website, <http://160girls.org/> accessed 12<sup>th</sup> August 2018). This type of sustained initiative beyond the courtroom is extremely important in achieving the goal of gender equality, which requires societal transformation, a process which lasts well beyond the litigation process.

The point here is that while law is an important and useful starting point in the quest to protect and promote human rights, it must not be the only means that is relied upon to achieve this task. Other innovative and relevant processes must be envisioned at the start of, during and at the end of the litigation process. For instance, the 160 Girls' Project is now working consultatively with the police in order to ensure effective enforcement of the Sexual Offences Act and is actually looking at ways through which the project can support the police in such implementation (*160 Girls Project*).

**b) *The Need to Understand Gender as an Axis of Inequality that is Informed and Shaped by other Axes of Inequality***

In 2016, FIDA-K brought the Matrimonial Property case (Federation of Women Lawyers Kenya (FIDA) v Attorney General & another [2018] eKLR) before the courts, on behalf of all the women of Kenya. It was argued that section 7 of the Matrimonial Property Act, which provides that, “ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”

The petitioner argued that this section was discriminatory against women, because it would require women to show the contribution they made towards the acquisition of property in the event of divorce. Further, the petitioner argued that section 7 was in contravention of Article 45 (3) of the Constitution, which provides that parties to a marriage are entitled to equal right at the time of, during the subsistence of, and at the dissolution of the marriage. In addition, the section was also likely to affect women’s enjoyment of the right to property as enshrined in Article 40, 60 and 68 of the Constitution. Further, section 7 contradicted section 10 (3) of the same Act, which provides that “parties to a marriage shall share equally liabilities incurred during the subsistence of the marriage for the benefit of the marriage; or reasonable and justifiable expense incurred for the benefit of the marriage”. The petitioners sought an order of Mandamus, compelling the respondent to delete section 7 as it was and replace it with the following proposed section, “Subject to Section 6 (3), *ownership of matrimonial property vests in the spouses in equal shares irrespective of the contribution of either spouse towards its acquisition, and shall be divided equally between the spouses if they divorce or their marriage is otherwise dissolved*”.

The court, in dismissing the petition, noted, *inter alia*, as follows: “section 7 of the Matrimonial Property Act applied to both men and women. In this sense, this is a gender neutral provision that does not specifically apply to women, as to be said to therefore lead to differential and disadvantageous treatment on the basis of gender. Further, there are situations whereby women earn more than men and contribute more financially in the acquisition of assets. The court further held that the issue of non-monetary contribution is one which had to be dealt with on a case by case basis, and that in fact section 7 provided for equality between parties to a marriage to the extent that it provided that one would walk out of a marriage with his or her entitlement based on the contribution made, whether monetary or otherwise”.

This case was brought on behalf of *all* the women of Kenya, and to this extent it is evident that it essentialized the women of Kenya; assuming that they have shared and common characteristics. Indeed, the court sought to dispel this assumption, when it noted that section 7 might also provide relief to women who actually earn more than their spouses and contribute more financially towards the acquisition of property. Indeed, in the court’s eye, the woman whose interests were represented in this suit was a very specific woman: a wife, a home-maker, and a mother. Yet, as the court pointed out, there are women who might not necessarily fit into this description. Are they also to benefit from a legal provision that requires them to share assets equally in the event

of divorce with their spouses, yet their contribution to the acquisition of those assets would have been more? It is indeed fortunate that the court was able to pick up these nuances.

What we see from this case is that there is a need to understand the subject category 'woman' when instituting public interest cases. This category, 'woman' is certainly not monolithic (Benhabib 1997: 27). Cases such as the Matrimonial Property one, point to the failure to understand the intersectional nature of gender inequality, leading to a situation whereby gender is analysed and presented as a single, unproblematic analytical category. In this case, there was a need to understand how a woman's economic status might intersect with her gender in order to produce specific forms of inequality or exclusion. This was not a suit on behalf of all Kenyan women, but rather, a suit based on assumptions concerning gender roles and how such roles then define women and their social status.

## 6.7 Conclusion

This chapter has demonstrated the potential of achieving gains with regard to the protection and promotion of women's rights through public interest litigation. Indeed, since the liberalization of the legal system in order to allow for more relaxed procedural provisions with regard to the institution of public interest litigation, many cases have been brought before the courts and the outcome has been the greater protection of women's rights. However, there is more potential in the use of public interest litigation to promote and protect women's rights than is currently being harnessed in Kenya. Consequently, it has been demonstrated here that there are inherent lessons that can be learnt through public interest litigation in order to strengthen the women's movement and inform the work of women's rights advocates. In summary, these are some of the lessons concerning women's rights and which arise as a result of public interest litigation:

- a) From the 'Wangari Maathai case', we saw that the women's movement can potentially be fragmented as a result of tense political processes. There is a need, therefore, to address this type of fragmentation so as to ensure that it does not frustrate the protection and promotion of women's rights through public interest litigation;
- b) Public interest litigation has played an instrumental role in advancing women's rights and ensuring the implementation of constitutional provisions on gender equality, even where such litigation does not necessarily address gender specific issues. This is especially so in the context of social and economic rights;
- c) In the context of constitutional provisions around gender equality, the use of public interest litigation has focussed primarily on achieving the goal of implementing the relevant constitutional provisions by seeking only reliefs through the courts. In this context, not much has been achieved, and there has been little progress towards the implementation of these constitutional provisions. However, public interest litigation has the potential of ensuring constitutional provisions are implemented even when reliefs are not obtained through the courts. This potential can only be harnessed by using public interest litigation more strategically, rather than limiting

its use to the court processes. In particular, public interest litigation should not be used as a standalone strategy, but should instead be used as only a single part of a more elaborate process that encompasses a number of other strategies such as the use of media more effectively; picketing; lobbying; inclusion and lobbying of actors from various sectors such as academics, technocrats, worker’s organizations, and even religious groups.

- d) There is a need to understand gender and the category “women” in more dynamic ways in order to avoid essentialization of this category. Essentialization in public interest litigation is likely to lead to absurd outcomes such as the marginalization and exclusion of certain categories of women.

These lessons ought to be taken seriously and incorporated in the work undertaken by women’s rights advocates.

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## PART TWO

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### SUSTAINING THE MOMENTUM

“Throughout my life, I have never stopped strategizing about my next steps. I often have to keep walking through whichever door opens. I have been on a journey and this journey has never stopped. When the journey has been acknowledged, and sustained by those I work with, they are a source of inspiration, energy and encouragement. They are the reasons why I keep walking and will keep walking as long as my knees hold out”

Wangari Maathai



## CHAPTER 7

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# WOMEN IN EDUCATION

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EDDAH GACHUKIA

### 7.1 Introduction

The inclusion of education in a book that addresses the question of changing the mainstream is appropriate and significant. This is because education is associated with impact on all sectors of human development. Education is indeed recognized as a pre-requisite for development. Education empowers women to fight against negative socio-cultural influences and prejudices that inhibit women's full participation in society. This chapter makes four main arguments. The first argument is that even though women of Kenya have achieved major gains in education, there's still much to be done because education is a critical empowerment tool that is important for liberating women from negative socio-cultural influences and prejudices that inhibit women's full participation and changing the mainstream. The second argument is that increasing the number of girls attending school is not enough because that is just the beginning. More importantly, there is need to interrogate the relevance and dynamism of the entire curriculum. This process aims at ensuring that education is empowering and can empower girls to change the mainstream. The third argument is that women in different disciplines such as law, medicine, and agriculture need to see themselves as critical players in this process of changing the mainstream. The fourth argument is that there is a general lack of appreciation in the women's movement of education as interdisciplinary and that visibility of women in education demands demystifying leadership. As changes in education create space for the girl child, the number of girls attending school has increased but this number is not enough to build an appreciation for the cross-cutting ability of education. Women in different disciplines from education to development to economics to politics and even engineering must view themselves as critical players in demystifying leadership, and only then will the mainstream be changed as women are truly empowered and take their rightful place in society. This chapter develops these arguments through a historical analysis with a focus on women's engagement in breaking down socio-cultural barriers in education. It further advances the argument by reviewing commission reports, Kenya's various educational report and UN convention report to situate the place of women in education against the backdrop of broader socio-cultural goals. Although a great deal of data is available in research works, and official reports, we prefer to stick to a discussion of what has worked in Kenya, and draw conclusions on what we must continue to pursue together, to achieve change towards gender equality. We reiterate that critical focus on inclusive empowering education is mandatory for achieving the equality goal for transformation of society. We believe that the

efforts and intentions of the government towards accelerating empowering education demands deliberate multiple support and complementary contributions from other partners, especially women who have benefitted from past education programmes. Educated women need to be visibly, audibly, and critically leading support in ideas, mobilization of resources, and programmes aimed at increasing opportunities for inclusive education. They also need to explore and point out ways of providing essential support aimed at uplifting the status of girls and women through education.

The chapter also draws on the FAWE Case study to argue for the full participation of women in decision making processes. Our reference to the work of the Forum for African Women Educationalists (FAWE) is used to illustrate how a focused group of women, dedicated to a desirable goal, can mobilize the whole continent towards the achievement of a desirable goal. With a secretariat based in Nairobi and networks spreading across 33 African countries, FAWE's work continues to impact and compliment the work of governments and other agencies. The knowledge available on the status of female education, the challenges facing girls' education, and especially the multiple benefits associated with educating girls and women, combine to build a strong case for the need to increase attention to advocacy, supportive policy, programming, resource allocation, and especially sustained monitoring and evaluation (Kimani et al. 2010: 7–10). The chapter concludes with some reflections on the role of women in ensuring the realization of the dream of women's empowerment through education. We conclude by summarizing our vision of a committed journey to gender equality in Kenya, through social transformation and social change. We also offer recommendations for accelerating the pace of this transformational journey. We recommend that leadership in this process be driven by already empowered women and men in education, educational researchers, women's networks, and grassroots organizations. We take note that for the first time in history, Kenya has a woman Cabinet Secretary in Education, committed to making a difference especially for marginalized populations, regarding girls.

The chapter recommends the adoption of a mechanism for monitoring this journey in education demands commitment from organizations that have already demonstrated capacity and interest. The author challenges organizations like the CCGD, WERK, African Women Studies Centre (UON), FAWE Kenya, Maendeleo ya Wanawake, proven Gender Studies units and Bureaus of Education in Universities, among others to partner with Government agencies to make Devolution a powerful tool for advancing Education For All, and female education in particular.

## **7.2 The History of Women in Education**

The importance of Education and its impactful contribution to all facets of development is well recorded, recognized, and appreciated. Education is indeed acknowledged today as a prerequisite for development. This argument goes further to justify the drastic changes made in Kenya, towards improving and accelerating education provision since independence. Sessional Paper Number 10 of 1965 recognized Education as the principal means of addressing “the domestic shortage of domestic skilled human resource”, and equalizing economic opportunities for all citizens, with emphasis on the introduction of Universal Primary Education (UPE) (Kenya National Assembly 2–3). What an

appropriate ideal!

### **a) Colonial Period – Colonial Neglect of Female Education**

During the colonial period, education of Africans was by and large characterised by racial segregation. An Education department report dated 1930/31/32 carried information on Education of girls as racially constructed –European, Asian, and African. The education of “native women and girls” was solely in the hands of different missionary denominations –with no coordination and commitment of the colonial government, with minimal support, if any from the Local Native Authorities. Before independence, more capital was invested in European and Asian Education both comprising 3% of the population, than in African education representing 97% (M. Chege 2006: 75). Until about 1949, African education was almost entirely in the hands of Christian Missions. The report pays fleeting attention to African girls’ education as important but left to be provided by the missions.

Technically, the Government village schools were technically open to girls as well as boys but in practice few girls attend these schools as yet. It is satisfactory to note that seventeen Mission girls’ schools were placed on the aided list under the new Grant-in-Aid Rules. Girls’ Education emphasized domestic science, needlework, laundry, and handwork (Chege and Sifuna 2006: 27). Girls were also exposed where possible to maternity centres, where they were introduced to child welfare work. Such girls would be absorbed in schools as primary school teachers or in-training in the few mission Teacher Training Programmes. A 1937 Report on the growing interest throughout the colony in the education of African girls –observes a “substantial increase because 7 girls actually passed the Primary School Examination”.

It is important to highlight the rise of African Nationalism in the 1940’s that witnessed the establishment of independent African schools through harambee efforts. The harambee concept is indigenous to most Kenyan populations, depicting self-motivated efforts by the people to address pressing needs and concerns. The rise in African Nationalism was accompanied by the desire to offer an education that addressed the need of the people. African leaders were critical of colonial education which not only denied them the right to continue with their traditions but also ‘rationed’ education that would even remotely aim at equality. This awareness had led to the establishment of independent schools in some parts of the country, schools that supplemented mission schools (Mackatiani et al. 2016: 57)“plainCitation”:(Mackatiani et al. 57”plainCitation”:(Mackatiani et al. 57 . Unfortunately, these schools which had created access for many children, including girls, were banned with the declaration of the *Mau Mau* emergency, with their population flocking back to mission schools or dropping out if not accepted/admitted.

### **b) Post independence period education**

At independence, Kenya went out of her way to prioritize education and to increase budgetary allocation to this sector. This was in response to the gross neglect of African education by the colonial government. In addition, among the priorities of the independent government was the abolition of the colonial government policy of racial segregation in schools, working towards

reforming and restructuring education, to foster national unity, as recommended by the first post-independence Education Commission, better known as the Ominde Commission (1964).

The commission sought to reform the colonial education sector towards the development of appropriate human resources for national development (Ominde 1964: 4–6) 4–6). Among the critical outcomes of its recommendations was the racial integration of formerly European and Asian schools, through the award of Government bursaries to enable African students' access, to these expensive and unaffordable European and Asian schools. These efforts are said to have yielded desired results, with African students increasing from 30% in 1966 to 65% in 1969. Data on such increased enrolment by gender does not appear to be available. We can assume however, that African girls' benefited since the former fewer and smaller European and Asian schools began to enroll African girls, albeit reluctantly at first. The Commission saw education as a means to promote social equity by incorporating social responsibility and obligation as opposed to the foreign individualism.

### **c) *Education Commissions and Task Forces***

Education Commissions and Task Forces have played critical roles in development and where possible re-orientation of education as necessary. Although women were represented, sometimes marginally in the Commissions, most of the recommendations made do not reflect awareness of gender concerns.

Successive National Commissions after the Ominde Commission included; The Ndegwa Commission (1970-1971) which made recommendations on education that was meant to influence economic development (Ndegwa et al. 1971: 386–500). There was no mention of the critical role of women's contribution to such development, a gross omission. Furthermore, the Gachathi Commission (1975-1976) was appointed to specifically evaluate the education system, define a new set of education goals and formulate programmes to stem rural/urban migration (Gachathi et al. 1976: 27–33). Its paramount goal was promotion of employment creation. Amazingly, it was also expected to find ways of reducing the education of budget from 15% to 7%", a strange mandate. The impact of such reduction would have on female education can only be our guess.

Additionally, the Mackay Commission's (1981) mandate was that of creating a second university for Kenya. It also recommended the restructuring of the Education system to 8-4-4 with the goal of orienting youth to self-employment, with the introduction of practical subjects such as mechanics, carpentry, masonry, and agriculture, changes that required schools to set up workshops that were found to be expensive (Mackay). The girls were expected to learn cookery, needle work, and child care in home-based skills.

Among the challenges of this system were that primary school children were too young, at 13-15 years to engage in self-employment and entrepreneurship. The introduction of Agriculture was found to be unattractive to the young learners whose dream was for an education that would help them escape hardships of rural life, to the more attractive white-collar jobs presumably available in urban environments. The offered subject choices were fewer for girls and focused on domestic skills that have

few opportunities for employment. The establishment of a second university was nevertheless a positive move that was likely to improve access for women to higher education.

The university was however initially biased towards Science, Engineering, and other technical courses. Taking into consideration the challenges facing girls' education in SMT fields, the bias would have disadvantaged women.

The following table covering the period 1999 to 2003, points to the result of such bias. By 2003, female students constitute only 32.6% compares to 67.4 for males enrolled.

**Table 1. Percentage of Students Enrolled by Gender**

Institution	1999/2000		2000/2001		2001/2002		2002/2003		2003/2004	
	M	F	M	F	M	F	M	F	M	F
<b>Public</b>										
Nairobi	70.5	29.5	71.5	28.5	70.0	30.0	69.9	30.1	68.5	31.5
KU	58.2	41.8	59.9	40.1	69.1	28.9	69.2	31.8	69.2	31.8
<b>Moi</b>	<b>60.0</b>	<b>40.0</b>	<b>70.8</b>	<b>29.2</b>	<b>70.3</b>	<b>29.7</b>	<b>70.4</b>	<b>29.6</b>	<b>67.4</b>	<b>32.6</b>
<b>Egerton</b>	<b>71.5</b>	<b>28.5</b>	<b>75.3</b>	<b>24.7</b>	<b>74.9</b>	<b>25.1</b>	<b>74.5</b>	<b>25.5</b>	<b>63.9</b>	<b>26.1</b>
JKUAT	80.0	20.0	69.9	30.1	69.7	30.3	69.4	30.6	68.8	31.2
Maseno	62.8	37.2	62.8	37.2	62.6	37.4	62.2	37.8	61.2	38.8
Sub-Total	67.2	32.8	69.0	31.0	70.9	29.1	69.5	30.5	68.4	31.6
<b>Private</b>										
Accredited	45.5	54.5	43.3	56.7	43.3	56.7	45.5	54.5	45.5	54.5
Un-Accredited	69.1	30.9	65.0	35.0	65.0	35.0	50.2	49.8	50.2	49.8
Sub-Total	48.8	51.2	46.7	53.3	46.9	53.1	26.3	53.7	46.3	53.7
Total	64.2	35.8	65.3	34.7	67.6	32.4	66.4	33.6	65.3	34.7
<b>Grand Total</b>		<b>49.891</b>		<b>50.837</b>		<b>63,214</b>		<b>68,722</b>		<b>67,558</b>

*Enrolment data includes parallel programmes of the respective universities/Source-Economic Survey, 2004*

The table illustrates that the enrolment data in universities clearly indicates discrepancies between the male and female genders in the study of Arts and Sciences at the University Level.

Other commissions of importance included, the Kamunge Commission (1986-1988) dubbed - Presidential working party on Education and Man-power Training addressed issues to overcome rampant unemployment generally (Kamunge 1988). Its recommendations do not address the limitations of female poor participation in Maths, Science and Technical subjects' and the impact in accessing technical courses which increase employment opportunities.

The Koech Commission (1999) whose main mandate was to restructure the education system, moving it away from the 8-4-4 system, paid particular attention to girls' education and the challenges facing it. Its major observation however was the need to focus on the content of education and its quality, more than the structure (Koech 1999: 49-70). Among its key recommendations were; provision of a universal and compulsory basic education in which disparities

posed by geographical factors, social and gender issues should be eliminated, leading to equity in education at all levels. The Commission also recommended the expansion of opportunities at post-secondary level, so that learners can have flexibility in the pursuit of further studies. The Commission also recommended the introduction of modular learning approach and credit accumulation in post-secondary education, to facilitate credit transfers from one institution to another (Koech 1999: 49–70). Moreover, the Commission observed that the introduction of limitless opportunities for access to education through expanded alternative and continuing education. According to the Commission, the introduction of a manageable curriculum content at all levels of education that does not overburden the learners and teachers would be also be important for revamping the education section. Additionally, the Commission noted the need for a comprehensive legal framework that addresses previously omitted aspects of education such as early childhood care, development and education (ECDE), special education and technical education. This may create the need for new agencies charged with the delivery and coordination of education services.

**d) *Kenya’s participation: Education and the UN and International Conferences***

Kenya’s participation in the United Nations (UN) and other international conferences and activities was important in supplementing focused attention to the acceleration of education generally and of female education in particular. The UN Conferences on Women (1975, 1980, and 1985) drew sharp attention to the UN community and member countries on the essential connection between Education and Development, and specifically demanded Education that deliberately empowered women and girls; indeed empowering all participants for effective roles in development. Specifically, at the 1975 (Mexico) –UN Conference on the International Women’s Year whose theme was “Equality, Development and Peace”, Third World Women including Kenya prioritized Development while down playing Equality and Peace. The conference nevertheless recognized the critical role of education for influencing development. The reference to equality was problematic for women in Kenya and specifically to men in leadership. “Women are not and should not aspire to be equal to men”, a superficial interpretation that was very sensitive culturally.

The 1980 (Copenhagen) Mid-Decade Conference –advanced the decisive role of Education as a driver of development, with emphasis on equal access to education, and the importance of non-formal and adult education, with particular reference to illiterate adult women and youth who drop out of school. The 1985 End of Decade Conference (Nairobi) –went further to categorically acknowledge education as the key to raising the status of women. Its declaration specifically called for the elimination of illiteracy rates, and the urgent need for addressing the high drop-out rate and absenteeism of girls. It called for equitable distribution of bursaries to both needy girls and boys, and highlighted the need for expanding knowledge of women’s unique contribution to development through studies that would lead to justification of greater support to female education.

**Table 2. Adult Literacy Enrolment by Gender 1997-2003**

<b>Year</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>	<b>% Female Enrolment</b>
1997	28,139	73,215	101,354	72.2
1998	26,180	74,081	100,261	73.9
1999	30,200	71,061	101,261	70.2
2000	25,802	68,101	93,903	72.5
2001	26,479	66,573	93,052	72.0
2002	41,341	73,524	114,865	64.0
2003	31,305	77,126	108,431	71.1

**Source:** *Economic Surveys 1998-2003*

The table illustrates that women were clearly disadvantaged in accessing Basic Education and their keenness to gain literacy in adulthood.

The 1995 Conference, (ten years after Nairobi) held in Beijing was thorough in taking stock of achievements of 20 years advancement of the goals of Equality, Development, and Peace, focusing on all women, everywhere. There was also significant progress in recognition of Women's rights as Human rights. In Beijing, African Women (through FAWE) demonstrated the successes achieved towards making a difference in the education of girls in several African countries, by mounting a multi-strategy demonstration of Centres of Excellence and other successful strategies.

However, the greatest contribution of the four successive World Conferences in our view, was the introduction of gender mainstreaming in all development programmes, from conception to planning, implementation, monitoring, and evaluation.

In Kenya, the Collaborative Centre for Gender and Development (CCGD), whose membership embraces both women and men, popularized the concept of Gender mainstreaming in planning, programming, implementation, budgetary allocation, and monitoring evaluation processes. Today such practice has become a common strategy in development programmes. The creation of Gender Desks in Government Ministries, starting with Education, was a major achievement, as a deliberate measure for ensuring gender mainstreaming, and encouraging sustained monitoring and evaluation of progress.

The Jomtien Conference on Education For All (EFA) -1990 was a breakthrough whose action plan committed all parties to the achievement of EFA and gender equity in education (Goldstein 2004:1). The convention on the Rights of the Child (1990) to which Kenya is a signatory is specific on the child's right to education and the need for this education to be child-centred, child-friendly, and empowering (emphasis ours) (Unicef 1989). Besides developing knowledge, skills, and values, education should instil self-esteem and self-confidence. Education is expected to go beyond formal schooling, to embrace life experiences and learning processes that enable children "to collectively develop their personalities, talents, and abilities."

It then becomes clear that education must go beyond access and embrace content that is rooted in a

wide range of values, necessary for success in life. The U.N Millennium Development Goals (MDGs) 2000 was yet another agreement to which all parties including Kenya, committed to (“Millennium Development Goals (MDG) Monitoring” n.d.). Among the MDGs were; Goal 2 –Achieve Universal Primary Education; Goal 3 –Promote Gender Equality and empower women. Others were to Reduce child mortality (Goal 4), Improve maternal health (Goal 5), Combat HIV and AIDS, malaria and other diseases (Goal 6) and Ensure Environmental Sustainability (Goal 7).

A focused review of these goals reveals that their achievement is dependent on the education achievements by women at all levels from the grass roots. They relate to most of the benefits associated with female education –summarized in the next section. Being party to the commitment on the achievement of the MDGs adds to the Government’s own commitment to female education. We therefore highlight these commitments to indicate that female education in Kenya has not thrived in isolation. There have been both internal and external forces and movements encouraging Kenya towards the acceleration of women’s education and development.

#### ***e) The Pre-2010 Period and the Place of Girls***

The Task Force on Free Primary Education followed the entry of the NARC Government. It was the first serious attempt to move Kenya towards the dream of independence in 1963. Free Primary Education was the first attempt to address the serious challenges posed by poverty at the family level. It called for support services for all, but girls’ education in particular, including provision of sanitary pads to girls in school. The Task Force on Affordable Secondary Education (2006) was biased towards government support to day schools which are more cost friendly to the government and parents. It highlighted some of the challenges facing girls in day schools the need to maintain government support to boarding schools in remote regions.

#### ***f) The Post – free education Period***

The national Rainbow coalition (NARC), having won the 2002 elections and taken charge of the government, reintroduced the free primary education programme in all Kenyan public schools. The programme was rolled out by the government to fulfil NARC’s social contract with the electorate. Due to time constraints, there was hardly any consultation among the stakeholders. The programme was arbitrarily put into action as a mechanism of bridging the inequality gap in Kenya (Muyanga et al. 2010: 2) Previously parents were burdened with the cost of developing schools and catering for the needs of their sons and daughters. The Free Primary Education removed the financial barrier that made many children not to attend school. The main objective of the program was to allow the children who had dropped out of school and those who had no funds to pay their fees to enrol in schools.

The implementation of the programme, however, did not, discriminate against anyone based on their level of income as the enrolment was open to both the poor and the rich. The population of each public school determined the funds allocated to it. The government allocated each student total amount of KSh.1020 (about US\$14.57) per year, with 36% of the amount being spent on recurrent expenditures such as paying wages and mail services (Muyanga et al. 2). The remain-

ing 64% is then used to purchase instructional materials such as books, and pens. The government designed two accounts for allocating the funds to schools; one for recurrent expenditures and the other for procurement of instructional materials. Transfers of funds from either of the accounts is prohibited. School management committee is tasked with the management of the funds. The committee is made up of the head teacher who is the chairperson, the deputy head teacher who has the role of a secretary, the Parents Teachers Association chairperson, two parents who are not members of the Parents Teachers Association and one teacher from each grade.

The programme puts a restriction on school heads and school committees when it comes to increment of funds that children pay at schools. Any increment must be approved by the Ministry of Education, Science and Technology (Muyanga et al. 2010: 3) The request for the increment of levies is to be sent to the District Education Board by the Education Officer in charge of the area after the parents have expressed their consent through the Provincial Director of Education. The heads of schools and the school committee, most of the time, consider the bureaucracy involved to be time wasting and tedious.

As a result of the Free Primary education programme, the enrolment in primary schools increased massively. The Gross Enrolment Rate rose from 92% to 104% in 2002 and 2003 respectively. The numbers of girls enrolling increased by 17% while the enrolment of boys increased by 18%. By 2006 the number of children enrolling in primary schools had shot to 7.63 million, up from the previous year's 7.59, million children (Muyanga et al. 3). The increase in enrolment of children brought with it a number of challenges; the classes were overcrowded, inadequate facilities to accommodate the large number, increase in the teacher-student ration from 35:1 in the year 2000 to 43:1 in the year 2004. Due to inadequate classrooms. Some students were forced to learn under trees. The average number of children per class increased from 40 to 120 pupils. The challenges lowered the quality of education offered.

While the government has continued to support the programme through donors such as the world bank that contributed 3.7 billion Kenya shillings, the British government who contributed 1.6 billion and the Organization of Petroleum Exporting Countries (OPEC), the question that most Kenyans ask themselves is whether the programme can be sustainable solely on domestic funds (Muyanga et al. 2010: 3).

The tables below provide some statistical data on the place of girls in the pre-2010 period: -

**Table 3. (Brudevold-Newman) Primary Completion Rate**

<b>Primary Completion Rate</b>	<b>2004</b>	<b>2005</b>
Primary completion rate, female (% of relevant age group)	87.30	89.59
Primary completion rate, male (% of relevant age group)	90.23	91.72
Primary completion rate, total (% of relevant age group)	88.77	90.66

<b>Literacy rate, adults -15+</b>	<b>2000</b>	<b>2007</b>
Literacy rate, adult female (% of females ages 15 and above)	77.89	66.86
Literacy rate, adult male (% of males ages 15 and above)	87.49	78.08
Literacy rate, adult total (% of people ages 15 and above)	82.23	72.16

<b>Literacy rate, youth 15-24</b>	<b>2000</b>	<b>2007</b>
Literacy rate, youth female (% of females ages 15-24)	91.94	81.63
Literacy rate, youth male (% of males ages 15-24)	93.31	83.21
Literacy rate, youth total (% of people ages 15-24)	92.53	82.39

Source: Ministry of Education KNEC Reports.

Kenya introduced FSE in 2008. The policy led to increased educational attainment of about 0.8 years of schooling. The result is that the influx of students accompanying the program did not decrease test scores Available evidence from the Ministry of Education, Science, and Technology (MOEST) demonstrates that the current FPE policy has led to a significant increase in primary school enrollment in the country, from 5.9 million in 2002 to 7.2 million in 2003 (Office et al. n.d.). Consequently, the number of enrolled pupils surpassed the available human and physical facilities in the 18,000 public primary schools in Kenya. Moreover, the teacher-to-pupil ratio rose from the recommended 1:40 pupils per class to 1:60 (Ejakait et al. 2011:1057–79; Majanga et al. 2010: 44–49).

This further exacerbated the difficulty of delivering lessons in the classrooms for teachers. Large classes incapacitated the teachers' ability to organize and manage classes, thereby impairing the ability of teachers to provide attention to individual pupils. This led to deteriorating quality of education, one of the major challenges that eroded the initial gains and became a great concern to teachers (Ejakait et al. 2011: 1057–79; Majanga et al. 2010: 44–49).

The top-down policy formulation and implementation approach to FPE did not have mechanisms to listen to the voices of teachers concerned about the declining quality of education (Sawamura and Si-funa 103–08). In general, the experiences of teachers with FPE policy in Kenya, the challenges they encounter in the classroom, their motivations and its consequence on the quality of education remains less studied.

As the tables illustrate the literacy rate of girls aged 15 years and above has actually gone down despite the introduction of free education policies at primary and secondary levels. It is not

surprising that the initial gains accrued to FPE in the initial two years have since been marred with challenges (Moses Oketch et al. 2010: 173–83; Tooley et al. 2008: 449–69) and that 60% of the pupils in the slums are attending private schools (M. Oketch et al. 2010: 51). Reasons that have been advanced by scholars writing on education include the perceived quality of education in the public schools and discipline that is evident among private schools (Moses Oketch et al. 2010: 173–83). The authors argue that the place of the teacher as a key actor in the classroom and their inability to be responsive to the needs of his learners is part of the problem of quality education in the context of FPE.

### ***g) The Post-2010 Period***

The ongoing revision of the curriculum in Kenya (2018) is poised to take cognizance of important ideals that have been at the heart of the women’s movement since early 1990s. The relevance of education for all children and especially for girls is a requirement (demand) which has to do with the mode of delivery that allows a child to express her views freely, in an environment that promotes non-violence in school.

We have highlighted the existence of corporal punishment, sexual harassment, and violence in some schools, as serious challenges for all children, and girls in particular. The need for schools to be child-friendly cannot be over-emphasized. All children and in particular, girls thrive in such an environment. Education must go beyond numeracy and literacy to embrace life skills that include the ability to make balanced decisions. The new 2018 curriculum needs emphasizes the principles of gender equality. **Who will be the watch-dog?**

### **i. Education in the New Constitution**

The Ministry of Education, as a matter of course must set up a task force to review education, science and training in line with the new Constitution. The task force will in turn recommend ways and means of enabling the education system to achieve national unity, mutual social responsibility, as well as lead to accelerated economic, industrial and technological development. This will be through enhancement of life-long learning. Key areas of immediate concern should include: the legal framework of education, science and training; structure of the education system; role of various stakeholders in education and improved co-ordination; teacher management; curriculum and examinations; the management and administration of education; and, emerging issues in education including equity, pastoral care, guidance and counseling, persons with special needs and inclusiveness for all disadvantaged groups.

### **ii. Gender Equity in Education**

Equal access of boys and girls and all other learners to education, research and training is a key measure of progress towards gender equity. Gender equity in educational opportunities is therefore a major issue that requires policy consideration. In Kenya, gender parity at primary and secondary level is being realized. However, gender disparities persist in certain regions espe-

cially in arid and semi-arid areas, hard to reach areas, adult basic education and urban informal settlements. Disparities are more evident in secondary and higher levels of education including universities and technical training institutions well as in adult basic education. Constitutionally, all persons are entitled to equal rights and opportunities including education. Education takes cognizance and encompasses other Government policies such as health and environmental issues, the Children's Act and the Sexual Offences Act as well as other contemporary gender and human rights issues. Several obstacles still inhibit especially girls and women access to education limiting their participation in social economic and political development. These can be summarized as: policy, cultural, attitude, specific measures and monitoring and evaluation.

- Social cultural attitudes

Socio-cultural attitudes and practices that negatively impact on access to education especially for girls. These include: making payments of levies for boys a priority in the face of limited financial resources; boys looking after animals in pastoral communities; allocating girls domestic chores that lowers the standard of performance; early marriages; school girl pregnancy and, female genital mutilation.

- Cultural

These include unfriendly school environment, including poor and inadequate infrastructure which disapprovingly affect children including girls, and children with special needs; Inadequate female and male role models including teachers especially in some rural, arid and semi-arid areas; Negative impacts of HIV and AIDS as girls and women tend to be more vulnerable to HIV infection, and to carry the greater burden of taking care of the sick including parents and thus fail to attend school; Poor performance especially for girls in the majority of subjects especially in science and mathematics due to wrong perceptions / attitudes; and, Gender based violence including sexual harassment leading to school dropout and early pregnancy.

- Specific Measures

Inadequate community awareness on the importance of educating both girls and boys, males and females; Gender -inappropriate teaching learning methods; Gender studies and issues are often confused or mistaken for women activism and feminism, and this tends to create resistance especially from the males; Inadequate provision of critical personal items especially sanitary pads for girls; Inadequate policy guidelines implementation in gender and education at the level of the school and community; Child labour that tends to affect both boys and girls; Additional levies imposed in schools that places a burden for parents; A database will require to be established by the TSC for all teachers accused of sexual offences. Any complaint received against any teacher would be stored in the database, including the outcome of the case. This would speed up investigations and conclusions of reported cases as the teacher can be tracked even after a transfer. Private schools can in turn make reference to this data and thus fail to employ a teacher who has been dismissed by the TSC on account of immoral conduct.

### 7.3 Establishment and Maintenance of Educational Institutions

The introduction of the Constitution of Kenya 2010 meant increased chances for all children to join school. It meant that communities would be encouraged to improve, refurbish and use existing facilities including schools and faith based buildings rather than to build new ones. Use of local materials is greatly encouraged. Nevertheless, the Government will not stop the building of new schools based on need. Where schools maintain certain facilities and services for pupils and students such as lunch programme, boarding facilities, swimming, computer lessons, bus and transport, these will be charged for maintenance and sustainability. Parents should discuss, agree and reach consensus on the need for the levy then seek the approval of the Ministry of Education through the Education Board. Projects should be prioritised and only key projects should be approved, and even then one at a time completed so that parents are not overburdened (Cheserek and Mugalavai 471–78).

Indeed, the Constitution of Kenya 2010 has far reaching implication on the education sector. The Constitution provides that ‘every person has the right to education (The constitution of Kenya 2010 Art 20, 35, 42 and 43). It further states that the right to education is a socio-economic right that is enforceable before a court of law and that the State should apply Affirmative Action principles in ensuring access to education to vulnerable groups and individuals such as women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of ethnic, religious or cultural communities.

The Constitution of Kenya further provides for children’s right to free and compulsory basic education, including quality services. Additionally, persons with disabilities are guaranteed access to educational institutions and facilities as well as through the use of sign language, braille or other appropriate means of communication, and access to materials and devices to overcome constraints arising from the person’s disability (The constitution of Kenya 2010 Arts 53, 54, 55, 56, 57, and 59). The Constitution further provides for educational access rights for the youth by guaranteeing access to education and training; access to employment; participation and representation of minorities and marginalized groups in governance and other spheres of life, special opportunities in educational and economic fields, and special opportunities for access to employment.

The Constitution of Kenya 2010 at Article 237 accords special status to the teachers’ service commission whereas article seven provides for official language and national language. The national government is responsible for all education, training and research except on matters of pre-primary education and village polytechnics that have been assigned to county governments.

### 7.4 The Benefits of Educating Girls

We have indicated severally that the Education of girls has long been associated with multiple effects that empower women to bring about other necessary changes for the development of society. In Kenya improvements in participation of women in all sectors of our economy would

never happen if girls and women did not benefit from education, awareness creation, and empowerment programmes. The degree and quality of this participation has been dependent on the quality of education both formal and informal that girls and women received over the years, and the degree of empowerment that has accompanied their education. To-day we also acknowledge education as a basic human right to which all children are entitled. The multiple roles of women provide sufficient evidence to support the argument that girls' education is a more valuable investment to society than the education of boys.

This observation is supported by Dr. Kwesye Aggrey's statement in his review of colonial/missionary education in Kenya in 1924. Dr. Aggrey had observed that while missionaries, to whom African education had been delegated by the colonial government, were biased in favour of men, women's education suffered exclusion. He compared this anomaly with freeing half of the society from slavery, while abandoning the other half to continue as slaves (Dr Aggrey N.pag). His famous statement that:

***“You educate a man, you educate an individual. You educate a woman, you educate a family, a society”***, (Emphasis ours) holds true to-day as it did in the Kenyan education scene that he had observed.

The multiple roles of women in the family and society justify all improvements in their awareness and participation can be enhanced by education. Among the multiple effects of education is the empowerment of women to bring about desired changes including; Management of their fertility towards deliberately planned smaller family size and well-spaced child-births. This in turn yields gain in other development sectors especially health and education of their families. It also leads to the reduction of child and maternal mortality – due to knowledge of the value of pre-natal and post-natal services and their use also results in healthier children.

Noticeable also are improvements in family health and nutrition through knowledge of diseases and their prevention, with implications on the whole family's health, food production, storage, and preparation. Women's increased knowledge in agricultural production demands more than education which need to be accompanied by appropriate support services in the form of credit and access to better seeds.

Women with education are likely to earn more income and such increased earnings find their way into family welfare. This relates directly to women's roles in the family and the provision of basic needs. Educated mothers ensure their children enrol in school, remain in school, are protected from adverse cultural practices such as FGM and early marriage, and are able to provide support for their children's success in school.

In the rural areas, informed women contribute to better environmental management as they engage in better farming methods, river bed protection and tree planting. The late Nobel Laureate Prof. Wangari Maathai and her partner organizations invested a lot of time and energy in providing extension services and education to women in environment conservation and management. She rightly believed women would be the most effective agents of change in environ-

ment conservation. This is because women combine their traditional roles with the knowledge acquired through their education, to maintain a healthy environment in their homes and communities. By so doing, they influence others towards change.

Education that is empowering enables women and girls to make considered decisions in relation to their own lives and that of their families. This improved capacity for decision making strengthens their roles in their families. The democratization of family decision making, added to possible economic independence, combine to yield reduced incidence of gender violence in the domestic sector, among other benefits.

Women's participation in the modern economy and their entry into improved economic activities are major results of education. The higher women advance in education the more eligible they become to enter professions and gain access to salaried jobs.

Education empowers women with self-confidence for public participation, political activity, and decision making. It instils self-confidence in articulation of issues and concerns in any appropriate fora. Due to this informed decision making, women are enabled to enhance democracy through deliberately considered support, voting and especially courage to vie for membership of decision making organs and leadership. Civic participation is an essential component of democracy. Education of women has revealed the need to interrogate candidates vying for political office to ensure such candidates are open to supporting issues of concern to them and their children – not merely motivated by personal interests. In this way women help to raise the bar for national development and political participation.

Educated women stand out in society because of their leadership and quality contributions in public participation. They are role models. Increasing participation in all sectors and especially in leadership at all levels has become a motivator for increased parental appreciation of girls' education. When women stand out, they motivate and mobilize public support when they seek leadership positions. We offer no apology for dwelling on these benefits which are not exhaustive, in order to justify all efforts and decisions to increase opportunities, resources, and social support for girls and women in education and training.

## **7.5 An Overview of Challenges Facing Girls' Education and Some Solutions**

Although Kenya has come a long way in her journey towards inclusive education, there exist persistent challenges hindering girls' full participation in education all levels. These include:

Firstly, Direct Cost: The government declaration of Free Education in 2003 relieved parents of the burden of school fees. However, there remain hidden costs including those of compulsory uniform, building and other development project levies, educational visits, and tuition (remedial) charges, to name only a few. School managers need to see the danger of hidden costs and ensure they do not hinder the poor from participation.

Secondly, the Opportunity Cost of sending girls to school in Kenya is found to be higher for girls than for boys. This is because of workload allocation that burdens girls with the bulk of home-

based activities. This overload in turn leads to lateness to school, absenteeism and poor concentration deriving from fatigue. Many educated women recall the numerous tasks they had to undertake before going to school, leading to lateness and ensuing punishment from teachers; and all the tasks they would undertake after school, leaving little or no time for study or homework.

Thirdly, Cultural practices such as FGM and its accompanying influence on early marriage leads to loss of opportunities for girls' education. It has also been associated with health complications. The dowry system influences parents to see girls as a source of income and discourages their commitment to educating girls.

Fourthly, lack of role models due to lack of female teachers in schools and the accompanying paucity of role models and mentors to motivate girls remain a challenge with particular reference to remote and marginalized areas of Kenya, where educated women are few, or fail to return after completing education.

Fifthly, parental reservations relating to parents being over-protective of their daughters and having reservations about the presence of male teachers who are the majority in most schools in the rural areas.

In addition, environmental Factors such as distance to school also discourage parents from releasing their daughters to attend school due to safety fears. The setting up of boarding schools for children in remote and marginalized areas of Kenya and among pastoralists/nomadic communities has proven to be a helpful solution but is expensive and limited in gaining the trust of parents for their daughters in these circumstances.

In some communities, the marriage of educated women is viewed negatively by parents who become discouraged by investing in girls' education only for the perceived and real benefits of such investment to go to another family through marriage - "watering another man's garden". In many cases, educated women have successfully challenged this notion by continuing to support their poor families after marriage.

Furthermore, child Labour arising from the common practice of girls staying at home to take care of younger siblings, the sick and the elderly, and missing out on school. In addition, due to poverty levels in rural areas, although banned by law, young girls are still "given" to relatives as household and child care helps, with minimal wages paid to parents. Poverty reduction at the family level would address this challenge. Child labour is rampant in poor communities where children go fishing, picking coffee, and assisting mothers carry loads on market days. These and other activities continue to interfere with school and learning.

Moreover, teenage pregnancy is a major challenge leading to unacceptable levels of wastage through drop out from school. It calls for collaborative action and partnership, including legislation, to curb sexual offences, empowerment of girls and boys through mentorship and counseling in schools. Going by recent media coverage and public outcry, Kenya has to come up with concerted and inclusive strategies for drastic reduction in the wastage evident in the current high rate of "children bearing children". The policy on readmission of girls who have dropped

out of school is a positive rescue measure for recognizing the right of all to education and continuing the empowerment of girls for a better life and informed decision making.

Poor/inadequate school infrastructure is yet another challenge facing girls. Many schools especially in the rural areas and urban informal settlements do not have adequate toilets. Girls have special needs that demand separate facilities and health related provisions to take care of girls during menses. This forces some girls to miss out on school several days a month.

It is heartening to note that as part and parcel of the Free Primary Education roll out, the Government has committed to the provision of sanitary pads for girls! Although the anticipated programme is yet to reach all needy girls, it has encouraged NGO's and individual women leaders to join hands with the government in facilitating the provision of sanitary pads for girls in schools a move is commendable.

The allocation of financial support through bursaries to support needy students remains an effective channel for addressing poverty and targeting the needy. The belated launch of the Starehe Girls' Centre in 2005 (nearly six decades after the creation of the famous, high performing, and populous Starehe Boys' Centre) revealed the number of brilliant but socio-economically disadvantaged girls who fail to take up their places in existing secondary schools, due to the unaffordable initial demands prior to enrolment, and the high direct cost.

Women with education need to stand up and join other interested groups everywhere to lead advocacy on increased allocation of funding in order to guarantee free education for all children at other levels, and also draw attention to the special needs of girls that militate against their success in education (Framework 26–28).

The establishment of and support to shelters for girls in danger of forced early marriage and FGM is a clear example of solutions by individuals and civil society organizations taking action. The AIC Girls' Centre in Kajiado initiated by teacher and leader Priscilla Nangurai and the African Inland Church, was recognized by FAWE as a Centre of Excellence, demonstrating one way of successful sheltering for girls in danger, enabling them to continue with their education. AIC Girls Kajiado has been successfully replicated in other regions of Kenya and Africa experiencing similar challenges. Religious organizations have been supportive due to their closeness to the poor and needy.

The presence of Women Teachers is an important strategy that establishes trust in the schools in the minds of parents. Many schools in the marginalized areas of Kenya, which are also referred to as “hardship” regions, while having no local women teachers, are unable to attract such teachers from outside. These are the same areas where girls' education has made minimal progress. There is need to retain women who have accessed education in such areas and others with low enrolment. This challenge needs the attention of the training, recruiting, and county authorities, while at the same time identifying and providing incentives for those willing to stay and work in local schools. It would appear that the “hardship” allowance paid by the government and the teachers' employer (TSC) will not be adequate. It should be accompanied by other

considerations.

The paucity of women teachers for SMT subjects due to poor performance of girls in these areas at lower levels is a major issue at the secondary school level which hinders access to SMT courses in higher education.

**Figure 4. Primary School Drop-out Rates by Sex and Province, 2002**

	Boys	Girls	Total
Coast	5.2	5.0	5.1
Central	3.1	2.6	2.9
Eastern	6.4	5.7	6.1
Nairobi	1.6	1.3	1.5
R/Valley	4.9	4.7	4.8
Western	5.1	5.0	5.1
Nyanza	5.5	6.2	5.8
N/Estern	5.5	6.9	6.0
Kenya	5.0	4.8	4.9

**Source-** Ministry of Education, Science, and Technology

It is not possible to exhaust identified and emerging barriers to girls’ education. We have tried to highlight the well-known interventions merely to point out entry points for any groups or individuals wishing to mobilize for action.

We find it commendable that an individual law maker (Justice Njoki Ndun’gu, now a judge of the Supreme Court) successfully formulated the **Sexual Offences Bill**, followed the due Parliamentary processes including lobbying for support, and was credited with having the Bill approved! Today the Bill is called the Njoki Bill. Although there appear to be challenges of full implementation, sexual violence remains a national issue for the attention of all, especially the law enforcement agencies.

Girls and women at all levels need an education that is so empowering that they will not tolerate or not come out openly to reveal cases of sexual abuse in schools and other educational institutions. Among professionals in schools, practicing lawyers, and law enforcement officers, Kenya needs a critical mass of people ready and willing to protect girls and women from sexual violation. The judiciary in particular should ensure complete implementation of this law and other protection measures.

The media in Kenya is alive in highlighting cases of sexual harassment and violence, a very commendable development. The growth of tertiary and higher education in Kenya has played a major role in facilitating and advancing women’s participation. At this level, there is need to keep track of the challenges facing female students, and to address them at institutional and

individual levels. Several universities already have an office for addressing complaints from students relating to sexual harassment. The effectiveness of these offices remains to be seen.

The introduction of Affirmative Action in universities' (1987) admissions has gone a long way in facilitating women students' admission to faculties that were almost inaccessible to them due to poor performance in critical subject areas such as SMT.

## 7.6 When Women Decide to Change the Mainstream

In this section we use the example of the Forum for African Women Educationalists (FAWE) as a case study of successful mobilization of women in decision making to impact on education for the benefit of women and girls in their countries. FAWE came to be in 1992, hot on the heels of the Jomtien World Conference on Education for All (EFA), (1990). The commitments made in Jomtien were binding to all parties: national Governments, Development Partners, UN agencies, inter-governmental and non-governmental organizations, to take action. Among these commitments was the dedicated pursuit of EFA goals on the education of vulnerable groups. Research data had revealed that girls and women in Africa had emerged among the most vulnerable.

### *a) Inception of FAWE*

At a meeting of the World Bank Donors to African Education Task Force in cooperation with African Ministers of Education in October 1991, were four Women Ministers, namely:

Simone Testa (Comarmond)	Seychelles
Alice Tindrebeogo	Burkina Faso
Paulette Moussavon-Missambo	Gabon
Fay Chung	Zimbabwe
Ida Yeboah (Deputy Minister)	Ghana

At their informal meeting also attended by Joyce Moock –then Rockefeller Foundation Associate Vice-President and representatives from SIDA, and the Commonwealth Secretariat, they reviewed the situation of participation by women and girls in Africa in education. It is this group that decided to use their privileged position to influence desirable change and address the challenges facing women and girls in education. The result was the decision to establish a high-powered panel of women education Ministers to act as a think-tank for identifying pertinent policy issues and a pressure group for stimulating action aimed at accelerating female education. FAWE was consequently created.

A concept paper on the feasibility of such a regional network led to the identification of other women ministers in Sub-Sahara Africa, also incorporating women Vice-Chancellors of Universities. An initial meeting of a few representatives of the original groups led by Hon. Fay Chung, also attended by Prof. Lydiah Makhubu, Vice-Chancellor of the University of Swaziland, held in

Nairobi approved the creation of FAWE and called for a larger meeting to formalize the organization. Participants were charged with the responsibility of indentifying other potential members and sharing their contact address.



*1st Fawe Executive Committee Members: Sitting left to right: Dr Eddah Gachukia, Hon. Kabunda Kanyonga, Hon. Alice Tiendrebeogo, Hon. Vida Yeboah, Hon. Gennet Zewide, Hon. Paulette Moussavou-Missambo & Prof. Lydia Makhubu*

The Founding meeting held at the Rockefeller Centre in Bellagio, Italy enthusiastically embraced the creation of FAWE by an impressive group of 18 Ministers, Assistant Ministers, and Vice-Chancellors of Universities. This meeting also commissioned the creation of a Secretariat in Nairobi, and approved the proposals contained in a revised concept paper. Participants also proposed the creation of National FAWE Networks that would support and prompt the efforts of the Ministers and Vice-Chancellors.

FAWE was borne out of the urgent need to take action and change the mainstream. As an organization of the African Women Ministers of Education and Vice Chancellors of Universities, FAWE was well positioned to provide the roles of a think-tank and pressure group at national, regional, and international levels, to activate and monitor national and international commitment to EFA, focus on vulnerable groups; mobilize resources for female education; draw attention to the importance of gender segregated research and utilization to inform policy and planning; identify authentic policy questions and priorities; explore and activate opportunities of NGOs and other groups with community outreach; and assess and strengthen the capacity of ministers of education and Vice-Chancellors to continually review available data and take action on it. There was no looking back for FAWE which was registered as an African NGO in Kenya in 1993.

#### **b) The Implementation Power of Women Policy Makers**

FAWE members recognized their power as ministers, assistant ministers, and Vice-Chancellors.

They were convinced that when women are appointed to positions of authority, they must recognize the need to utilize this privileged position for the benefit of needy causes within their sphere of influence. Working together, women empower one another with knowledge, enthusiasm and courage to tackle issues even outside their domain. By combining their knowledge and experiences, they learn together through sharing their experiences. They would therefore take action in their ministries and countries and network with others for the greatest impact. Recognizing that their tenure as ministers was not guaranteed in the political environment, they made an early decision to establish chapters at the national level. National Chapters would facilitate and complement FAWE members' work, and provide continuity in their absence. Today FAWE has 33 functioning National Chapters which translate the FAWE mandate and take action at the national level.

### ***e) Creating Partnerships in Education***

In 1994 FAWE members met with their African male counterparts and succeeded in persuading them to join FAWE as associate members in support of the agenda of accelerating female education in Africa. Using research data presented by the Kenyan researchers, Sheila Wamahi and Wangui Njau, they convinced members and their male counterparts that the problem of school drop-out was common to all African countries and needed prompt action if EFA was to be achieved. Data generated by the African Medical and Research Foundation (AMREF) had revealed that in Kenya, more than ten thousand (10,000) girls drop out of secondary schools due to pregnancy annually. The researchers shocked their audience into consciousness that this rate of drop-out was equivalent to closing down ten or more girls' secondary schools every year. Together, the ministers were also exposed to case studies from Tanzania and Botswana on the value of re-admitting school drop-outs due to teenage pregnancy, girls who proceeded to perform brilliantly in further education. Needless to say, several African countries including Kenya, adopted the strategy of re-admission of school drop-outs as an official policy.

FAWE members also made impact on resource mobilization at national and international levels through clear articulation of issues in their partnership with development partners. They also oversaw the establishment of Gender Desks in their ministries, which continue to contribute to closer monitoring of challenges facing the progress of EFA in addressing them and (Hyde 1998: 9–15). They realized the need for gender awareness training for officials at all levels, including teachers, a practice that spread to other sectors as well. In collaboration with other partners, FAWE produced gender mainstreaming manuals and guides for use in ministries, schools, and colleges.

Among the outcomes of the Government of Kenya, FAWE and the other development partners were: concerted efforts on gender mainstreaming at all levels of education: integration of gender concerns in all education programmes on policy, data collection (analysis and utilization); improved curriculum content and delivery; regular updates of statistics on access, attainment, and achievement; deliberate plans of action for improving the quality of education for both girls and

boys; gender sensitization of policy makers and managers of education. Moreover, there was a conscious increase and efficient use of resources in the delivery of gender sensitive education, for example, in the provision and equipment of Science labs in girls' schools, and increasing the number of streams in girl's secondary schools.

In Kenya, FAWE published *The ABC of Gender* in partnership with the Collaborative Centre for Gender and Development (CCGD) authored by Wanjiku Mukabi Kabira and Masheti Masinjila. This remains a useful guide and framework for training and monitoring achievements of numerous facets of gender concerns in education, including text books and other learning materials. It ensures that education materials serve to empower all, regardless of gender (Kabira et al. 1995: 1–39). *The ABC of Gender* was shared widely with all FAWE Chapters. It is a valuable guide for teacher training institutions and curriculum development units.

Among other FAWE publications still in use in schools and colleges are: *Girls' Education: Why, What, Who, and How*; *Girls' Academic Achievement: Realizing the Full Potential, An Aid for Head Teachers and Teachers*. *Women Making a Difference: Dynamic African Headmistresses (Profiles)*. These were used in many African Schools to motivate girls. In partnership with musicians in Kenya and WERK (Sheila Wamahiu) FAWE produced the popular song and video *Send Your Girl Child to School* in English and French (Sub Sahara Entertainment n.p). These were used by FAWE National Chapters in relevant media to popularize girls' education, having been adapted for local use. *A National Score Card*, a valuable tool for monitoring and evaluating progress remains a useful guide.

Other materials widely used in Kenya were profiles of achieving women in African education. This activity was complemented by the Women Educational Researchers of Kenya (WERK), featuring high achievers in several fields among Kenyan women. These profiles were valuable in motivating and mentoring girls at all levels of education. Today however, girls in Kenya have living role models, among them doctors, lawyers, judges and magistrates, politicians, Cabinet Secretaries, Vice-Chancellors, among others.

In the 1990's the profile of a woman lawyer (Josephine Sinyo) with the challenge of vision, was a winner in advocacy, demonstrating what education could achieve for girls and women, even when physically challenged (F. Chege 2006: 26). Of particular interest was the performance of girls in the Sciences, Mathematics, and Technical subjects. Research data in Kenya indicated that because girls performed poorly in these subjects, some careers such as medicine, architecture, and engineering were closed to them. Today the Ministry of Education has a whole unit devoted to promote and oversee the teaching and performance in SMT (CEMASTEAM).

FAWE also launched a partnership with the Media in Africa and still continues to offer a prize for comprehensive coverage of girls' education in member countries. In Kenya media coverage of challenges facing girls' education is thought provoking (Day of the African Child coverage, June 16 reporting: "Sex pests on the loose: why many girls are out of school" (Sunday Nation, July 29, 2018) (Wambui 2018); "Teen pregnancies stalling girls enrolment, says CS" (People

Daily, June 19 2018) (Teen Pregnancies Stalling Girls Enrolment, Says CS 2018).

A regular newsletter in English and French has been effective in sharing news and experiences in member countries. Other FAWE publications over the years demonstrate facets of emphasis in FAWE work, including empowering girls to speak out and articulate the issues affecting them.

Today FAWE can rightfully claim credit for a significant contribution towards the achievement of gender equality in education and policy interventions to ensure free and even compulsory primary education, re-admission of adolescent mothers back to school and support to girls' in Science, Mathematics, and Technology education, to mention only a few.

Less measurable are shifts in social attitudes and practices towards girls' education. FAWE has also worked with other networks to address emerging issues that threaten girls' education such as political violence, HIV and AIDS, and food insecurity. FAWE beneficiaries have also been mobilized, together with families, religious, community and other leaders to act as role models to girls. The youth, women's organizations and mothers' clubs have proved to be effective advocates and actors as well.

Strong partnerships are necessary for advancing the gender and education agenda and for broad outreach both horizontal and vertical. Such development partners under the post Jomtien plan of action, and donors under the African education umbrella are critical in ensuring the success of FAWE, both regionally and at national level. UN agencies such as UNICEF and UNESCO at the country level remain supportive in keeping individual countries on their toes. The UNICEF initiative of child friendly schools has been a major boost to girls' education.

## 7.7 Conclusion

This chapter reviewed the contribution of education as a key driver of transformation and change in Kenya. In this process, we strongly endorse Nelson Mandela's statement that: "Education is the most powerful weapon which you can use to change the world" (Mandela 2014: 1). Mandela was addressing young people and urged them to persist in their education for the greatest gain. We review milestones achieved since independence including the abolition of racial segregation of schools, several abortive efforts at the introduction of Universal Primary Education and the declaration of FPE in 2003. We endorse the multiple efforts of the government and partners as well as the communities to increase access, enrolment, transition, and success through improved resources and efforts at curriculum review towards relevant education, recognizing education not only as a right but also as a driver of development.

Acknowledgement of female education as a pre-requisite for development leads to collaborative efforts towards gender equity at all levels, and especially the need to empower girls at school to overcome their social disadvantage and enable them to fulfil their potential. The result of these efforts is phenomenal because women play multiple roles, touching on all sectors, especially in their contribution to reducing poverty levels at the household level.

The empowerment process is important for liberating women and men from negative social-cultural influences and prejudices that inhibit women's full participation. The paucity of women in decision making positions can only improve with a major shift in attitudes towards their capabilities. Deliberate appointment of women is already happening in response to the demands of the 2010 Constitution, backed by high standards of performance by women already in decision making.

While education is important for making women stand out, political will and appreciation of women's contribution are mandatory. Key achievements in this struggle include the benefits of free primary education for the women of Kenya, the inclusion of girls in education through advocacy and expansion, the creation of a supportive legal environment for the education of women and girls, gender interventions such as expanding boarding facilities and feeder schools. All these have been major gains for women.

However, we still have long way to go! In the journey towards changing the mainstream, continued education and training of women and men leaders is important for Kenyans to overcome culturally derived prejudices and complexes, and recognize/accept leadership regardless of gender. In addition, the provision of quality education, characterized by interrogative, inquisitive, innovative minds for all is what Kenya needs to prepare: individuals/human beings who can propel the development of future society to greater heights, regardless of gender. Women everywhere, individually and in their groups, would need to join the push to guarantee an empowering education and training for all with particular emphasis on girls and women. The comprehensive example by FAWE needs replication locally, and nationally, in all areas of Kenya.

The chapter has outlined some of the historical challenges facing girls' education such as direct costs, opportunity costs, cultural practices such as FGM and early marriages, parental reservations, environmental factors, child labour, teenage pregnancies as well as poor and inadequate school infrastructure, among others. A major shift is also needed to examine success in education as an empowerment tool. From the classrooms in schools to the lecture theatres, we need to focus on assessing participation of girls and women in the process of education and training. Critical thinking and freedom of expression are essential components of such participation.

Kenya's future demands women who have achieved higher levels of education to reach their potential, and who are able to stand up for other women; women who are not shy of being referred to as activists or agitators for the benefit of other girls and women; women who are not fearful of competition, are fulfilled by their performance in their field and are also able to touch the lives of other women, who may not be able to articulate their needs clearly. These multiple roles demand continuous education and information gathering. This is why women, working in their networks are able to focus deeply into issues hindering progress. Kenya needs to hear and read reports from women researchers, women in politics, women in higher education, women lawyers, women in Science and Technology, diplomats, chiefs, farmers, journalists, and career women in all professions. Women need to be keepers of each other, celebrating each other.

This book is a great example of women expressing their views for others to inform, teach, activate, and appropriately act.

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## CHAPTER 8

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# WOMEN AND REPRODUCTIVE HEALTH IN KENYA

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WANJIRU GICHUHI

### 8.1 Introduction

The United Nations Population Information Network (UNPIN) explains that women's empowerment encompasses the women's sense of self-worth, access to opportunities, access to and control of resources, choices and the ability to exercise them, control over their own lives, and their influence over the direction of social change (UNPIN 1995). From this illustration of what empowerment ought to incorporate, it is clear that there is a great untapped potential of women and girls in Kenya, and it is largely confounded by traditional ideas about their roles. When women are held back from contributing to important development goals, whether in the areas of economic growth, nutrition and food security, health and/or other areas, their contribution to the nation is restricted. As it stands, Kenyan women are underrepresented in decision-making positions; have less access to education, land, employment and have overall poorer health status. A section of those living in rural areas often spends long hours collecting water and firewood, which will invariably interfere with school attendance and leave little time to earn money or engage in other productive activities (USAID 2018). There is no doubt that reducing the barriers that limit Kenyan women's potential will benefit families and communities for as it is globally recognized women can make a significant contribution to the society and the economy. Critical to this end also, is the need to ensure that their needs, especially in health are addressed as well.

However, while major strands have been achieved for women in Kenya in the past decades, they remain challenged and vulnerable in various areas, including being violated, culturally constrained, for instance in their inheritance rights and power relations as well as in achieving financial independence. The 2014 Kenya Demographic Health Survey (KDHS) indicates that almost half (45 per cent) of women between the ages of 15 and 49 have experienced either physical or sexual violence at some point in their life (KNBS, et al. 2015). At the same time, the study also found out that 15.9 per cent of Kenyan women aged between 18 and 24 had been married by age 18; while 11.9 per cent had a child by the time they were 18 years old. Moreover, 25.4 per cent of the women aged between 18 and 24 in the poorest 40 per cent of Kenyan households were married before reaching 18 years of age (PMA 2020, 2015). According to the same study, maternal mortality due to preventable pregnancy-related causes remain high at 362 per 100,000 live births and it is highest among rural women and the poorest communities (KNBS, et al. 2015). Literature supports the fact that the systematic gender barriers that women face in Kenya, may be perpetuated by deeply held and persistent stereotypes which are a result of slow changes in societal

attitudes and cultural beliefs around gender roles, norms, and female empowerment at the household and community levels.

## 8.2 The Struggle for Women Empowerment

One of the goals discussed in 2015 when adopting the 2030 Agenda for Sustainable Development was the need to achieve gender equality and empower all women and girls. The persistent gender inequality in the world today deprives women and girls of their basic rights and opportunities. This is manifested in the slow progress in women's representation in political life, decision-making within their own households and in the control of their own bodies, as well as in the violence they face in all societies (UN 2017). But the struggle for women empowerment did not start as late as 2015. In 1975, the Commission on the Status of Women called for the organization of the First World Conference on Women which would coincide with the International Women's Year. This World Conference of the International Women's Year was held in Mexico City, with 133 governments, Kenya included, participating while 6,000 NGO representatives attended the International Women's Year Tribune – a parallel forum. A World Plan of Action was defined by the Conference so that certain comprehensive guidelines for the advancement of women through 1985 could be implemented (UN Women 2013).

In 1980, 145 United Nations member states gathered in Copenhagen for the mid-decade World Conference of the United Nations Decade for Women. The progress in implementing the goals of the First World Conference which included a focus on employment, health, and education was reviewed and a Programme of Action was adopted to ensure stronger national measures on women's right to own and control property, in addition to improvements in protecting their rights to inheritance, child custody, and others (UN Women 2013). However, many member states were challenged in the implementation of these decisions by lack of funds.

In 1985, the World Conference to Review and Appraise the Achievements of the UN Decade for Women was held in Nairobi with a mandate to establish concrete measures designed to overcome obstacles that prevented the achievement of the decade's goals. As a result, the participating governments adopted the Nairobi Forward-Looking Strategies for the Advancement of Women, although gender equality remained a distant dream for many women.

These strategies outlined the measures that were to be taken to achieve gender equality at the national level, while also promoting the participation of women in peace and development efforts (UN Women 2013). At that time women, in Kenya were still having many children and contraceptive use was low, although it had shown a downward trend, while maternal mortality among women of childbearing age was unprecedented. (NCPD and IRD, 1989)

The 1995 Fourth World Conference of Women held in Beijing marked a significant turning point for the global agenda for gender equality and the represented 189 countries, including Kenya, unanimously adopted the Beijing Declaration and the Platform for Action, thus pushing forward the agenda for women's empowerment and ushering in what is the key global policy document

on gender equality (UN, 1995). Strategic objectives and actions for the advancement of women and the achievement of gender equality were outlined in twelve critical areas of concern, namely: women and poverty; education and training of women; women and health; violence against women; women and the economy; women and armed conflict; women in power and decision-making; institutional mechanisms for the advancement of women; human rights of women; women and the media; women and the environment; and the girl-child (UN Women 2013). A series of five-year reviews have since followed the 1995 Fourth World Conference on Women, and they took place in 2000, 2005, 2010, and 2015.

Kenya, which is a signatory to numerous international conventions on human rights, women's rights, reproductive health rights, and children's rights, in addition to various agreements on international goals pertaining to education, health, and poverty eradication, supports women's empowerment. (MOEST, 2001) In fact, the country is committed to ensuring non-discrimination, gender equity, and social justice since it is also a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and because the Constitution of Kenya, promulgated in 2010, mandates the nation to do so (KLR 2010). One key area in which women's empowerment is manifested is in how well they are in control of their own reproductive health, so that they can achieve their reproductive intentions (Ford 2017)

### **8.3 Defining Women's Reproductive Health**

In the strategies on women and health of the 1995 United Nations Fourth World Conference on Women held in Beijing, it was agreed in Article 92 that,:

“Women are affected by many of the same health conditions as men, but women experience them differently. The prevalence among women of poverty and economic dependence, their experience of violence, negative attitudes towards women and girls, racial and other forms of discrimination, the limited power many women have over their sexual and reproductive lives and lack of influence in decision-making are social realities which have an adverse impact on their health” (UN 1995:35).

Further, reproductive health is defined in the same document as:

A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so...reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems (UN 1995:34).

The signatory countries agreed on the need to provide awareness to men and women on safe, affordable and effective methods of family planning of their choice as well as methods of their choice in regulating their fertility (UNFPA 2014). The productive and reproductive health of both men and women in Kenya are closely interrelated and jointly affected by gender issues and reproductive health rights. As it stands, the Kenyan Constitution (KLR 2010) recognizes reproductive rights as human rights, even as it enshrines gender equity. Men in the country, however, remain the majority power holders in nearly all aspects of everyday life, including the reproductive health of women, family planning, as well as family size. But there is global recognition today that fulfilling the rights of women and girls is central to development – a realization which can be traced back to the International Conference on Population and Development (ICPD) in Cairo, 1994 (United Nations Population Fund 2016).

Unfortunately, according to KLR (2010), this recognition has yet to be fully reflected in Kenya, especially since the culture and society here still contains and accepts various harmful practices that have negative effects on women and their reproductive health. Indeed, the Kenya National Commission on Human Rights points out that sexual and reproductive health is a fundamental human right as well as a human development issue that is guaranteed in several international and regional human rights instruments as well as national laws and policies. (Kenya Health, 2011) Kenya's Constitution guarantees the right to health care including reproductive health, and provides that no one can be denied emergency medical treatment, even going so far ahead as to state that the State is obligated to provide appropriate social security to those who are unable to support themselves and their dependents. In line with these constitutional guarantees, Kenya has developed several policies, along with establishing various institutions that seek to promote and protect the sexual and reproductive health rights of her citizens. Even so, violations to the right to sexual and reproductive health continue in the country (KNCHR 2012).

Practices such as female genital mutilation, child or early marriages, and nutritional taboos are some such practices which contravene the rights of women and girls to liberty and security, as well as to the right to be free from inhumane and degrading treatment. Indeed, some of these practices are outright proscribed in The Children Act No. 8 of 2001 (Rev 2007), as well as The Sexual Offences Act No. 3 of 2006 (Rev 2007), even though they continue to be practiced in several parts of the country (Kenya Health 2011). Part of the abuses that violate the right to be free from inhumane and degrading treatment include the gender-based violence which is increasingly widespread in Kenya, and which comprises physical and sexual abuse and violence such as rape. These abuses are likely to have long-term negative health effects varying from psychological and medical consequences, to higher chances of unintended pregnancies and sexually transmitted diseases (Kenya Health 2011; Gichuhi and Omedi, 2014)

Indeed, the Kenya National Commission on Human Rights also notes with concern that the sexual and reproductive health rights of Kenyans are being violated (KNCHR, 2012). This is mostly due to inadequate sexual and reproductive health services, difficulties in accessing these

services because of cost or distance especially among the poor (United Nations Population Fund, 2014 and USAID, 2018). The Kenyan government continues to be hard pressed to dedicate the maximum of its available resources to progressively realize the people's right to sexual and reproductive health. (KNCHR 2012) Sexual minorities such as those who are gay, lesbian, bisexual, transgender, intersex, engaged in commercial sex work, or living with HIV/AIDS, as well as the adolescents and youth, refugees, and internally displaced people, remain the most vulnerable to the stated violations (KNCHR 2012).

## **8.4 Autonomy and Women's Reproductive Health**

Autonomy is a multidimensional concept that can be difficult to quantify, though it essentially refers to the independence or freedom of will or of one's action. Acharya, et al. (2010) describe it as the ability to obtain information and make decisions about one's own concerns – for women, especially, autonomy would include being able to make decisions about their own reproductive health choices which is a critical sign of empowerment. Dangal and Bhandari (2014) define autonomy as the capacity of an individual to act in accordance to morality as opposed to acting under the influence of desires; and they find women's autonomy to be a complex concept because it has contextual meaning that is influenced by the personal attributes of the women in question as well as the socio-cultural norms of the society in which they live. As Acharya et al., (2010) assert, women in developing or low-income countries such as Kenya often have limited autonomy and control over their health decisions, especially as present gender-based power inequalities often restrict open communication between partners about reproductive health decisions as well as women's access to reproductive health services. Osamor and Grady (2016) find that factors such as age, education, and income affect women's autonomy, as does the presence of strong religious, tribal, and social traditions and structures that strictly define the roles of men and women.

With autonomy, however, women would be able to act independently, even make decisions regarding contraceptive use or going to a health facility without asking anyone's permission. Indeed, Fotso, Ezeh, and Essendi (2009) found in a study conducted in the slum areas of Nairobi that women's autonomy was significantly associated with women's use of obstetric health care, although the effect varied with the wealth status of the household. It is, therefore, evident that greater autonomy among women may result in them being able to seek and use different forms of healthcare as well as contribute toward other significant benefits such as long-term reduction in fertility, higher child survival rates, and allocation of resources in favour of children in the household (Osamor & Grady 2016). Acharya et al., (2010) postulate that women's autonomy in decision-making is positively associated with their age, employment, and number of living children. Improving women's empowerment, especially increasing their access to education and economic resources, may lead to them being more autonomous in decision making, especially in enhancing their reproductive health choices.

## 8.5 Poverty and Women's Reproductive Health

Kenya, according to Sessional Paper No. 3 of 2012 on Population Policy for National Development prepared by the National Council for Population and Development (NCPD), has certain economic and social challenges that have seen the country implement economic and structural reforms such as those in the Economic Recovery Strategy for Wealth and Employment Creation for 2003-2007. This strategy was followed by the Kenya Strategy for National Transformation, 2008-2012, which aimed to accelerate equitable economic and social development for Kenya to become prosperous. Under these strategies, Kenya has introduced various poverty reduction interventions such as Free Primary Education (FPE), Local Authority Transfer Fund (LATF), and Constituency Development Fund (CDF) (NCPD 2013).

While these endeavours resulted in a significant growth of the economy as seen in the growth of real GDP, a high population growth has hampered the per capita GDP growth. Indeed, Kenya's Human Development Index reveals that there are disparities within categories of people living in urban and rural areas, income groups, as well as geographical regions. Moreover, inequities continue to increase as a result of newly emerging urban settings; urban poverty is rising with the growth of slums; inadequate services among the poor, and strain is increasingly felt in such areas as educational and health services. The social and economic situations, together with Kenya's demographic situation, then, play critical roles where women and their reproductive health in the country are concerned (NCPD 2013). Of particular concern are the estimates which suggest that over 90 per cent of population increase projected in the least developed countries over the next four decades will take place in urban areas, especially because approximately 70 per cent of all urban residents in sub-Saharan Africa live in slums or slum-like conditions at present (Mberu, et al. 2014).

Izugbara and Ngilangwa(2010), in their exploration of the poor urban Kenyan women's views and lived experiences of the relationship between economic disadvantage and unpleasant maternal outcomes, discovered that urban poor women in Nairobi associate poverty with adverse maternal outcomes because it primarily exposes women to exceedingly hard and heavy workloads during pregnancy and the period surrounding it, and also to intimate partner violence, as well as to inhospitable and unpleasant treatment by various service providers. Mberu et al. (2014) explain that the growth of slums is characterized by overcrowding, social and economic marginalization, poor environmental conditions, insecurity, and little to no basic social services, all of which translate to an appreciable deterioration of key urban health and social indicators. This spectre of urban poverty can be linked to adverse sexual reproductive health outcomes for the urban poor, which is indicated by high rates of unwanted pregnancies, higher fertility, sexually transmitted infections, and poor maternal and child health outcomes. Indeed, Nairobi slum residents are more disadvantaged when it comes to living conditions, morbidity, mortality, sexual violence and risky sexual practices as compared to other population sub-groups, and access to health services such as family planning services.

## 8.6 Maternal Health

The World Health Organization (WHO) noted in 2015 a reduction in the incidence of maternal mortality in Kenya. This maternal mortality ratio is still among the highest in sub-Saharan Africa, a region that carries 62 per cent of all global maternal deaths. (PwC, 2016) Kenya's Ministry of Health reported in 2014 that the leading specific cause of maternal deaths in the country was haemorrhage at 34 per cent, while abortion contributed to 9 per cent of all maternal deaths in the previous decade. Since over 40 per cent of pregnancies that occur in the country are either unwanted or mistimed, they are classified as unintended, and can be attributed to a low uptake of contraceptives. (KNBS, et al., 2015) While 53 per cent of women by 2015 were using at least one method of contraception, the percentage does illustrate that there is an unmet need for family planning among women who are in the reproductive age so that they do not have to opt for abortions in case of unintended pregnancies (Ipas 2016). In a country where almost 8,000 women die during pregnancy and childbirth every year, while another 160,000 are either injured or disabled because of inability to access quality healthcare, access to reproductive healthcare needs to be urgently prioritized so that social and economic barriers – poverty, that prevent women from seeking prenatal or obstetric care, as well as other reproductive health care, are addressed (PwC 2016).

People need access to accurate information if they are to maintain their sexual and reproductive health, while for those who do decide to have children, access to services that can help them have a fit pregnancy, safe delivery, and healthy babies is crucial (United Nations Population Fund 2014). To this end, maternal health remains an important indicator of reproductive health. The right to appropriate healthcare services to ensure a safe pregnancy and childbirth was recognized in the ICPD Programme of Action, and the Committee on Economic, Social, and Cultural Rights also identified maternal healthcare as a core obligation under the Covenant on Economic, Social and Cultural Rights. Even so, maternal morbidity in Kenya is high though it receives less attention compared to maternal mortality. According to the 2008/2009 and 2014 Kenya Demographic and Health Surveys, the maternal mortality ratios have gone down from an estimated 488 deaths for every 100,000 live births (KNBS and ICF Macro, 2010) to 362 deaths for every 100,000 live births (KNBS et al., 2015).

For every woman who dies in Kenya, 20-30 suffer serious injury or disability, requiring them to undergo lengthy recovery periods and face long-term physical, psychological, social, and economic consequences (KNCHR 2012).

Maternal health for the urban poor in Kenya is very poor, with large numbers of women living in slum communities reportedly taking ill during pregnancy and the post-partum period while others die. Among some of the adverse issues affecting this segment of women, according to Izugbara and Ngilangwa (2010), include pregnancy loss, foetal deaths, stillbirths, unsafe abortions, and HIV, while maternal health problems include haemorrhage, anaemia, malaria, hypertension, placenta retention, premature labour, prolonged or obstructed labour, and pre-eclampsia. The results of these problems are foetal deaths, premature births, loss of pregnancy,

and maternal mortality, morbidity, and deformity. KNCHR (2012) also indicates that obstetric fistula, which manifests as vesico-vaginal fistula and recto-vaginal fistula, is one of the most devastating and stigmatised forms of complications of childbirth which results from neglected obstructed labour.

Waweru-Wanyama (2014) explains that obstetric fistula manifests itself as an abnormal communication between the urinary bladder and vagina, leading to uncontrolled, continuous leakage of urine or faecal matter. Fistula is mainly caused by complications arising from obstructed labour, sexual violence, early marriage and childbirth, lack of access to skilled maternal care, poverty and malnutrition, and harmful traditional practices such as female genital mutilation; and it leads to the ostracization and disowning of women. Estimations indicate that there are 3 to 4 cases of fistula occurrence for every 1,000 deliveries in Kenya, which translates to about 3,000 new cases of the condition every year, out of which only 7.5 per cent are able to access medical care to treat the condition (Waweru-Wanyama 2014).

## 8.7 Contraceptives and Women's Reproductive Health

Voluntary family planning, assert Fleischman and Peck (2015), is one of the most transformative interventions in global health as it not only improves women's health but also saves the lives of both women and children in some of the world's most vulnerable communities. Other than its health benefits, family planning contributes to the empowerment of women, sustainable development, economic growth, and the prevention of mother-to-child transmission of HIV. As Kenya continues to make significant progress in family planning with its contraceptive prevalence rates of 58 per cent being one of the highest in the region, it still faces various challenges in maintaining its momentum (Fleischman & Peck, 2015). Mochache et al. (2018) note that contraceptive usage has been associated with improved maternal and child health outcomes. But while significant resources have been allocated to programmes, a sub-optimal uptake and utilization of contraception and contraceptive services, especially in the developing world, remains a factor of concern. Indeed, Mberu et al. (2014) found that almost half of the pregnancies (47 per cent) in Korogocho and Viwandani slums in Nairobi city are unintended, and that in about a quarter (28 per cent) of postpartum months where the risk of another pregnancy is high, no contraceptive method was used by women in these two slums.

In their study of the Digo Community residing in Kwale, Kenya, Mochache et al. (2018) found that there are high levels of contraceptive usage among women of reproductive age, but also made observations that could improve uptake and utilization of contraception among the groups. They observed and recommended that programmes ought to address demand-side factors that include female educational attainment, skilled birth attendance, and the promotion of antenatal care (Mochache et al. 2018). In their report on Family Planning and Women's Health in Kenya, Fleischman and Peck (2015) suggest that strong, bipartisan leadership would be necessary to depoliticize the critical issue that is family planning and, therefore, highlight its importance and that of healthy timing and spacing of pregnancies with a view to improving women's health,

averting countless abortions, increasing child survival, preventing unintended pregnancies, and improving economic and social development.

## 8.8 Policy Implications, Recommendations, and Conclusions

The International Conference on Population and Development of 1994 opted to place the human rights of individuals at the centre of the global development agenda, instead of using numerical population targets. By emphasizing the value of investing in women and girls, it hoped to improve the quality of life for everyone, even as it affirmed the importance of sexual and reproductive health, such as family planning, as a precondition for women's empowerment. Some of the issues it wanted addressed included an end to gender-based violence and an end to harmful traditional practices such as female genital mutilation as well as increase freedom of choice in reproductive health outcomes (United Nations Populations Fund 2016).

But even before the 1994 ICPD, Kenya had already become among the first countries in sub-Saharan Africa to institute a National Family Planning Programme (NFFP) in 1967, which it then reviewed before issuing Population Policy Guidelines in Sessional Paper No. 4 of 1984 to guide the implementation of an expanded population programme. After the 1994 Cairo ICPD, the Kenyan government reviewed its Population Policy Guidelines to integrate the ICPD Programme of Action, which culminated in the development and issuance of the National Population Policy for Sustainable Development in Sessional Paper No. 1 of 2000, which was meant to guide Kenya's population programme to 2010 with a broader spectrum on women and their reproductive health needs (NCPD 2013).

The success of Kenya's past population policy has been facilitated by the Government's commitment and support for its population programme, high level advocacy, and participation by various sectors in population programme activities. In addition, there have been socio-economic considerations such as addressing persistent poverty levels, and rapid population growth though challenged in the implementation by Socio-cultural factors such as low involvement of women in decision-making, myths and misconceptions, negative attitudes and perceptions, and conflicting messages from religious and political leaders (NCPD 2013).

The cost of maternal health services, along with weak referral systems, poor quality of care, socio-cultural barriers, and inadequate capacity in terms of personnel and facilities have all contributed to high maternal mortality and morbidity over time. Also, restrictive laws and lack of policies and programme on safe abortion increases the risk of death due to unsafe abortions. As a result, women continue to die or suffer disability because of preventable causes. The government and other stakeholders need to take measures against maternal mortality and morbidity by strengthening health systems, providing health education, and safeguarding against unsafe abortions, among other actions – all of which empower women regarding their health rights with a view to enabling them make independent informed decisions (KNCHR 2012).

To this end, Sessional Paper No. 3 of 2012 (NCPD 2013), among others, outlines Kenya's commitment to expand family planning services delivery points to also include community-based

distribution; promote male involvement and participation in family planning; strengthen the integration of family planning, prevention of HIV/AIDS, reproductive health, and other health services; and intensify advocacy for increased budget allocation for these services. In response to gender equality, equity, and the empowerment of women, this policy promotes the participation of both men and women in decision making at all levels, including reproductive health and family planning matters. At the same time, it advocates for availability and access to quality treatment, care and rehabilitative services for victims and those affected by harmful practices or violence and improved policy environment to help mainstream gender and reproductive rights in population and reproductive health programmes.

In light of the big gap between pregnant women receiving antenatal care from a medical professional care (92 per cent) and fewer (43 per cent) of them delivering in a health facility, although some improvement has been observed based on the most recent 2014 KDHS data, various adjustments can still be done (NCPD 2013). This may entail advocacy for increased resources to ensure there are comprehensive maternal health care services, especially among under-served population groups in addressing postnatal care, post abortion complications, and even fistulae. Also, in recognition of the high maternal mortality rate and the fact that the provision of skilled delivery plays a major role in reducing maternal mortality, the Government of Kenya introduced a policy of free delivery of services in government facilities since June 2013. This initiative, alongside the Beyond Zero campaign, launched in January 2014 by the First Lady of the Republic of Kenya, sought to mitigate the issue of cost as a hindrance to the utilization of skilled delivery, and to improve maternal and child health outcomes. The Beyond Zero campaign, in particular, had donated 22 mobile clinics to various counties by April 2015 with the aim of providing healthcare to poor and marginalized communities. Statistics show that by February 2016, these clinics had provided healthcare for over 30,000 Kenyan women who previously, would not have been reached. These initiatives, including hospital deliveries and antenatal attendance seem to be paying off (Njuguna, Kamau, & Muruka 2017).

Given how poverty continues to be a barrier to sexual and reproductive health choices and care for women at the local level, counties should consider creating budgets to facilitate the creation of awareness about sexual and reproductive health rights, check-ups and treatment, including other related matters such as domestic violence, rape, breast or cervical cancer, HIV/AIDS and fistula (Ipas 2016). Ultimately, enhancing partnerships between the government and different stakeholders will facilitate more awareness efforts at the community levels about the importance of recognizing women and their reproductive health rights, and will likely lead to their empowerment by seeking to improve the literacy levels among the poor, as well as launching efforts to reduce their economic dependency, and enhancing their autonomy in decision making pertaining to their reproductive health choices.

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## CHAPTER 9

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### POST-INDEPENDENCE GRASSROOTS WOMEN'S MOVEMENTS AND ECONOMIC EMPOWERMENT 1960S TO-DATE

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TABITHA KIRITI-NGANGA AND JOY MUENI KIIRU

#### 9.1 Introduction

This chapter documents post independence grassroots women's movements that provided avenues for women's economic empowerment. These movements were engineered by women for women and the main objective was to address gender related issues that kept women both economically and socially marginalised. The Chapter also documents government initiatives aimed at economically empowering women.

We argue that even though these movements have helped some women to achieve economic empowerment to some extent, the majority of Kenyan women remain marginalized and economically disempowered. Various government initiatives such as the Women Enterprise Fund (WEF), Uwezo Fund, the National Government Affirmative Action Fund (NGAAF), the Access to Government Procurement Opportunities (AGPO), and many others, have been tried for the purpose of uplifting women and their enterprises but the issue of disempowerment still persists. This implies that there are certain factors at work which prevent women from becoming economically empowered and these need to be addressed. Until now, everyone has thought that by encouraging women to form self-help groups, merry go rounds (*Chama's*) and investment clubs, they can achieve economic empowerment. However, it's time we started thinking of addressing the factors that prevent women from taking advantage of the various opportunities available for them in order to achieve full economic empowerment. This paper traces the journey towards women economic empowerment through different vehicles, starting with grassroots organizations formed after independence such as the *Makati* Women Groups, the Women's Bureau, merry-go-rounds/*Chama's*, SACCOs such as JOYWO, MFIs and many others. Government initiatives such as AGPO, WEF, NGAAF to mention but a few have also played a role on the journey towards realizing economic empowerment for the women.

The chapter is organized in sections. Section 10.2 presents some economic theories of empowerment, and the research methodology used here. Section 10.3 analyses the achievement of different initiatives that have been used by both the women themselves in informal groups as well as in the formal groups in their struggle to achieve economic empowerment. Government initiatives are also analysed. The paper does not point out only the achievements but also points out areas that need addressing if women are to achieve full economic empowerment.

## a) Theory of Women's Economic Empowerment

The need for women's economic empowerment derives from the need to mainstream women issues, including women's participation in the development process. Over time different theories have been developed by different disciplines to illustrate the need for women's involvement in the development process. Theories of gender mainstreaming in the development process derive from the fact that various development theories were supposedly 'gender neutral' which is best described as being 'gender blind, leading to economic inequalities. It was not until the early 1990s, with the advent of the Human Development theory, and Hamartia Sen's (2001) major contribution through his entitlement and capabilities approach to development theory, that we saw women's issues entering the development arena. The United Nations, through the Millennium Development Goals in 2000 and later in the Sustainable Development Goals, also puts a lot of emphasis on gender equality and empowerment of women.

Over time, there have been two approaches used by researchers on gender and development. These approaches are Welfare and Development, Women in Development (WID) and Women and Development (WAD). The WAD and WID were based on modernization and liberal feminism and theories within the empowerment and Gender and Development (GAD) frameworks (Ewer).

The welfare approach focussed on addressing issues of basic economic neglect for women's needs to ensure that women were provided for directly. This included the distribution of free goods and services in the form of food aid, relief aid, mother and child health programmes, family planning and so on. This approach is considered politically safe since it does not question or attempt to change the traditional role of women. The welfare approach as described addresses only the reproductive role of women as mothers and wives and ignores their other roles in productive and community sectors (Moser 2012: 28–30).

The Women in Development (WID) is an attempt to address the problem of exclusion of women in the development process. It is an approach that calls for greater attention to women in development policy and practice and emphasizes the need to integrate them into the development process. Its main goal is to have more efficient and effective development using women's projects, women's components, integrated projects as strategies with the aim of increasing women's productivity and incomes and also increase their ability to manage their households (Erwer).

The gender and development (GAD) approach focuses on intervening to address unequal gender relations which prevent equitable development and which often lock women out of full participation. The approach seeks to have both women and men participate in the decision making processes in order to cater for gender related issues in policy and planning. The overall objective of GAD is to make policy impacts more gender aware and to reduce gender inequalities leading to an inclusive growth process. GAD is, therefore, an approach that seeks to empower women and transform unequal relations between women and men (Young). It focuses on the relations between women and men and the unequal relations of power (rich/poor men/women) that pre-

vent equal development and women's full participation. The main goal is geared towards the equitable, sustainable development with women and men sharing decision making power. The approach identifies and addresses short term needs by men and women to improve their conditions and at the same time addresses men's and women's longer term needs. A successful GAD approach requires sustained long-term commitment (Simojoki 2003: 29).

The other approach is the empowerment approach. The empowerment approach was developed in the mid-1980s and is related to the word power implying that the person empowered has control over material assets as well as intellectual resources and ideology that govern social relations in both public and private life (Moser 2012). The empowerment approach comes from women who seek to empower themselves through greater self-reliance, to influence their own change and the right to determine their own choice in life. The components of women's empowerment include decision making power in the household by being able to make and influence the process of accomplishment of decisions that impact on the entire household (Batliwala 1994). The other component of women's empowerment is access to and control of productive resources including credit. Empowerment also implies that women experience increased levels of knowledge and awareness, are free to express their views without fear and have freedom of movement. Empowerment also implies that the woman is valued and is respected and she can speak out against exploitation whether socially or economically.

Hence economic empowerment is the process of gaining access to resources and developing one's capacities with a view to participating actively in shaping one's own life and that of one's community in economic, political, socio-cultural and religious terms (Karani 1987: 431).

Women's economic empowerment is about women and taking control over their lives: setting their own agendas, gaining skills, building self-confidence, solving problems and developing self-reliance (Indiresan 1999).

No one can empower another: only the individual can empower herself or himself to make choices or to speak out. However, governments and institutions, including international cooperation agencies, can support processes that can nurture the self-empowerment of individuals or groups.

Economic empowerment is just as important for women as it is for men. However, in most patriarchal societies like Kenya, it is usually women who find themselves marginalised, both economically and socially. Kenya's independence in 1963 ushered an era of self-rule and aspiration for national prosperity. Women, too, wanted their own independence to actualize and to become worthy partners in the development process. Different strategies involving both groups and individuals were deployed by women to push boundaries for economic empowerment. The more privileged women in government offices used their positions to advocate and lobby for women empowerment, while other women formed self-empowerment groups which mandated collaborative actions with peers to address mutual challenges that impeded their economic empowerment. In other occasions, the government has enacted policies and programmes such as

the Women Enterprise Fund and UWEZO Fund, Access to Government Procurement Opportunities (AGPO) to help women achieve economic empowerment. The history of Kenya is rich with examples of how far women have come in their struggle for economic empowerment.

## **b) Methodology**

The main methodology used in this paper is qualitative, comprising oral interviews with women who have contributed a lot towards other women's economic empowerment. It also uses grey and scholarly literature.

## **c) Justification**

Did you know that even after independence, women workers in formal employment were not entitled to house allowance and neither were they supposed to be employed as full time workers? Did you also know that women were not supposed to be walking unaccompanied after 6.30pm; that women were not supposed to be employed in the disciplined forces; that married women could not access credit from financial institutions without their husband's consent and unmarried women could not even dream of borrowing money from financial institutions since they did not have collateral? Did you also know that in most cases, the highest position a woman working in formal employment could get was being secretary, nurse or teacher?

Liberties that women enjoy today have come a long way and have been paid for dearly, sometimes through blood and sweat, by courageous women with a vision for women empowerment. Our list documents the works of Terry Kantai and Prof. Wangari Muta Maathai. These women used their positions to fight gallantly for the empowerment of women. Other women had a vision for women's financial independence and went out of their way to chart opportunities for women to access credit. We document the works of Mrs Rachel Ruto, Dr Jenniffer Riria, and Mrs Nancy Mutugu, among others.

However, a lot remains to be done since women are not yet there. The majority of Kenyan women are still struggling to survive, operating small businesses that never grow, most live from hand to mouth, cannot make decisions regarding the way their lives should be such that even when opportunities are availed to them, they are not able to take advantage of these. It is, therefore, important not only to document how far women have come but also to point out issues that need to be addressed in order for women to achieve economic empowerment.

## **9.2 Women and Economic Empowerment**

Socio economic marginalisation of women inspired a proliferation of grassroots women's movements with the sole objective of gaining socio economic empowerment for women.

### ***a) Women Participation in Formal Employment***

One woman, Terry Kantai, tried to empower women in Central Kenya by mobilizing communi-

ties into self-help entities. She initiated the concept of *Mabati* Women Group Projects together with Jerioth Kamau who was then the community development officer in Nyeri and marketed effectively the idea in the whole province. The *Mabati* Women's Group was inspired by the need for better housing and especially the elimination of the grass thatch. Besides replacing grass thatches with iron sheets, the *Mabati* Women's Group was also involved in rain water tapping and rearing dairy cows in order to provide milk for home consumption and the market. The *Mabati* Women's group was propelled by the desire for grass root women's empowerment.

The rapid implementation of the *mabati* idea and especially the roofing of houses challenged the gender norms and left men feeling insecure. To ease this conflict, women groups were motivated to organize songs around their activities to indirectly convey the message that their efforts were for the total welfare of the whole family. Hence a song like "*harambee ino itu mukwonaii, ni ya mutumia na muthuriwe*" meaning "this harambee you witness is for the husband and wife," and "*harambee ino itu mukwonaii, ndi kwenda mundu wa muceneneko*" meaning "The harambee that you witness does not involve any gossipers". Inspired by the success in meeting basic welfare needs, the concept of the *Mabati* Women's Group was replicated all over Kenya. However, even with the assurances of the women that the Harambee spirit was for both husband and wife, it ended up removing the responsibility of providing housing from men to women and left men to their own devices, mainly engaging in drinking of alcohol.

Terry started the Women's Bureau in the Ministry of Culture and Social Services in 1976 which used three major outreach strategies namely, Vertical, Horizontal and Integrative. The first strategy was to mobilize/organize, create awareness, and equip grass roots women with lobbying and advocacy skills, as well as to promote income generating activities which would raise women's profile in the society. The second was to strengthen and give greater voice to women's organizations which would be useful in supporting the Women's Bureau in advocating for policy changes within the government. Thirdly, the Women's Bureau involved other ministries on matters related to promotion of the social economic changes of women and ensured there were key men and women assigned to ensure that women were part and parcel of the development processes.

However, the Women's Bureau relied heavily on donor funding, mainly from the Scandinavian countries, the Netherlands, the United States Agency for International Development (USAID), international agents such as the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM) and the United Nations Children's Fund (UNICEF), among others. The work of the Bureau led to the change of women clubs to the now known women groups, thus allowing every category of woman to join an organized group, engaging in projects such as pig rearing, chicken keeping, bee keeping, small business enterprises, posho mills, grade cattle, and others (Wambua n.d: 14).

The Women's Bureau was instrumental in undertaking national action- oriented research on the status of women which was useful in inputting national and international forums and also for the purpose of including women issues in the five year development plan. In addition, the data collected by the Women's Bureau was useful in preparing the bureau's five year development

plans.

The establishment of the Women's Bureau and the strong women's organizations saw the entry of women groups into bigger economic organizations such as land buying companies. Notable among them are the *Nyakinyua* Women Group which bought big chunks of land at Maimaihiu, the Thogoto Land Buying Company and the *Nyakinywa* Kenya Njeru Single Women Group which also invested in land. The land buying idea was partly driven by the fact that women in Central Province had experienced loss of their sons and husbands during the struggle for independence and also as elsewhere, the social cultural and legal instruments did not allow women to inherit land or property. However, leadership wrangles and the entry of men into these land buying companies as managers and shareholders led to a lot of court cases involving fraud and other forms of corruption which led to the collapse of some of these land buying companies.

In Taita Taveta, the community experienced serious transport problems and a women's group known as Mraru Women Bus Group, through their savings, harambee efforts and a loan of Ksh.6000 in 1974 was able to acquire a modern bus. Although the loan was repaid in one and a half years, this project attracted envy and for some reason men started sabotaging the project. Women made good money and in less than 2 years they had started a retail shop for basic commodities but the bus and the retail shop collapsed after some time.

It was also during the existence of the Women's Bureau that maternity leave, presence of women during the sale of land, allowing girls in the army to continue with their career despite pregnancy, women to be Chiefs, District Commissioners (DCs) and Provincial Commissioners (PCs), women to be hired on permanent basis (married women could only be employed on contract since men were viewed as the breadwinners) were allowed.

During this time, women were also not allowed to walk past 6.30pm without being accompanied by a man (Karani, 1987). However, the Women's Bureau organized seminars, workshops, and chief's barazas and lobbied against this supposed to be 'protective law' and it was slowly shelved off.

The Women's Bureau major achievement was to mobilize women in thousands thus attracting a lot of donor agencies such as UNICEF, USAID, the Department for International Development (DFID) and the Swiss foundation for development cooperation (SWISSAID), to economically empower women through projects like posho mills, building day care centres, buying chicken broilers, and water projects which essentially were small scale businesses, earning them only little for survival (Ouko 1985: 188; Davison 1985: 268).

On the policy side, the major achievement of the Women's Bureau was to get women represented in development plans. From the foregoing it is clear that the approaches used in trying to economically empower women were the welfare and WID approaches whose main goals were to have more efficient and effective development using women's projects, women's components, integrated projects as strategies with the aim of increasing women's productivity and incomes and also increase their ability to manage their households. That is why the Women's Bureau

did not achieve much and was identified more with the individual rather than an entity by itself (Davison 1985). Women still remain as marginalised just as they were after independence, operating small scale businesses that don't grow, living from hand to mouth, relying on Non-Governmental Organizations (NGOs) and other donors for funding of their projects and for survival.

Another woman who has contributed immensely to women's economic empowerment is Prof. Wangari Muta Maathai who worked as a lecturer at the University of Nairobi in the Department of Anatomy at the School of Veterinary Medicine.

During her time, she campaigned for equal pay for female workers at the University of Nairobi and in other institutions where women worked and went as far as trying to turn the academic staff association of the university into a union, in order to negotiate for benefits.

The males who happened by chance to do the same kind of jobs used to be paid higher salaries and allowances with the belief that they were the bread winners and women were supposed to be looked after by the men.

Tax relief was also skewed in favour of the married male workers with the same belief that they had more responsibilities than their unmarried female counterparts who may have been having their own children but were not married. This belief and practice was also found in the only institution of higher learning then which was the University of Nairobi.

Married women who worked at the University of Nairobi were not paid a housing allowance, insurance cover or a pension because they were expected to be maintained by their husbands. This practice was discriminatory and of course gave male workers more economic empowerment than women and in essence making women dependent on men even when they had the same qualifications. Through strikes and boycotts, the University yielded some ground and Wangari and her lady colleagues came to be treated like 'honorary male professors' receiving a housing allowance similar to that of their male colleagues. Interestingly, the rest of the female colleagues continued to receive less pay and benefits and it was not until many years later that male and female workers started receiving equal pay and benefits in the country.

## **b) Women's Groups or Chamas**

Other women have managed to economically empower themselves and others through the formation of merry-go-rounds or *chamas* as they are normally called. *Chamas* are formed for a variety of other reasons apart from saving, among them is to foster camaraderie among friends, strengthen family ties as members of family-based *Chamas*, visit each other and get to know where their kin lives. Such *chamas* are especially common in the cities. Some are formed for welfare purposes – to get support during difficult times, death or sickness.

In the *Chamas*, members also make regular financial contributions, but in every group meeting the money is given to a different member, mostly the host of the meeting, and the model keeps rotating member after member until everyone receives the money. Hence the term merry-go-

round (Onyango 2017).

The next story is of a group of women from Makueni known as *Wendo Was Kamuithi* Women Group, who have remained together as a *chama* for decades with one objective of fighting hunger and poverty and become economically empowered.

This is the very inspiring story of a group of women who came together since they were young women in their early and late thirties. Four decades later they are still together, never changed their leadership and are economically much stronger than when they began. But first let's get to the beginning.

In the 70s, a priest stood at the pulpit one Sunday morning to preach and edify the congregation. In his message that day he lamented the environmental degradation, the soil erosion the result of which was unproductive land, hunger and poverty in the area. He cautiously told the congregation that the devil was indeed getting too much undeserved credit for the environmental degradation. That day he preached that hunger and poverty in the context of environmental degradation was more of human doing and only human beings could take action. He encouraged the congregation to come together and in groups to fight the vice. A group of young women heard him and took heed of the gospel, especially the part on environmental degradation. They came together to become disciples of the good news of environmental conservation. The priest in turn helped them to access the equipment they needed to practice "the gospel" which included spades/shovels, hoes and seedlings. The young women were set and begun digging terraces in their farms, planting trees and conserving the environment. They did this jointly from one member's farm to the other. Once they finished digging terraces and planting trees in their own farms, they extended their services to the neighbours' farms for a fee.

After winning several awards in the local church organization for their work in environmental conservation, the young women realized that together they could go very far and decided to diversify their activities and to cement and solidify their organization through formal registration with the Department of Social Services. They then began a merry-go-round among other self-help activities. For example, they would help each other to till their land in turns from one member to the other and to assist each other during social functions and emergencies. Their bond of sisterhood grew stronger and stronger. Later the group begun table banking and realized they could re-invest some of the profits for mutual benefit. To supplement their group income they did joint casual labour; for example all of them would take a casual job like tilling land and later they would invest the proceeds jointly.

Gradually, the women raised enough funds to buy a plot on their local market. They put up a small commercial building on their plot. During the construction period, the women supplemented their joint fundraising with individual contributions. The proceeds from the commercial building are shared proportionally depending on the shares that each has bought through their individual contributions. With time, the women have also bought shares in a commercial building within the neighbouring market.

Interestingly, since the 1970s when the group began, the women have never changed their leadership. They are now past retirement age and though their chairperson is now approaching 80

years, she is still mentally alert, strong and in good health. Today the group members are all aged in body but still very active and better off in terms of their social economic welfare. They may not be able to do difficult manual work to raise funds like when they were still young, but they are still able to sit and break small stones into ballast for sale, rear chicken and goats as well as manage their commercial building to raise income for their group. Indeed, they are now more financially stable and they all confess that they have been able to pay school fees and feed not only their children but their grandchildren as well. They proudly say that they are not vulnerable dependants even in old age.

They also benefited from the UWEZO fund and invested in a project of hybrids goats. Each one of them has one hybrid goat which she rears in custody for the group. The women have since repaid their UWEZO fund loan.

This women group is also a beneficiary of the Ukambani Women Needs Organization (UKA-WONE), a water project which aims at installing water tanks at household level through women groups to cushion residents against the menace of water scarcity. However, the tanks are not given out for free, but are distributed in a model that is affordable to members of economically viable groups such as the *Wendo wa Kamuithi* women group. Each individual member has to put in Ksh 5,100 as deposit. The rest of the cost of the tank (about Ksh12,000) is payable in six monthly instalments of Ksh.2000 each after delivery. This women group was able to support each willing member to get a water tank. Those members who are not able to raise the required deposit are offered credit from the group's table banking initiative.

Staying together as friends for four decades is not easy. How do these women manage such long lasting friendly relationships? They told us that they believed in forgiveness and reconciliation. A forgiving spirit, coupled with clear laws and regulations within the group, is what has enabled them stick together as friends and without any leadership wrangles. Indeed the group has a high level of trust amongst themselves. Trust and honesty is the only reason why members would declare how many eggs, for example, a jointly owned chicken laid, how many were hatched, how many chicks survived and how many were ready to be redistributed in the group or sold for the benefit of the group. The group is happy with their financial achievements so far but still believes that they could still benefit from more financial support implying that whatever they earn from their small business ventures is not enough to not only feed, clothe and educate their children but also expand their business. For example, they still have free space in their plot to construct and would be happy to put up more commercial buildings. The women also confessed to having only limited information on all available sources of funding that they could benefit from.

The down side of this group is the deep cultural beliefs about the girl child. For example, none of the women would be willing to let their own daughters inherit their position in the group or their proceeds from group investments. The boy child was the favourite succession plan for all the women. Since membership into the group is only open to women, the women prefer that their daughters in law rather than their own daughters succeed them as members of the group (Kopiyo and Mukui, 2001). Of course the daughters in law will be holding fort for their husbands

implying that soon, the sons will be controlling the businesses.

The other Women's Group is the "Kiru Gwaka Women Group", in Muranga in Central Kenya (Kopiyo and Mukui 2001). There is something striking about the country side in the Central region, especially the Mura'nga area. There is no home with a grass thatch. Grass thatches were completely phased out in that area with women spear heading the process. During the struggle for independence, many men from Central Kenya went in the forest to hide as they fought for independence. Women were left alone as homemakers and as heads of households. Before the struggle for independence, home construction was the responsibility of the men, however when men went to the forest to fight, women had to take over the responsibility of constructing the family house, among other responsibilities. By the time Kenya got independence and men went back home, the women were already used to constructing houses and the men accepted it, without taking any of the reproductive roles that women had to perform on top of constructing their houses. That role did not reverse and what's more, women took home construction to the next level. They wanted more decent homes. Iron sheet roof was seen as decent enough at the time and every woman desired one, not only to shield the household but also to provide clean water during the rainy season. Women formed merry-go-round groups in order to pool resources and construct homes for each other in turns till all their households had an iron roof over their heads.

This group is an all women group that began with about 400 members in 1986. They were united by the desire to improve their shelter, through iron sheet roofing. They began a merry-go-round the proceeds of which were mainly for constructing iron sheet roofed homes for each member. It took six years from 1986 to 1992 to ensure that each group member had achieved their goal of improved roofing, implying that they were contributing very small amounts. One hundred and ninety one members left the group at this time. The rest (209) remained members till today. The remaining group diversified their activities to include various welfare enhancing activities. Key among their activities was education for their children. They believed that education was the only way to break away from poverty. It is clear that these women have already taken over not only the role of constructing houses but also other roles such as educating and providing for their children and the question is, what are the husbands doing after being relieved of all household responsibilities?

There weren't many fundraising opportunities for the women except for merry-go-rounds and casual labour. The women did casual labour jointly and serenading politicians who gave them money which they saved in their group account. They shared some of the proceeds from their venture and saved the rest in a group account. Each member also contributed Ksh.20 per month towards the group kitty.

They managed to raise enough money to begin putting up a storey building in their plot in Kiri-ani market and bought individual shares to complete the construction. They also bought another plot and put up a building using individual shares and group contributions.

Every year the women share dividends from their investments and table banking activities. They are now old and some are over 80 years old. Interestingly, they have never changed leadership, they still have the same chairperson and all other officials that they began with and have never had leadership wrangles. They have a constitution that they follow to the letter; they respect each other and have a high level of trust among them. They have achieved their dream of educating their children; and living decent lives free from squalor.

So far younger women are beginning to join the group on a succession plan. The older women, especially the leadership has also taken over a mentorship role. They mentor the younger women on areas of conflict resolution and nurture them to be able to succeed the leadership.

Although this women group has tried to economically empower the women, they have ended taking up roles that men used to do, including constructing the houses, educating the children and generally providing everything for the family. This means that men are left alone to rely on their wives and they have not taken up any of the roles that women used to do hence ending up with a lot of time to themselves which they use for leisure and drinking often resulting into gender based violence when they realize that they no longer have any role at home since these roles have been taken over by their wives.

### **c) Beyond the Women's Groups**

Even though the merry-go-round has been empowering to women, it has its limits. Merry-go-rounds have constraints on how and when the money is received and saved and they have no returns. It is more like sharing poverty amongst the poor. The typical merry-go-round is limiting in terms of how much it can provide, especially for women in entrepreneurship. However, there are visionary women out there who have seen the challenge and worked hard for a solution, not just for themselves alone but for other women, too. Today we have formal and informal financial institutions that are 'women friendly' and work to ensure that women can access 'friendly' financing options. One of these institutions is the Joyful Women Organization or Joywo as it is normally called which was started by Mrs Ruto. Joywo is an umbrella NGO that is involved in 'table banking' and it enables members to enjoy capacity building, financial donations and grants from donors. Joywo works with already registered women groups who borrow at low rates of interest from Joywo and then lend to their members at a small profit. These profits go back to the women groups to empower them. Its activities are prominent in Bungoma, Uasin Gishu, Nandi, Kakamega, Trans Zoia and Nairobi with the objective of reaching all the 47 counties.

For the rural women and other poor women who cannot access formal financial institutions mainly because of their low incomes, 'table banking' is the only sustainable means of accessing credit on demand (Mwobobia 2016). Table banking also has many advantages; for example, the practice eliminates bank fees, waiting periods for loan approval and many other obstacles faced by women in Kenya who need loans but lack collateral. In 'table banking', groups don't give their contributions to any member but use them to form a kitty where members borrow from. The advantages of table banking are:

- (i) The ‘table bank’ is group owned, thus gives members a sense of pride, also, interest earned from loans still goes back to the group’s kitty.
- (ii) The close interaction between members fosters an exchange of knowledge and skills in regards to making investments.
- (iii) They are a convenient banking option as they are located within communities thus are easily accessible and are tailored to member’s needs.
- (iv) ‘Table banking’ can be used by the poor, with contributions as low as Ksh 50 and no need for collateral, it promotes financial inclusion.

Financial inclusion is listed as a target paramount in achieving eight of the seventeen global Sustainable Development Goals (SDGs). However, women have often been left out and are unable to access loans from commercial banks. ‘Table banking’ is an increasingly popular concept that is helping level the playing field for women unable to meet conditions such as the need for collateral demanded by traditional banks (Onyango 2017: n.p).

It operates as a Savings and Credit Cooperative Society (SACCO) where members save and borrow from their collection for short term or long term at a low rate interest. Another objective of ‘table banking’ is to give women economic empowerment through financial assistance and trainings (Mwobobia 2016; Murithi 2014).

With ‘table banking’, a women group can allow long-term borrowers to repay at 1 per cent interest rate over 3 years or 36 months and a short-term borrower to pay at 10 per cent interest within 30 days. ‘Table banking’ is purely based on mutual trust, openness and honesty for the fellow members to guarantee each other’s savings. To cater for defaulters, members who could have problem with repayment are requested to notify the group on time to either be assisted or have their repayment period extended. In cases where the member fails to pay and does not notify members, a committee is formed to investigate. Later, if nothing is done, members are forced to take the defaulters household goods and report the member to the area chief.

Research has shown that ‘table banking’ has led to the start of many income generating projects such as green houses and rearing of milk goats, among others, which enables them to get investment returns of over 200 per cent (Mwobobia 2016). It has also led women to own land which customarily was only owned by men (Kilongi 2011). This is a great achievement though it comes with a cost in terms of labour and logistics, among others.

It has also led to harmony in homes, contributed to modern farming, buying of land, financial independence, start or expansion of businesses, contribution to home budgets, loan accessibility and building of houses, among others, all of which are critical drivers in the empowerment of women in Eldoret, Kenya (Mwobobia 2016).

However, most women tend to join and borrow from many ‘table banking’ groups and end up either defaulting on payment or having their household properties taken and auctioned by the group to recover the loan. Most ‘table banking’ groups face challenges of record keeping, dis-

agreements for non-payments, failure to attend meetings and failure to pay interests on the loans.

## 9.2 Micro Finance Institutions (MFI)

Before the late nineties, commercial banks were very exclusive and would not allow civil servants and teachers and other lowly paid individuals to hold accounts with them. Accessing a bank account, leave alone acquiring a loan needed refereeing and lots of documentation for the vetting process. Needless to say women who did not own property could not borrow from commercial banks at the time. Access to credit and bank accounts was therefore a huge struggle.

### a) *Kenya Women Holding/Kenya Women Finance Trust (KWFT)*

The Kenya Women Finance Trust (KWFT) is the precursor to today's Kenya Women Micro Finance Bank, a subsidiary of Kenya Women Holding and started operations in 1991 by Dr Jennifer Riria. To date, the Kenya Women Holding (now known as Echo Network Africa), has over 400,000 women members across Kenya. Besides the financial services, the organisation provides other non-financial services to women entrepreneurs to enable them manage their enterprises and improve their economic status (*Kenya Women Microfinance Bank - Our Story: n.p*). It is a renowned woman led and women serving microfinance institution. Micro finance institutions such as KWFT have easier procedures of obtaining loans from MFIs than conventional banking thus having the most significant effect on economic empowerment of women in the lower income class. The microfinance institutions also empower women on entrepreneurship which in turn increases employment opportunities as the women are trained on how to invest and manage their finances. Most MFIs finance their customers' development projects such as small-scale businesses as well as the expansion of old business through credit/loan. Most of the customers of microfinance institutions are in informal employment, and MFIs have greatly reduced the gap between the lower and the middle class income individuals by offering financial services to the lower class.

The Kenya Women Finance Trust, a fund to enable poor rural women to gain access to credit, was created by a group of Kenyan professional women in the early 1980s as an NGO. Today KWFT is among Kenya's largest NGO-based microfinance institutions. KWFT has offices in all the 47 counties, many of them in Kenya's poorest areas (*Kenya Women Microfinance Bank - Our Story: n.p*). Nearly 80 per cent of clients are very poor. Most loans are for US\$400 or less, enough to start a small business such as raising chickens or selling fish. The KWFT disburses funds through women's associations, and members receive training in financial management and credit.

Repayment rates are over 95 per cent. More than one third of KWFT clients employ at least one person, often someone who is extremely poor. In this way, KWFT loans not only help the poor women who receive them, but through these women they also create jobs for other poor people, enhancing the programme's impact. The funds provide poor women with seed money for invest-

ment in micro enterprises to boost their incomes.

KWFT makes it easy for women to access financial and non-financial services to women with small and micro enterprises to enable them develop their businesses, increase income and generate employment. The services include working capital loans, consumer loans provided to the existing clients to cater for school fees and emergencies such as hospital bills and fire at business premises. KWFT encourages women to organize themselves into groups and to organize their own self-help activities so as to support one another in all ways. They are also encouraged to save for future needs. KWFT continues to serve low-income women who borrow less than Ksh 20,000(US\$250) and pay within a period of nine to twelve months.

In another category at KWFT, women entrepreneurs organize themselves into groups of 20 members who then register with the Ministry of Culture and Social Services. Loans are granted to individual women through these groups.

The special loan scheme is aimed at alleviating the effects of unforeseen circumstances on the KWFT clients. These special loans include school fees, hospitalization of the client or her immediate family members and fire on the business or a woman's residential premises. KWFT can also lend to an individual provided that they have the capacity to secure the loan.

The KWFT is the largest and only micro-finance Institution, exclusively for women. It is built on the belief that women can transform their lives, those of their families and the way the world works through entrepreneurship. Kenya Women Finance Trust has grown from small beginnings in 1981 into an institution with 100,000 members from Kenya's 47 counties.

However, few women borrowers from MFIs make decision on the credit received and how business profits are used, leaving the decision making to their husbands. Due to lack of knowledge in running a business and most times mixing business capital and profits makes most women led businesses to fail or not to grow although they still have to pay for loans borrowed. This has led to women borrowers' household items being auctioned in order to recover the loan.

Generally men are opposed to the idea of a wife earning independent cash income because they believe that financially independent powerful women are difficult to control, leading to gender based violence when men try to reassert control over the wife.

### **b) United Women's SACCO**

Women own only about 1 per cent of all registered property in this country. Most of the property in Kenya is registered in a man's name only, except for about 6 per cent which are jointly registered (*Saccos in Kenya Led by United Women Sacco:n.p*). However, women in joint ownership of family income generating property do not necessarily benefit equally from the proceeds. Also, proceeds from jointly owned property within the family setting may not necessarily be used according to women's priority expenditure items. Clearly, ownership without control of property may not necessarily empower women (*GOVERNANCE | Uwsacco:n.p*). It is for these reasons, among others, that women struggle to buy, own and control property. The United Women's SAC-

CO started by Mrs Nancy Mutugu has tried to fill this gap and has set a minimum of Kshs5,000 as monthly savings and Ksh100,000 as the minimum savings a member should have before being allowed to borrow. In the year 2000 the SACCO already had twenty five willing members and they began the registration process of United Women's SACCO. By the year 2001, the SACCO was fully registered and operational. The pioneers of the United Women's SACCO did not have a tight social bond, but were bound together by a common interest: a secure SACCO where they could save and borrow at low interests. To make it easier for them to operate, they decided they should only make the SACCO exclusive for women. The SACCO comprised mainly professional women and other women who felt they did not fit into the Small and Medium Enterprise (SME) scheme of lending, and were ill prepared for the rigorous process of getting a loan from commercial banks. The SACCO has grown from 25 professional women members to over 3,000 women members of all walks of life. The SACCO's biggest achievement so far has been in the area of empowering women. Through the SACCO, women have realised their dreams of acquiring and owning property which includes land and houses. With property women are able to borrow from formal financial institutions. They have also expanded their businesses. A good example is the story of a lady who was running a kiosk when she joined the United Women's SACCO. Today she operates a supermarket.

Today women can borrow from the SACCO up to Ksh 3 million. Their savings have also gone up. The majority are saving twice the amount they used to save initially though the minimum saving limit has not changed. This has seen the SACCOs savings translate into billions of Kenya shillings. The women are no longer vulnerable and scared of including men in their SACCO and have begun opening SACCO membership to men.

Loan repayment rates are at 99 per cent, loans are processed within three days and members get dividends of up to 12 per cent annually. The women have now proposed to have a housing co-operative within the SACCO.

The main challenge is about loan security and the issue of guarantors. The few loans (1 per cent) that get defaulted on are very difficult to recover. The loans are not insured, and it's not easy for them to chase the guarantors due to goodwill, and the close bond of friendship they have developed over time (*GOVERNANCE | Uwsacco:n.p*).

The SACCO has sought assistance from a local university to have women trained in leadership and management to ensure that they still remain at the core of the SACCO after they have opened their doors to male members. The United Women's SACCO remains exclusive to middle income women since the monthly contributions are too high for low income women.

**c) Grass Roots Organizations Operating Together in Sisterhood (GROOTS)  
Kenya**

GROOTS International was established in 1985 in Nairobi. GROOTS Kenya is a network of women self-help groups and community organizations. It is a response to inadequate visibility of grassroots women in development and decision-making forums that directly impact them and

their communities (*GROOTS Kenya | Building a Grassroots Women Movement in Kenya: n.p*). GROOTS Kenya bridges this gap through initiatives that are community-centred and women led. The main objective of GROOTS Kenya is to ensure that grassroots women are masters of their own destiny through their direct participation in decision making processes. Thus, GROOTS Kenya's goal is to strengthen the role of grassroots women in community development by serving as a platform for grassroots and individuals so as: to come together; to share their ideas/experiences to network and to find avenues to directly participate in decision making, planning, and implementation of issues that affect them (<http://www.groots.org/members/kenya.htm>), The organisation has become a formidable platform where over 3,500 organised groups engage with policy makers to develop transformative models to end poverty and gender inequality.

Local communities have been trained and empowered through GROOTS, to interrogate and contribute to the designing of policies that affect them. For example, if the government were to provide extension services, the women interrogate those services to make them demand driven, so that they can get exactly what they need and not what the government thinks they should have. They hold their political leaders and other policy makers to account on development related interventions.

The 1990s were also the years when the *Human Immunodeficiency Virus* (HIV) pandemic had huge effects on communities. It was a time when the disease was not well understood and there was no medication to deal with it; not even existence of the Antiretrovirals (ARVs). Communities segregated infected persons and had no physical contact with them; not even handshakes. In those days, those suspected of dying from the *Human Immunodeficiency Virus Acquired Immune Deficiency Syndrome* (HIV AIDS) were buried in polythene bags for fear of spreading the disease. Those suspected to be sick with HIV/AIDS were quickly transferred from hospitals and the task of care shifted to homes. Needless to say many people died of the pandemic and women bore the biggest burden as both infected and affected. GROOTS Kenya was very instrumental in offering support to HIV affected women. They enhanced the capacity of women on home based care and offered support to orphans and vulnerable children, in the context of the HIV/AIDS pandemic (*Programmes | GROOTS Kenya: n.p*). GROOTS Kenya developed the Home based Care Alliance (HBCA) that became instrumental for home based care providers and an accountability vehicle on programming for interventions related to HIV/Aids. The HBCA now exists in many African countries and was a significant vehicle used by the World Health Organisation (WHO) in mid-2000 to develop guidelines in Task Shifting. Though HIV/AIDS is now well understood and better managed, GROOTS continues to support orphans and other vulnerable children.

GROOTS is also involved in the area of women and property. Till today there are communities where women are likely to be disinherited if their husbands died. GROOTS has trained communities to protect such women through what they call 'Community Watch Dog Groups'. These are groups that monitor and guard widows against property stripping. Once there is suspicion that a widow will be disinherited, GROOTS women would approach the funeral committee and

insist that the widow has to be acknowledged as a wife of the deceased in the eulogy. Should the funeral committee not be co-operative the women then alert the local authorities for appropriate advice. Many times, the authority would order the eulogy not to be read during the funeral ceremony making it an illegal reference document. GROOTS members support the affected widow to arrive at the morgue and collect the burial permit before the family members arrived to collect the body. These, among many other strategies, helped and still help to curb asset stripping. GROOTS experiences helped to inform the development of the 2009 National Land Policy and subsequent land laws. Still on land matters, GROOTS has noted the linkage between land grabbing and disempowerment, and how women bear the brunt of that. To that end, GROOTS is training local communities to map and use Global Positioning System (GPS) to develop public land inventories.

The idea is to guard against public land grabbing and to identify public land that is already grabbed for ease of repossession by the authorities. Through the support of GROOTS, public land watchdog groups have mapped all land in Lari constituency and they have replicated the model in Murang'a County. The National Land Commission is currently reviewing this model to figure out how it can contribute to mapping all public land in the country.

Another area where GROOTS is very active is in the extractive industries and utilisation of natural resources, especially now that there is gold, oil and other mineral resources in Kenya. GROOTS works with local communities and governments, both local and central government to ensure that there are policies in place to ensure that local communities benefit from mineral resources around them.

The work that GROOTS does is much more complicated and sometimes technical. For example, GROOTS is currently working with Agricultural institutions to train and equip women on modern farming technologies. Scientists are training women on dry land farming as well as poultry and dairy farming. Through a Japan Government funding, which is administered through the World Bank, GROOTS Kenya aims to demonstrate that by investing in women farmers living in poverty, Africa can accelerate the efforts to bridge gender inequality and end poverty. A major outcome of the project is to build strong advocacy skills among the farmers that have ensured that both the local and the national government invests in infrastructure such as roads, milk coolers, water dams, hospitals, etc. that are priority to and complement the hard labour of the farmers. GROOTS is now working in 16 counties in Kenya.

At the beginning of this project that is working directly with over 3,500 smallholder farmers, over 99 per cent of the women did not have any bank accounts. To date 100 per cent of the members have functional bank accounts. They have not only raised capital through 'table banking' but are taking commercial loans. Women who had never made profit of Ksh5,000 in farming are now selling produce of over Ksh100,000 per season. GROOTS work is transformative. They seek to transform communities through their own (community) participation in local development and policy making and through direct engagements with policy makers to make local development initiatives demand driven.

Funding is a real challenge in GROOTS. Much as GROOTS has several grants running, there are important components of its work that many donors still don't appreciate and therefore, they do not fund. For example, not many donors are willing to fund the in-depth community organising of a project; yet it happens to be the foundation of a successful project.

### **9.3 Government Initiatives towards Women's Empowerment**

The government has also in one way or the other been involved in programmes to help women achieve economic empowerment. Some of these are in the form of special funds for women which they can borrow at low interest rates in order for them to expand their businesses. One of these is the Women Enterprise Fund (WEF).

#### ***a) Women Enterprise Fund***

The government established the WEF as a flagship project in Vision 2030 to address serious national development challenges regarding the marginalization and exclusion of women from mainstream economy. The Fund's structure, policies, processes and products are deliberately designed to address the challenges that have contributed to marginalization and exclusion of women.

The goal of the government in the Vision 2030 regarding women is to reduce gender disparities by making fundamental changes in four areas. These are: opportunity, empowerment, capabilities and vulnerabilities. These changes are aimed at increasing women's access to education, training, capital and other productive resources. WEF has been in the forefront to address these issues through facilitating access to finance and other business development services to women entrepreneurs, including capacity building and facilitation of access to business linkages among others.

The Women Enterprise Fund is a Semi-Autonomous Government Agency in the Ministry of Public Service, Youth & Gender Affairs. It was established in August 2007 to provide accessible and affordable credit to support women start and/or expand business for wealth and employment creation. Its motto is: "When you empower a woman, you empower a family and a whole nation".

The objective of WEF is to mobilize resources for sustainable access to affordable financial and business support services to empower Kenyan women. Its mandates are:

- i. Provision of affordable and accessible credit to women for enterprise development;
- ii. Capacity building of women beneficiaries and their institutions;
- iii. Promotion of local and international marketing;
- iv. Promotion of linkages of micro, small and medium enterprises owned by women with big enterprises, facilitate and support investments in infrastructure that support women enterprises such as markets, business incubators and so on.

In its endeavour to realize its vision and mission, WEF upholds the following core values:

- Integrity;
- Accountability and transparency;
- Team work;
- Innovativeness;
- Professionalism;
- Respect for diversity; and
- Customer focus.

The target customers are economically active Kenyan women from 18 years and above, who want to start business or are in growth oriented enterprises. The Fund supports women in micro, small and medium enterprises from all sectors of the economy. It funds individual women aged 18 years and above, registered women self-help groups, companies owned by women and also men who can be members of the group provided that 70 per cent of the members are women and all leadership positions and signatories to the accounts are held by women.

There are two channels of accessing the WEF Loans. These are the Constituency Women Enterprise Scheme (CWES) and the Financial Intermediary Partners (FIS). In the Constituency Women Enterprise Scheme channel, the loan product offered is known as Tinker Loan. Through this channel the WEF gives loans to registered self-help groups of 10 members and above comprising 100 per cent women or 70 per cent women and 30 per cent men. All leadership positions in this group must be held by women. The group must have an account in a Bank/SACCO FOSA/ Post Bank/Deposit Taking Micro-finance (DTM) and must have been in existence for at least 3 months. The loan is generally interest free, with only 5 per cent administrative fee and is repayable within one year, with a grace period of 3 months before repayment begins.

The WEF works closely with the District Gender and Social Development offices (DGSDO) and loan application forms are usually for free from these offices. The DGSDOs also work closely with the Regional Credit Coordinators (RCCs). WEF volunteers mobilize women and sensitize them about the Fund and how to access loans. Loan applications are vetted by the Constituency Women Enterprise Fund Loan Committees (CWEFLC) which are found in every constituency.

The membership of the Constituency Women Enterprise Fund Loan Committees comprises the District Gender and Social Development officer, the District Officer, the Local *Maendeleo ya Wanawake* representative, the District Youth Officer or the Youth Enterprise Development Fund (YEDF) officer, a Representative of a local Financial Intermediary partner and the WEF Constituency Volunteer.

The minimum first loan is usually Ksh100,000 and after successful repayment, the group can borrow a second loan of Ksh.200,000; a third of Ksh350,000 and a fourth one of Ksh500,000 at

no interest rate. The grace period for the first and second loan is three months and two months respectively and thereafter one month grace period.

The other channel through which the WEF loans money is the Financial Intermediary Partners (FIS). The Fund has partnered with 83 financial partners spread in all the 47 counties. The loan product offered through this channel is known as Jiimarishe Loan. The loan is given to individual women, self-help groups or companies owned by women at an affordable rate of interest of 8 per cent per annum on a reducing balance. The maximum amount per borrower is Kshs 2 million. It is important to note that any amount above Kshs500,000 requires approval by the Board of WEF and the repayment period is 36 months. There is flexibility of security which differs depending on the Financial Intermediary.

In 2012, the Women Enterprise Fund emerged winner of the Millennium Development Goals (MDGs) Award for outstanding achievement in promoting Gender Equality and Women Empowerment (3<sup>rd</sup> MDG).

However, these achievements notwithstanding, the fund appears to entrench the stereotype that women's businesses are supposed to remain small as the amounts loaned and especially at the constituency level are too small to make any significant difference in the size of business for individual women as it is too small and spread across a number of individual women and economic empowerment remains elusive.

#### ***b) National Government Affirmative Action Fund (NGAAF)***

The National Government Affirmative Action Fund (NGAAF) is a Semi -Autonomous Agency under the Ministry of Public Service, Youth and Gender Affairs established through Legal Notice No.24 of the Public Finance Management Act, 2012 and governed by the Public Finance Management Act, 2012 (National Government Affirmative Action Development Fund), Regulations 2016.

The Fund's mandate is to empower the vulnerable groups, namely the women, youth, persons with disabilities (PWDs), children and the elderly at the County level in line with the aspirations of the Vision 2030 and the Constitution. The National Government Affirmative Action Fund (NGAAF) falls under the Ministry of Public Service, Youth and Gender Affairs.

The Fund is a product of our Constitution in support of the Government's commitment to put in place measures to redress past disadvantages among certain segments of our population. It is also anchored on the Vision 2030 development blueprint under the Social Pillar to address the plight of vulnerable groups through enhanced access to financial facilities for socio-economic empowerment among women, the youth, persons with disabilities, needy children and elderly persons in the country. It also provides an avenue for promotion of enterprise and value addition initiatives. Its motto is empowering for self-reliance. Its mission is to improve livelihoods of vulnerable women, youth, persons with disabilities, children and the elderly for socio-economic empowerment through financial support for inclusive and participatory sustainable

development. NGAAF endeavours to play its part in implementing Vision 2030 with regard to economic empowerment, capacity development, social cultural development and institution capacity pillars.

However it is clear that the NGAAF is not solely focused on women economic empowerment but combines vulnerable women, the youth, persons with disabilities, children and the elderly, thus spreading it too thin to make any significant differences in economically empowering women.

### **c) Access to Government Procurement Opportunities (AGPO)**

The Access to the Government Procurement Opportunities (AGPO) initiative for women, the youth and persons living with disabilities was operationalized in the Public Procurement and Disposal Act, 2005. This led to the gazetting of the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 vide Legal Notice No 58 dated 8th June, 2011. The purpose of the regulations was to promote local, national and regional industry and support socio-economic development.

In 2013 the Cabinet Secretary, National Treasury, issued an amendment to the Public Procurement and Disposal Act, (No. 3 of 2005) under Legal Notice No. 114 dated 18th June, 2013 and enacted the Public Procurement and Disposal (Preference and Reservations) Amendment Regulations, 2013.

Regulation (31) (1) provided that a procuring entity shall allocate at least 30% of its procurement spending for the purposes of procuring goods, works and services from micro and small enterprises owned by the youth, women or persons with disability.

Regulation (31) (2) for the purpose of paragraph (1) provided that, a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices, contract awards and submit quarterly reports to the Authority. This was to ensure that the disadvantaged groups were not to compete with the well-established firms.

In 2016, Kenya passed a new Public Procurement and Asset Disposal (PPAD) Act in terms of the implementation of the Preference and Reservation Scheme.

The law provides a major shift from the past situation whereby the Preference and Reservations Scheme 2011 existed, but implementation was through regulations and periodic circulars issued by the Finance Minister. The Preference and Reservations Scheme is now anchored in an Act of Parliament which does not allow room for non-compliance.

The Government of Kenya has over the years put in place a number of measures aimed at reducing barriers faced by the target group in doing business with the government under the AGPO initiative. Some of these measures worth mentioning are the issues related to: (1) Bid bonds are not required; (2) pre-qualification is automatic once business is AGPO certified; (3) There is an online tenders portal on the Public Procurement Regulatory Authority (PPRA) website which is a good platform as information about tenders is easily available; (4) PRRA has a section on its website that provides information about market prices and this is also helpful to Medium and Small Enterprises, especially when it comes to submitting successful bids; and (5) both the PPRA and National Treasury have developed tools and is-

sued circulars to all Procurement entities for use to file their returns.

The number of registered and certified AGPO Small and Medium enterprises as at September 2014 was 14,644. This comprises women, youth and persons living with disabilities. However, as at June 2017, this had increased to 54,306 registered enterprises. Public Procuring entities are required by law to reserve for women, the youth and PWDs at least 30% of their annual procurement spent for goods, works and services in the following areas:

- General Supplies - for stationery, furniture, computer hardware, fittings, computer accessories, printers, photocopiers;
- Small Works & Engineering - for construction in categories of electrical works, water works, road works and building works, plumbing works, interior design;
- ICT Services - for repair and maintenance of ICT equipment, networking, configuration, web design, programming;
- Professional Services & Consultancy - for cleaning services, fumigation services, sanitation services, event organization, catering services, entertainment services, insurance brokerage services, asset valuation services, car hire services, transport services, professional consultancies, veterinary services, asset tagging;
- Fresh Produce and Agricultural Products - for supply of fruits, vegetables, grains, cereals, meat products, fertilizers, agro-chemicals.

Data from the National Treasury shows that as at 6<sup>th</sup> September, 2017, only 68,186 enterprises were registered under AGPO with women comprising 58.2 per cent (39,681) of the total.

A study done by this author for UN Women in 2017 on the extent of participation of Women and youth in the Access to Government Procurement Opportunities in five counties in Kenya found that there were more women doing agribusiness and food supplies at 34 per cent than in all the other categories of businesses followed by retail/wholesale trade which stood at 23 per cent and construction work at 13 per cent as shown in Figure 1. This could be attributed to the fact that it is easier for women to start an agribusiness or retail as it may not require as much capital as it would in manufacturing which is quite capital intensive and requires specialized skills which the women may not have. The sector with the least proportion of women doing business in was manufacturing/mechanics at only two per cent. There was a similar proportion of women in hospitality, catering, event organization, performing arts and those offering ICT services at 5 per cent. Professional/consultancy/research services were only offered by 8 per cent of the women respondents while security and cleaning services were offered by only 9 per cent.

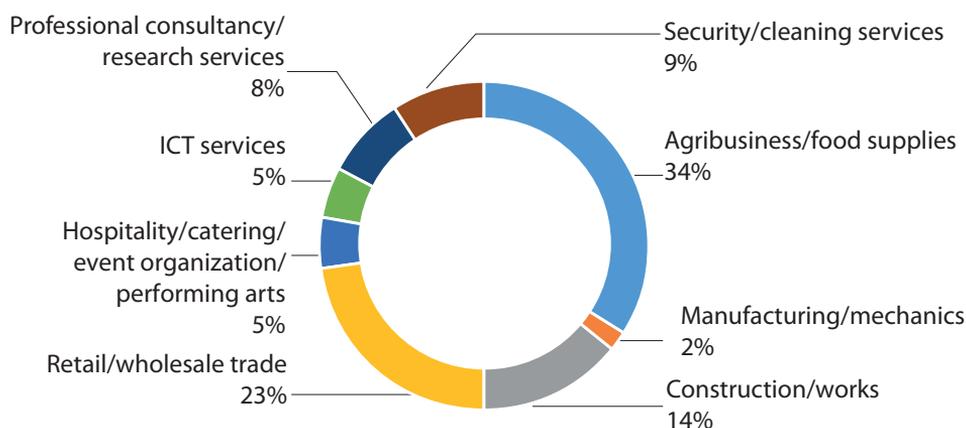


Figure 1: Business Category offered by Women under AGPO (2017)

Nevertheless, although the figures come from a small sample, it shows that AGPO has increased women's opportunities to do business and in the process eventually achieve economic empowerment.

Table 2 shows AGPO performance from 2013 to 2017 by category and procuring entity.

Table 2: AGPO Performance from 2013 to 2017 by Category of Procuring Entity

Financial Year	Category of Procuring Entity	No. of tenders awarded to women	Value of Tenders Awarded to Women	% of Tenders to Women
2013-2014	Ministries	2,518	4374,809,698	75.77
	Parastatals/SAGAs*	-	-	-
2014-2015	Ministries	3,372	8,807,468,342	52.81
	Parastatals/SAGAs	689	420,037,404	41.57
2015-2016	Ministries	2,694	5,201,061,451	49.54
	Parastatals/SAGAs	6,101	2,291,222,470	44.26
2016-2017	Ministries	4,209	5,256,750,204	48.41
	Parastatals/SAGAs	7,274	3,093,507,948	47.75
	Commissions**	441	231,678,547	60.41
	Counties***	283	554,421,807	42.17
<b>Total</b>		<b>27,401</b>	<b>30,230,957,871</b>	<b>51.97</b>

The study found that during the 2015/2016 financial year, women got 2,694 contracts from ministries worth Ksh5.2 billion and 6,101 contracts from parastatals/SAGAs worth Ksh.2.3 billion which was 49.5 per cent and 44 per cent of tenders awarded by ministries and parastatals/SAGAs respectively. By the end of the 2016/17 financial year, the total number of contracts awarded to women was 27,401 with a value amounting to Ksh30.2 billion or 52 per cent of tenders awarded to the target group.

AGPO faces various challenges making its uptake remain small even as the women struggle for economic empowerment. The major challenges facing women owned business that have AGPO certificates are: (i) challenges in filling standards tender documents; (ii) certification, Technical and Financial Challenges; (iii) delay in payment for goods and services delivered; (iv) corruption; (v) short timelines to repond to tender; and (vi) stiff tendering requirements.

The challenges facing those without AGPO certificates were: (1) lack of awareness of AGPO initiative; (2) lack of information of how to register a business and for an AGPO certificate; (3) perception of corruption in government; and (4) fear of suffering loss due to delayed payments.

The study found that 82 per cent of those who have embraced the AGPO initiative said that they had benefited from the AGPO initiative and the benefits ranged from business expansion, employment, payment of fees, provision of basic needs and purchase of property. However, 54 per cent said they were not satisfied with the initiative probably due to the challenges they may have faced from registration to winning the tender.

The long term objective of AGPO is to reduce poverty, especially among the marginalized women, the youth and PWDs. From the study it is clear that this objective may be achieved if only the uptake of the initiative was much higher than it is now. This is because, doing business with the government seems to be benefiting the women in business growth in terms of increased profit margins, increasing the number of employees, increasing the amount of stock and acquisition of new partners among the critical parameters of women empowerment.

From the key informants point of view, the procuring entities face various challenges such as: (i) Lack of funds for capacity building for both the target group and the procurement officers; (ii) lack of capacity to make returns to The National Treasury and the Public Procurement Regulatory Authority as required by law; (iii) delayed payments due to funds reallocation to other uses; (iv) poor flow of information between procurement and finance departments; (v) Corruption; (vi) lack of coordination between Treasury and the Public Procurement Regulatory Authority; (vii) strict regulations leading to challenges for the target group; (viii) lack of capacity to use Integrated Financial Management System (IFMIS); and (ix) lack of proper signage leading to poor accessibility.

The challenges faced by the target group and the procurement entities need to be addressed.

To reduce corruption in the procurement entities and more so among the procurement and financial officers, there is need for officers to adhere to the code of conduct governing public officers, especially on matters of integrity and as necessary take regular training on good ethical practices and effectively streamline the public procurement processes.

Sensitization and capacity building are needed for the target group through use of a targeted approach in order to demystify the AGPO initiative. This training should be done at the national level, at the County level and even at the procurement entity level and targeted to a specific group since each group has its own challenges.

It is also important to ease the stiff requirements which the target groups complained prevent them from registering with AGPO. Moreover, the funds set aside for payment for goods and services should be ring-fenced to prevent reallocation to other uses. Official timelines set for payment for goods and services delivered should be strictly adhered to and all Local Purchase Orders/Local Service Orders (LPOs/LSOs). Tender contracts issued to AGPO beneficiaries should contain a provision that the procuring entity should pay interest at the prevailing mean commercial lending rate as determined by the Central Bank of Kenya on delayed payments that are beyond the recommended time period the date the invoice was received by the procuring entity. This would ease the pain the suppliers go through in paying debts that they incurred in supplying goods and services to the procuring entities.

The National Treasury and the Public Procurement Regulatory Authority should strive towards cooperation and coordination in order to streamline registration of businesses under AGPO in order to avoid possible double registrations by AGPO beneficiary's business entities.

For those procuring entities that do not make returns, it is important to train and build their capacity on how to make the returns and the importance of having up to-date-data on the performance of AGPO.

It is also important to have a multi-sectoral approach within government departments on the implementation of AGPO to the effect that the planning, finance and procuring departments work together in terms of coordination, communication and cooperation.

There is also need for the procuring entities to work together in publishing the enterprises that have been winning tenders because it is clear that the same enterprises could be winning tenders in almost all procuring entities over the years taking advantage of the lack of a multi-sectoral approach to the implementation of the AGPO initiative. The AGPO certificates could be serialized such that if at any one time a woman has put in a tender application, they cannot at the same time apply for another tender in another ministry, parastatal or SAGA until the procurement process of evaluation in the first one is over. This would prevent some firms dominating and becoming the dominant suppliers in the procuring entities at the expense of the other firms. This would enhance transparency and accountability.

It is important to train both procurement officers and the target groups on the use of IFMIS and at the same time, sort out the technological issues associated with IFMIS to make it user friendly.

Finally, the UN Women and other development partners should consider organising and facilitating more capacity building initiatives both at the National and County levels on the AGPO initiative in order to address the challenges faced by both the target group, the procurement entities, the National Treasury and the Public Procurement Regulatory Authority and enhance uptake of the AGPO initiative.

## 9.4 Summary

This paper has traced the journey towards women economic empowerment through different vehicles, starting with grassroots organizations formed after independence such as the *Mabati* Women Groups, the Women's Bureau, and merry-go-rounds, Chamas, SACCOs such as JOYWO, MFIs and many others. Government initiatives such as AGPO, WEF, NGAAF to mention but a few have also played a role in the journey towards realizing economic empowerment for the women.

The paper has shown that there are certain gains that have been achieved from the time of independence to the present. These gains are:

- i. Women can now enjoy security of tenure in formal employment just like their male counterparts.
- ii. Women can enjoy house allowance whether they are married or not.
- iii. Women can rise in their careers to even management positions just like their male counterparts.
- iv. Women enjoy the same tax relief benefits just like their male colleagues.
- v. Women can now access credit not only from Chamas, women Sacco's, but also from women friendly banks.
- vi. Women can also engage in private business and even trade with government institutions through AGPO and facilitated by the Women Enterprise Fund, the National Government Affirmative Fund, the UWEZO fund and other friendly banks that give them Local Purchase Orders or Local Service Orders.

However, all these efforts and initiatives have not brought about significant realizing economic empowerment for Kenyan women. Their businesses remain small, most women live from hand to mouth, they are not able to make decisions on the use of the loans that they borrow and even on the profits from their businesses and generally, the grassroots organizations including merry-go-rounds are more like circulating poverty amongst themselves.

## 9.5 Conclusion

Although women have made great strides towards achieving economic empowerment, they are still a long way away from utilizing their economic potential and achieving full economic empowerment. Culture and women's socialization on their roles inhibits and restricts them from realizing their full potential. For example, there exist gender gaps in decision making positions and only a very small proportion of women are in management and decision making positions, both in government and in the private sector. The majority of women work in sectors considered 'safe' in the sense that they will still practise their reproductive roles well and there still exist wage gaps between male and female employees. Compared to men, women have less access to education, employment and even land which

they can use as collateral for loans in formal financial institutions.

Kenya remains a patriarchal society such that even though the Constitution of Kenya states all public appointments should respect the 30 per cent gender rule, this has not been actualized even by the Government itself.

The uptake of government initiatives such as WEF, AGPO and others remains very low since both the women and the procuring entities face various challenges that need to be addressed.

Therefore, a lot still remains to be done for women to realize their full economic empowerment. This implies that while continuing to encourage women to form self-help groups, merry go rounds (*Chamas*) and investment clubs, these will never bring about full economic empowerment, hence the need to think of addressing the factors that prevent women from taking advantage of the various opportunities available for them in order to achieve full economic empowerment.

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## CHAPTER 10

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# WOMEN'S ORGANISATIONS AS AGENTS OF CHANGE (1985-2010)

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ELISHIBA NJAMBI KIMANI AND PHILOMENA NJERI MWAURA

### 10.1 Introduction

This chapter focuses on some women's organizations and their contribution to women's socio-economic and political empowerment during the second liberation between 1985 and 2010. This period was a landmark for women in Kenya. 1985 was not only the end of the United Nations International Women's Decade but the year when the Third United Nations Women's Conference was held in Nairobi. The conference came up with the global plan of action for women's social-economic and political empowerment, popularly known as the *Nairobi Forward Looking Strategies*. On the other hand, 2010 saw the conclusion of the constitution making process in Kenya and its promulgation on 27<sup>th</sup> August, the same year.

The period from 1985 to 2010 is therefore aptly dubbed the "Second Liberation political phase for Kenya", since the era was characterized by the emergence of political pluralism, providing a wider political space for women to exercise their democratic rights and freedoms. As a result, women agitated for inclusion, particularly in politics, which resulted in vibrant engagement and activism, creating a pathway for revitalization of the women's movement. The movement was manifested in the emergence and mushrooming of women friendly civil society organizations with feminist agendas for transformative change in gender equality; a paradigm shift in the way culture defines women and men as well as power relations.

The civil society organizations aggressively set the pace in addressing discrimination against women and girls. Women started getting a clear ideology and focused on many issues of concern including liberation, recognition of their rights and increased participation in decision making processes and structures. In Kenya, women's organizations became well defined in their vision and mission as they incorporated a wider scope of objectives, especially in the promotion of political involvement, economic empowerment, social integration, rights to reproductive health, elimination of gender based violence and wider involvement in the democratic space. This notwithstanding, the achievement of women's social economic and political empowerment during the second liberation (1985-2010) can best be appreciated in the context of the prevailing environment and the contribution of the women's organizations, as agents of change.

## 10.2 Background to the Second Liberation, 1985-2010

Since the founding of the United Nations, equality between men and women has been among the most fundamental guarantees of human rights. The United Nations Charter, adopted in 1945, sets out as one of its goals to *reaffirm faith in fundamental human rights and in the equal rights of men and women*. Article one (1) of the Charter specifically stipulates that one of the purposes of the United Nations is to promote respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion (Jain, 2005). According to United Nations (2015), women constitute half the world's population, yet they do two thirds of the world's work, earn one-tenth of the world's income and own less than one per cent of the world's property. There is no gainsaying that although women's contribution to various sectors is clear, their role remains largely unrecognized. They are also faced with many constraints in trying to participate in development including initiated development projects, which are largely dominated by their male counterparts.

Prior to the 1980s, women in Africa not only joined in the struggle against colonial powers, but also demanded improved reproductive health rights. In Africa and Kenya many women have defied tradition and have come out strongly to champion for the rights of women and peace within their communities. Although the women's movement has had varying objectives, its common goal is the achievement of equal rights and better social-economic and legal conditions for women. For instance, for many years, Kenyan women were neither officials in political parties nor amongst those cleared to contend for elective positions. In other words, women have been side-lined from politics even at the party level. This has been a recurrent theme that has reverberated over the years with seemingly little progress made to absorb women into formal political parties' structures. For the women of Kenya, however, a dispiriting precedent had been created as they continued to perform dismally in elections until the late 1990s. It has been noted that the post-independence structures did not emphasize an active role for women in development (Kamau, 2010).

With such limited access to national politics, women had to find other alternative ways to agitate for equal rights, law reform and social justice. Beyond the institutions representing formal politics were several international actors such as non-governmental and civil society organizations through which women tried to bring about change. Therefore, Kenyan women's struggles have not taken place in a vacuum since the process has been shaped by global action and international thinking on the status of women, expressed in the United Nations world conferences on women. The First United Nations Conference on Women held in Mexico in 1975 tackled questions of development, equity and the empowerment of women. This was in addition to laying down several important foundations, which included the declaration of the United Nations Decade for Women (1976 to 1985); the creation of the United Nations Development Fund for Women (UNIFEM), now UN-WOMEN; the World Plan of Action structured around women in development, gender equality, the elimination of discrimination and peace (Jain, 2005).

The main objective of the Second World Conference on Women held in Copenhagen in 1980 was to take stock of the progress made on the action plan drawn up in Mexico City. Further, the Conference came up with a pragmatic plan of action that insisted on women's equal access to education, employment and health care. The Plan also drew attention to the need for women to regularize their rights vis-à-vis property inheritance, the custody of children, and nationality. Once again, women solidly represented Kenya. The then Chairperson of Maendeleo ya Wanawake, Jane Kiano played a central role in drawing the delegates' attention to the vexed question of female genital mutilation (Hosken, 1982). On the other hand, the Third United Nations Women's Conference held in Nairobi in 1985 aimed at appraising the achievements of the women's decade as well as reviewing the obstacles towards the achievement of the goal of equality, development and peace as set forth in the priorities of the women's decade (Amrita ed. 1995).

The Nairobi Conference came up with the global plan of action popularly referred to as **The Nairobi Forward Looking Strategies**. The strategies were then considered adequate for the advancement of women and were expected to guide renewed commitment at national, regional, and intercontinental levels (Amrita, 1995). Additionally, the same strategies were to be operationalized by the year 2000, with a policy document that illustrated concrete measures to be adopted by each chapter in order to overcome the obstacles that hindered the advancement of women. Within this period, the concern was that women in the developing countries were most adversely affected by the prevailing socio-economic and environmental conditions; which included drought, famine, debts and low income amongst others. Further, the experiences of women in the developing world were attributed to structural imbalances and conventional yet critical international political and economic circumstances. In this regard, the conference observed that the international community would be critical in setting new international policies based on equity, sovereignty, equality, interdependence and common interests (Ellison, 2004). Further, it was important to assess women's crucial roles in the culture and family, which ensured access to women's reproductive health, participation in democracy, social empowerment, and realisation of women's human and legal rights, economic autonomy, protection and management of natural resources as well as involvement of women in peace building (Steady, 1981). For Kenyan women, the Nairobi Conference was monumental in that from Mexico to Copenhagen and Nairobi, one layer of ambitious planning was added to another, pushing women up the ladder and closer to equality. The lessons would therefore be extremely valuable as they entered an unprecedented and tumultuous phase of political activity.

Arguably, the most influential of all the women's conferences was held in Beijing in September 1995, which resulted in the **Beijing Platform for Action**. For the first time, the concept of gender mainstreaming was emphasized and adopted in the Platform as a process through which development and institutional policies, programs and other operational initiatives addressed the needs and concerns of women and men. The Conference delegates identified twelve critical areas of concern that were in urgent need of gendered interventions by government and civil society players alike: women and poverty; education and training of women; women and

health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanisms for the advancement of women; human rights of women; women and the media; women and the environment; and the girl child. (<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>). The Beijing Platform for Action bound signatories to a stringent review process while the member states were required to produce comprehensive reports every five years, outlining the steps, or lack thereof, made towards tackling the twelve areas of concern. National reports and surveys were then bundled into regional and international reports, which continued to be published as a means of assessing progress (UN, 2015).

In the early 1990s, Kenyan men formed a solid block against women's aspirations. The tide began to change with the introduction of multi-party politics in Kenya as male politicians in alliance with fellow women in politics actively pushed for a gendered agenda. This alliance was in full effect during the 1997 general elections. This was when Hon. Phoebe Asiyo, then a Member of Parliament for Karachuonyo Constituency in Nyanza Region of Kenya, introduced the now legendary Affirmative Action Motion in parliament, requiring the number of women parliamentarians from the regions to increase to 18 (Kabira 2012). Later, in the year 2000, the Affirmative Action Bill was tabled by the Hon. Beth Mugo requiring Parliament to increase women's representation to 30% in elective bodies such as the local authorities and the national Assembly. The motion was forwarded by Parliament to the Constitution of Kenya Review Commission.

In order to facilitate these advancements, it was important to instigate women's specific projects and initiatives that would attract national and international support. These initiatives would propel women's potential with a plan of enabling them to work, gain autonomy and overcome the oppressive structures and barriers, which significantly challenged their participation through legislation and institutions. It is important to note that the magic behind women's achievement during the second liberation movement was the unity of purpose by women's organization and their determination to achieve the set goals. The following section will consider a few of these organizations, while acknowledging the many others including grass root communities and faith based organizations, without which the successes of the second liberation movement for women's political, social and legal rights in Kenya, would not have been realized.

### **10.3 National Women's Organizations and the Second Liberation Movement**

The following are some of the women organizations in Kenya that participated in the struggle for the second liberation. In this section, we discuss their origins and activities from 1985 and their contribution to the success of the second liberation. As we shall see, these organization's to some extent, transformed women's socio-economic and political life in a remarkable way.

#### **A. *Maendeleo Ya Wanawake Organization (MYWO)***

Maendeleo Ya Wanawake Organization (MYWO) is a non-profit voluntary women's organiza-

tion that was formed in 1952 with the mission of improving the welfare of the rural communities especially women, children and youth in Kenya. MYWO is the largest women's organization in Kenya, with membership in all the counties. The idea of forming the organization was conceived by a clique of white settler women in 1952. They were community development trainers in the Department of Community Development and Rehabilitation at the Jeans School Kabete (now Kabete Technical Institute). Mrs. Nancy Shepherd, the first president (1952-1957) led the group. White women first initiated the organization as the East African Women's League (EAWL). Its members sought unity and cooperation in colonial Kenya. The organization was used by the colonial government to rally Kenyan women against the MAU MAU freedom fighters, in exchange for exemption from six days forced labor and a hefty Sterling Pounds 1200 as capital investment for the secretariat. The organisation was structured along the lines of English women's institutions and mandated to work in towns as well as in the rural areas. The colonial government was behind the establishment of the organization since it was formed during the time of the Emergency, when the movement of Africans from place to place was restricted.

The organisation was formally registered as Maendeleo Ya Wanawake Organization in 1955, with its first constitution dated 27<sup>th</sup> October 1954. The constitution was formulated in English, Kiswahili and Kikuyu. The organization had a monthly newspaper published in Kiswahili, Kikuyu and Kamba languages. While MYWO drew members from the then Provinces, the women from Britain dominated its National Executive Committee with one Kenyan woman drawn from each of the Provinces. From 1954 to 1955, representatives in the organizational governance comprised of Lady Mary Baring (President); Mrs. Beecher (Vice President); Miss. Shepherd (Chairman); Mrs. Harriet Musoke (Vice Chairman); Miss. Hollinshead (Secretary).

In the mid-fifties the MYWO's energies focused on organizing women into clubs and providing literacy and handcraft skills. Africanization of MYWO was agitated for by women leaders key among them; Grace John, Maggie Gona, Aida Mbotela, Rebecca Kaloki, Jael Mbogo, Pheobe Asiyo, Elizabeth Mwenda, Fidelia Olang, and Selina Ludenyo, among others. In 1961, the first African committee led by Phoebe Asiyo as President, took over leadership and engaged in massive recruitment of members, with emphasis on improved nutrition and hygiene for women while still agitating for independence.

In the 1960s, after the attainment of self-rule, the organization worked closely with the Department of Community Development and Rehabilitation to provide education on hygiene, adult literacy, tailoring and cookery skills to women and youth. Additionally, MYWO played a key role in rebuilding the country after independence through its countrywide networks. Remarkably, the organization supported the then President Jomo Kenyatta's (1963-1978) call for self-help by mobilizing women in building schools, health and community centers across the country.

The new independent government rewarded MYWO's efforts by funding their projects and recognizing the role of the organisation as a welfare agency. Overtime, MYWO's grassroots network expanded to the eight Provinces of the country, with a defined leadership made up of a chain of

elected representatives from the smallest administrative unit (village) up to the national level. Since then, MYWO has undergone a series of transitions from a women's welfare association during the colonial times to a powerful organization championing for the social, economic and political empowerment of women.

In 1969, MYWO opened Maendeleo Handicrafts shop adjacent to the Six Eighty Hotel, along Kenyatta Avenue, Nairobi, which was operated as a cooperative society. By the mid- 1970s, the organization had raised enough money to build Maendeleo House in the Central Business District of Nairobi. Later in 1974 the ground-breaking ceremony for MYWO Headquarters' building took place. The ceremony was followed by successful mass fundraising countrywide in support of the organization's projects. The leaders were strongly influenced by the United Nations Declaration of the Women's Decade (1976-1985), following the first World Conference for Women held in Mexico City in 1975. As a result, the organization oriented its programming towards social welfare, while providing a prominent voice for grassroots women's organizations. In 1980, the nine-storey building, Maendeleo House was officially opened by the then President of the Republic of Kenya, Daniel Toroitich Arap Moi.

In mid 1980s, MYWO became affiliated with the then ruling political party, the Kenya African National Union (KANU). The organization mobilized women for KANU and managed all government programs for women. However as a result of the alignment to KANU, development partners declined to sponsor MYWO development projects. This notwithstanding, during this period the organization acquired many assets in the form of vehicles, and land as a reward for its support for the KANU government. Consequently by 1984, the organization in collaboration with the Government of Kenya had launched a major countrywide program roll-out with projects covering Family planning, Maternal and Child Health care, Family Nutrition, Soil Conservation, Water and Sanitation, Tree Planting, Energy Conservation and Immunization of Children. It is then not a wonder that in 1985, MYWO successfully hosted the World Women's Decade Conference where over 10,000 world delegates converged in Nairobi as a follow- up to the earlier World Women's Conference held in Mexico. After the Nairobi Forward Looking Strategies were in place, MYWO adopted the desired plan for women by shaping its objectives to suite the Forward Looking Strategies.

In the early 1990s, MYWO joined the democratization movement in Kenya and disengaged itself from KANU. Nevertheless, like other civil society organizations in the country, MYWO continued to agitate for political space for women. In particular, in 1991, during the political transition from one party political rule to a multiparty system, MYWO found its place in the political reform movement and therefore joined other civil society organizations to protect the interests of women within the new political dispensation. Since then the mandate and focus of the organization has continued to be defined by operative national, regional and global legal and policy frameworks, key among which are the Convention on the Elimination of all Forms of Discrimination Against Women, the Beijing Platform for Action, United Nations Convention on Climate

Change/Environment and Women, the Millennium Development Goals, Sustainable Development Goals, the Constitution of Kenya (2010) and the Kenya Vision 2030, among others..

The organization has grown into a nation-wide network of over 4,000 members and 600,000 affiliate groups, with branches all over the country. Various women leaders have provided leadership in various capacities as follows: 1960 – 1961 – Mrs. Phoebe Asiyo (President); 1962 – 1967 Mrs. Jael Mbogo (Chairman); 1967 – 1968 Mrs. E.M.Mwendwa (Chairman); 1968 – 1971 Mrs. Ruth Habwe (Chairman); 1971 – 1984 Mrs. Jane Kiano (Chairman); 1984 – 1985 Mrs. Theresa Shitakha (Chairman); 1985 – 1986 Late Mrs. Mary Mwamodo (Chairman); 1986 – 1989 Mrs. Francisca otete (Care Taker Committee Chairman); 1989 – 1986 Mrs. W. K. Onsando (Chairman); 1996 – 2006; Mrs. Z.J. Kittony (Chairman); 2006 - 2013; Mrs. Rukia A. Subow HSC. MBS (Chairman); and 2013-To date – Rahab Mwikali (Chairman).

Through collaboration with national institutions and line Ministries, the organization has performed a critical role of popularizing Kenya national political ideologies through the country-wide organizational networks and provided a basis for women’s participation in democracy and development. The organization’s efforts have mobilized women’s participation in the improvement of maternal child and reproductive health, through improved access to services and enhanced healthcare nationally. Further the organization has promoted girls’ education and improved their self-esteem through improved access and participation in education, reduction of harmful traditional practices and provision of psycho-socio support. Due to its country-wide networks and scope of its mandate, the MYWO has worked closely with the Ministry of Public Service, Youth and Gender Affaires to promote gender equality and women’s empowerment across the country. Specific programs in this respect include peace building and conflict resolution, women and development, civic education, gender equality, as well as gender and governance. The programs aim at enhancing social, economic and political empowerment for women by raising awareness on women’s rights and most prominently providing a voice for grass-root women. The fact that MYWO ultimately seeks to empower women socially, economically and politically by supporting them to deal with the unique challenges that hinder their progress in the society, directly contributed to women’s gains during the second liberation. Its mission and vision made it fit well within the then women’s movement and its agenda.

In the recent past, MYWO has experienced many challenges including internal wrangling, political interference and weak governance. Lack of funding has also been a serious challenge for the organization. Over time and space, the organization lacked defined leadership, operational procedures and regulatory frameworks including strategic plans and strategies for documenting its functions and activities, which caused most members to exit and develop parallel initiatives across the country, common to the organization’s vision and mission (Kamau, (2010). The organization has however, continued to engage in its program priorities albeit with limited funding especially from external donors.

### **B. League of Kenya Women Voters (LKVV)**



*Hon. Martha Karua (right) and Mrs. Idda Odinga (left), the founding members of the League of Kenya women voters*

The League of Kenya Women Voters (LKVV) popularly known in Kenya as **the League** is a non-partisan political women's membership organization that was

founded in 1992 by a voluntary group of like-minded Kenyan women to advance the rights of women in elective political leadership and other positions of decision-making. The founding of the League is credited to two personalities, namely, Mrs. Ida Odinga and Hon. Martha Karua. The main focus of the League is the promotion of women's active and equal participation in politics and public affairs through the electoral processes as voters and leaders.

The League's activities focus on Civic Education, Economic Empowerment, Research and Advocacy. The organization envisages a just society where women are adequately and effectively empowered; and are recognized equally as men in their political, social and economic contributions. As part of its achievements, the league has increased voter education and electoral monitoring, developed a governance and human rights programme, a curriculum for opinion leaders and trained many voters' electors across the country. It has also influenced participation of more women in political processes, for example in the Constitutional Review process, nomination of women to parliament and conducted civic education. Further, the organization has been instrumental in generating documentation to promote women's agenda in the development process, for example the Voters' Handbook and continuous reports on women's performance after every general election in Kenya. It is therefore clear from all these achievements that the League has made a tremendous contribution to the second liberation.

However, despite these achievements, the league has experienced structural challenges due to lack of resources and capacity. Sometimes the inadequate and delayed funding has resulted in the interruption and delay in meeting the organisation's targets. Additionally, the high turnover of leadership has caused the organization to lose its turgidity and mutual collaboration with partners and donors.

### **C. Federation of Kenya Women Lawyers (FIDA)**

The Federation of Kenya Women Lawyers (FIDA Kenya) was established in 1985 after the Third United Nations Women's Conference, held in Nairobi in that year. The mission of the organization was to eliminate all forms of discrimination against women in Kenya. The organization was affiliated to the International Federation of Women Lawyers, an organization started in Mexico by a group of women lawyers who sought to promote Gender Equality globally (Dolphyne, 1991). FIDA (K) is a membership organization, which has gradually grown to a membership of over 1000 women lawyers and law students.

The mission of FIDA (K) is to promote women’s individual and collective power to claim their rights in all spheres of life. The members envisage a society that respects and upholds women’s rights. FIDA (K) is conscious that in order to realize their mission and vision, there are certain core values that are central in guiding its work, institutional norms and interventions. The values include being women centered, professional rigor, transparency accountability, upholding and promoting a culture of inquiry, respect for diversity, team work and the collective good. The organization was at the center stage in advocating for the advancement of women during the second liberation not only through law reforms but also in raising awareness on the rights of women. It’s then not a wonder that the organization has earned respect and international recognition in women’s rights advocacy.

FIDA Kenya has achieved much in the past. Some of the achievements include: recognition as a critical partner for government and civil society in ensuring policy, legislative and constitutional reforms. The organization has representation in various organizations, committees, local and international networks and boards, which enables it to play a key role in overseeing the proper capture of women’s needs and interests (UN, 1996). Being the oldest women’s rights organization in Eastern Africa, FIDA (K) has over the years carved a niche for itself as a fearless defender of women’s equality, human rights at the national, regional and international levels. Among the key personalities that strengthened the institution towards achieving its mandate include: Lilian Mwaura, Nancy Baraza and Martha Koome.



**Mrs. Lilian Mwaura, Nancy Baraza and Martha Koome were key players in FIDA-K for many years**

FIDA Kenya has successfully established and achieved strategic partnerships with several entities including the Kenya Government through its line ministries and agencies, civil society partners, development partners, institutions of higher learning, among others (UN, 1996). With time, FIDA (K) has managed to train women on legal rights and skills on how to represent themselves in courts of law, while seeking redress for violations of their rights. Some of the cases where FIDA clients have represented themselves in court are child custody and maintenance, separation, divorce and succession. The organization also offers psycho-socio support to emotionally distressed clients through individual, couple or group therapy sessions (Khadiagala,

2001). During the Constitution of Kenya Review process, FIDA (K) played a significant role as a legal advisor to the women's movement. In collaboration with other women organizations FIDA (K) was active in clarifying legal issues to women across the country. Further FIDA (K) has consistently informed the society on gender related legal issues through gender audit reports documenting women's experiences and participation before, during and after the general elections.

#### ***D. African Women Development and Communication Network (FEMNET)***



**Dr. Edda Gachukia and Mrs. Njoki Wainaina, the founder members of FEMNET**

The African Women's Development and Communication Network (FEMNET) was set up in 1988 by national women networks in Africa to coordinate Africa's preparation for the Fourth World Conference on Women, held in Beijing, China in 1995. The Network was established to promote women's development in Africa. Among other achievements, the Network

played a key role in helping Non-Governmental Organizations to share information and practical approaches on women's development, equality and other human rights.

During the second liberation movement, FEMNET worked with many organizations including the United Nations Commission on the Status of Women, other UN agencies and African Union (AU). Some of the areas that FEMNET has focused on with the African Union and in support of women's empowerment include: the Protocol on the Rights of Women in Africa of the African Charter on Human and People's Rights: the Economical Social and Cultural Council: and the New Partnership for African Development. As a contribution to the women's socio-economic and political empowerment, FEMNET engaged in strengthening the role and contribution of African NGOs, focusing specifically on women's development, equality and other rights. The organization also provided a channel through which the NGOs could reach one another and share experiences, information and strategies to improve their work on African women's development, equality and realization of women's rights.

The achievements of FEMNET are evident in the continued support it earns from its members, partners and peers. This enables its ongoing function as a co-coordinating mechanism between the regional and international policies of the African women's movement. This, in turn, has been pivotal in ensuring that key concerns of the African women's movement have been reflected in international policies during and after the second liberation. What enabled FEMNET to achieve its mandate was its training and communication strategies. The organization also developed

a unique framework for gender mainstreaming, which was later updated. FEMNET pioneered training on how such frameworks can be applied in gender analysis in Africa.

The critical structural challenge faced by FEMNET was that being a pan-African institution, it assumed more mandate in coordinating all pan-African women organizations. This notwithstanding the organization has made remarkable achievements in advancing women's equality and empowerment in Africa, Kenya included.

### ***E. Collaborative Centre for Gender and Development (CCGD)***

The Collaborative Centre for Gender and Development (CCGD, also referred to as (The Center) is a membership non governmental organisation which was founded in Kenya in 1995 and officially registered in 1996. Before the founding of the CCGD, some of its founder members were involved as consultants in FEMNET working on gender capacity building programs, research and advocacy. The CCGD, cut a niche for itself in strategy development and research. It has had a significant impact on the operational strategy of women's participation and representation within the constitution review process. Among the founder members were; Prof. Wanjiku Kabira, Prof. Eddah Gachukia, Dr. Okwach Abagi, Wanjiku Mbugua, Miriam Gachago, the late Sarah Wanjohi and Milton Obote (<http://ccgdcentre.org/>).

The CCGD membership consists of men and women from multi-disciplinary backgrounds in public and private institutions, passionate about women's empowerment and also equipped with skills in gender sensitization, analysis, programming and advocacy.

The overall objective of CCGD is to mainstream gender in all development processes and operations in governance as well as addressing sexual and gender based violence. The programs to advance its activities have focused on the promotion of girl child education, elimination of retrogressive cultural practices that hinder women's empowerment, socio-economic and political empowerment of women, research, and influencing policies in public and private sectors. Key strategies that CCGD has used to achieve its mandate and contribution to its success have included lobbying political parties to increase the participation of women in politics, working with and lobbying government ministries to address the needs and concerns of women in all their operations, lobbying Treasury to engender the budgetary processes, research and dissemination on women's experiences and challenges in participation in politics decision making.

Among its achievements, the Center not only lobbied but also provided leadership, mobilization and expertise for many activities during the entire constitution making process. It was a focal point for women's Civil Society Organizations during the struggle for the second liberation especially from 1997, through the constitution making process up to its promulgation in August 2010. Further, the Center was instrumental in the development of the Affirmative Action Motion, which was tabled in parliament by Hon. Phoebe Asiyo in 1997. It also played a key role in the founding of the Kenya Women's Political Caucus (KWPC), in addition to facilitating in the drafting of several key bills in parliament amongst them: the Community Health Workers, Social Support Enterprise Bill, Sexual Offences Bill and the Marriage Bill. The Center also offers

scholarships to needy girls across the country. Like other civil society organizations and NGOs, the Center also faces challenges in funding but it has consistently performed its mandate with support of the donors it has maintained because of its good reputation in executing its activities.

### ***F. Coalition of Women against Violence (COVAW)***

The Coalition on Violence against Women (COVAW) is a registered non-profit making women's rights organization, which was founded in 1995 as a response to the silence of the Kenyan society in addressing violence against women. The membership was drawn from professional and individual women and men who were committed to the eradication of violence against women and the advancement of women's human rights in general. The members saw a need to break the silence and expose the issues of violence in both the private and public domains. In addition to focusing on violence against women the organization was concerned about the low participation of women in decision making processes at all levels in Kenya.

Among the founder members of COVAW was Hon. Adelina Mwau, who was very passionate about the advancement of women through the protection of human rights. Another key personality in promoting and advancing women's rights through the organizations was Angelina Mwau, sister to Adelina. Since its inception, COVAW has continued to be instrumental in placing violence against women in the list of crimes and a human rights violation in the public domain and has successfully spearheaded the Sixteen Days of Activism on Violence against Women, a UN campaign geared towards sensitizing communities and the country about women's right to bodily integrity and state protection. COVAW has moved to the next level in addressing Sexual and Gender Based Violence (SGBV) in that it is also addresses the root causes of violence against women by focusing on breaking the cycle of violence. The organization aims to contribute to building social movements opposed to and committed to eradicating violence against women; mobilizing women in democracy as a strategy to advocate for their rights and empowerment. A greater part of this work includes strengthening the voice and impact of women leaders as champions of change at the grass-roots, linking the local to the national policy processes and ensuring women's access to services and justice to end violence against women. (<http://covaw.or.ke/>).

In contributing to the empowerment of women in Kenya, COVAW has been running different initiatives such as Access to Justice and Women's Rights (AJWR), an initiative that seeks to ensure that women and girls whose rights have been violated overcome all legal, social, financial and structural barriers in the quest for justice; provision of free legal aid to survivors of violence; facilitating court representation through the pro-bono advocates' scheme where and when necessary; and building the capacity of crucial service providers to survivors of SGBV. These service providers include: law enforcement agents, health care service providers, members of "cheap jerseys", the provincial administration, prosecutors, magistrates and children's officers. Through the AJWR initiative, COVAW also conducts awareness forums and legal aid clinics through which women and girls are empowered with knowledge on their rights and reporting procedures upon violation (<http://covaw.or.ke/>)

Further as a contribution to women's empowerment, COVAW's Advocacy and Communications

(AC) initiative has helped in creating an enabling environment for women in Kenya to claim and fight for their rights. The organization has also contributed to the achievement of positive change in the legal and policy environment that has in turn facilitated increased awareness and reduction of violence against women in both private and public domains; through contributing towards the effective implementation of constitutional and other legal provisions that protect women against violence. COVAW was a key player in the architecture and lobby for the enactment of the Sexual Offences Act (2006) and continues to emphasize on its implementation. In addition to having actively kept the sexual and gender based violence debate alive, the organisation has since its inception in 1995 worked with women's organizations, government and donors to mitigate SGBV through its activities, and thus contributed to the success of the Kenyan women's second liberation movement.

### **G. The Green-Belt Movement**



*Prof. Wangari Maathai founder of the Green-Belt Movement*

Professor Wangari Maathai founded the Green Belt Movement (GBM) in 1977 under the auspices of the National Council of Women of Kenya (NCWK). Among other reasons, the movement was established to respond to the needs of Kenyan rural women who feared that their water streams were drying up, their food supply was less secure, and that they had to walk further and further to get firewood for fuel. Another mandate that the movement took was to empower communities to conserve the environment and improve livelihoods. With time the GBM widened its scope to work to work at the national and international levels to promote environmental conservation, with the aim of building climate resilience for sustainable livelihoods. Additionally, the movement focused its activities on empowering communities, especially women and girls to foster participation in development process and democratic space (Maathai, 2006).

During the second liberation, the movement contributed by demonstrating the power in women's formation of groups for a common goal. This is demonstrated in the success in growing seedlings, planting trees to bind the soil, store rainwater and provide food and firewood. Women also enjoyed economic empowerment through improved livelihoods and monetary gains from the sale of seedlings. GBM engaged and held the government accountable for creating a value-driven society of people to consciously work for continued improvement of their environmental management, conservation and empowerment. In this way, it contributed to the realization of greater democratic space and more accountability from national leaders for human rights and women's empowerment. Further the movement actively added its voice in conscientising communities against the

grabbing of public land and the encroachment of agriculture into the forests and water towers (Maathai, 2007). In particular the organization was vocal in resisting the construction of a tower block in Uhuru Park in downtown Nairobi, and also joined others to call for the release of political prisoners. These were landmark achievements for the movement that illustrated pursuits into the ideals of fairness, transparency and accountability.

Prof Wangari Mathai used this platform to become an important beacon of the second liberation as she gave women's issues visibility nationally and internationally. As the movement widened its scope and got involved at regional and global levels, it captured international interests in the campaigns and advocacy on climate change (Casimiro et al. 2009). Due to her advocacy for peace, women's empowerment and environmental justice, Prof Wangari Mathai became the first African woman and only Kenyan to have won the Nobel Peace prize, making her a role model for women all over the world. The GBM continues to pursue her goals of social and environmental justice.

#### **H. Kenya Women's Political Caucus (KWPC) and Women Political Alliance of Kenya (WPAK)**

The Kenya Women's Political Caucus was formed in 1997 after the Affirmative Action Motion moved in Parliament by the then chairperson, Hon. Phoebe Asiyo, was soundly defeated by a male-dominated House. The motion had sought to put in place legislation to mandate that a third of the 222-seats in parliament be reserved for women, among other gender concessions. The Women's Political Caucus led the efforts in collective action for the women's movement in support for the motion. The defeat of the motion worked as a wake up call that gave women in Kenya energy and unprecedented collective determination to walk together to ensure that their issues were moved to the centre of the political agenda. Women's civil society organizations elected Hon. Asiyo as the chair of the Caucus and Prof. Wanjiku Kabira as the Convener.

The **Kenya Women's Political Caucus (KWPC)** and its sister organization **Women Political Alliance of Kenya (WPAK)** eventually became instrumental in providing a strong lobby platform that ensured the application of the principle of affirmative action in regard to women's representation in the constitutional review process by firstly, securing nearly one-third female membership in the district and national forums and secondly in the drafting committee of the Constitutional of Kenya Review Commission. The combination of the Caucus, headed by Hon Phoebe Asiyo and the Alliance headed by Wanjiku Kabira hitherto became a formidable force in terms of outreach, intellectual drive and other capabilities needed to push the campaign to its logical conclusion. This translated into seven female commissioners out of a total of twenty six members and about one hundred women delegates out of six hundred in the Constitutional Conference held at the Bomas of Kenya in 2003 (Nzomo, 2003:4). The move was a significant contribution to the achievements of women in Kenya during the second liberation. Additionally, a significant agenda setting contribution by the Caucus was the launching of the Women's Political Manifesto for the 2002 general election, which defined women's own platform for politi-

cal negotiation, participation, and served as a women's Agenda Accountability tool for political aspirants and political parties.

### ***I. The National Council of Women (NCWK)***

The National Council of Women of Kenya (NCWK) was founded after independence in 1964. It was a women's organization made up of rural women in Kenya with affiliation to the International Council of Women. It was registered in 1966 and thereafter became the common front to unite various women's organization in the country, with a mandate to promote their common issues and objectives. Since its formation, NCWK has acted as the umbrella body for women's organizations, whose affiliates include women's NGOs, Community-Based Organizations, and Faith-Based Organizations. Among the key personalities in the NCWK leadership have been Prof. Wangari Maathai, Ms Lilian Mwaura and Ms Lydia Gachoya.

Prof Mathai introduced the idea of planting trees through citizen foresters and called the new organization, the Greenbelt Movement (GBM) under the auspices of the NCWK in 1976. Prof Wangari Maathai was the chairperson of the NCWK from 1981 to 1987. Thus, NCWK has directly contributed to the second liberation movement not only through awareness raising and civic education on women's participation in setting and advancing their agenda, but also as a mobiliser for grassroots' women organizations to form a common front. In this capacity, the organization was actively involved in a lot of advocacy for opening democratic space for women's participation in the Constitution making process in Kenya.

## **10.4 Conclusion**

The second liberation movement will not only be remembered as a reawakening period for conscientization on gender equality but also as a period when civil society organizations worked in solidarity for a common goal, namely claiming women's space in the society. However, while acknowledging that the women's movement in Kenya has achieved remarkable strides towards social, economic empowerment for women and that woman are increasingly being considered in electoral positions and appointments on the basis of the two thirds gender rule enshrined in the Kenya Constitution (2010), gender equity in political representation is still wanting. Women continue to occupy a subordinate position compared to their men counterparts, while girls continue to be viewed as being lesser human beings, compared to the boys.

Much work and efforts have however gone into advancing women's social, economic and political rights and empowerment. Indeed this has been the common denominator underlying the focus for the women's movement from 1985 to 2010. It is appreciated that the period, which has been termed as the second liberation for women in Kenya, culminated with the widening of democratic space and most importantly, the realization of the gender friendly 2010 Kenya Constitution. There have also been gender friendly law reforms and policies that have opened

space for women's social-economic empowerment and participation in politics as well in decision making structures and processes. However, it is worth noting that much is yet to be done and achieved in order to bring women into the center of leadership, political participation and to be beneficiaries of the outcome of the development processes at the county and national levels. Thus, the struggle for the Kenyan women's social economic and political empowerment continues unabated as they look forward to the third liberation.

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## PART THREE

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# ENVISIONING BEYOND THE MAINSTREAM

“If you are trying to transform a brutalized society into one where people can live in dignity and hope, you begin by empowering the most powerless. You build from the ground up.”

Adrienne Rich



## CHAPTER 11

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# PER ASPERA AD ASTRA: FEMALE EMPOWERMENT IN KENYAN LITERATURE

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ALINA NIKOLAEVNA RINKANYA

### 11.1 Introduction

Since the time of its birth, Kenyan women's literature has been treating as its key theme the problems of gender equality and the struggle for a decent place of women in the society as its full-fledged and equal members. The heroines of Kenyan women writers have been struggling against destructive consequences of traditional, colonial and modern patriarchy, gender-based disparity and submission, (Gifford 1948) frequently manifested in most violent forms. They were acquiring self-emancipation and self-reliance through education, seeking representation and participation not only in domestic, but also, in country-wide matters through paving their way into political circles.

This chapter sets out to trace the development of these themes in the literature of Kenyan women writers since its beginning in the 1960s up to the first decades of the current century. The analysis puts an emphasis on the novels since, as it was observed by V. Belinsky already in the 19<sup>th</sup> century, the novel is the most sensitive reflector of social dynamics (Gifford). However, some works in other genres, such as short stories and poetry, will also be analysed, if these genres play a prominent role in the creative activity of specific writers. The chapter attempts to mention the names of most of the published women writers in Kenya so as to create a wide panoramic picture of the development of women's literature in the country. Nevertheless, some writers who, in the author's opinion, may serve as the most illustrative representatives of a specific period are given special attention. For that purpose the chapter is divided into four sections, each one of which corresponds to the time periods.

In terms of existing critical literature, it may be said that although women's literature in Kenya is a long-time and well-established phenomenon, it has received a rather timid attention from the critics. Among the major studies is Marie Kruger's seminal monograph *Women's Literature in Kenya and Uganda* (Kruger 2011), arguably the only one giving an overall evaluation of women's writing in Kenya. Elizabeth Oldfield in *Transgressing Boundaries* (Oldfield 2013) surveys from the viewpoint of the post-colonial theory the works of three Kenyan women writers, namely, Grace Ogot, Elspeth Huxley and Marjorie Oludhe-Macgoye as well as the Ugandan author Barbara Kimenye. John Kuria, in his doctorate thesis (Kuria 2001) investigates the feministic

aspects in several short stories and novels by Kenyan female writers. The studies dedicated to particular authors include Roger Kurtz's treatise on Marjorie Oludhe-Macgoye titled *Nyarloka's Gift* (Kurtz, 1997), along with a number of master's dissertations on Micere Mugo (Omutiti 2005) and Margaret Ogola (Cherop 2016). Journal articles on the subject are more numerous – but the limits of the chapter would hardly allow us to provide even a short tentative list.

As a theoretical background for the chapter we have opted for the theory of post-colonial feminism. As put by Raj Kumar Mishra:

The matter of fact is that postcolonial women refuse to remain passive and continue to bear male-oppressive environments. These women seek to emancipate themselves through education, struggle, and hard work. The postcolonial men re-colonized the bodies and minds of their women in the name of preserving their cultural values. Postcolonial feminism is primarily concerned with deplorable plight of women in postcolonial environment [...] Postcolonial feminists argue for women emancipation that is subalternized by social, cultural, or economic structures across the world. (Mishra 2013:132–33).

And thus: “Postcolonial feminism [...] comprises non-western feminisms which negotiate the political demands of nationalism, socialist feminism, liberalism, and ecofeminism, alongside the social challenge of everyday patriarchy, typically supported by its institutional and legal discrimination” (Mishra 2013: 130). Exactly for the purpose of altering this “deplorable plight of women in postcolonial environment” and fighting “the social challenge of everyday patriarchy”, Kenyan women writers in their works advocate gender equality, equity and parity, as we would try to demonstrate below.

Methodologically, the analysis is based on library research and text analysis methods. These methodological tenets allowed us to articulate major concerns of the authors investigated and to trace how these concerns were reflected in their works, to formulate the message that, in our opinion, these writers were trying to convey to their audience.

## 11.2 The 1960s: The Making

Creative writing by women authors in Kenya was initiated almost simultaneously with the country's post-colonial history – the first short stories by Grace Ogot were published in 1962 and 1964, the year before and after independence. Grace Ogot (1930-2015) can confidently be deemed as ‘mother superior’ of Kenyan women's writing, who largely defined its basic aspects and themes and outlined the basic types of characters.

Ogot's first novel *The Promised Land* (1966), set in the 1930s, was focused on the fate of main protagonists, a Luo farmer Ochola and his wife Nyapol, who emigrate from Nyanza to northern Tanganyika in search of greener pastures. Nyapol opposes her husband's desire to uproot his family, but goes along with him, only to see her family fall into ruin when Ochola is cursed by an antagonistic neighbour and falls ill. Nyapol is able to save her husband's life by taking him back

to Nyanza; she is the one to return with her sanity and dignity intact. *The Promised Land* is the first modern African book written by a woman, the first one to feature a strong central woman character, and may well be considered as the cornerstone of women's literature in the region.

*The Graduate* (1980) tells the story of a university graduate who goes to the United States for further studies. On his return to Kenya he discovers that things have changed considerably. The novel also features the character of a female politician who aspires to remake the Kenyan nation in the image of moral integrity and political autonomy.

*The Strange Bride*, a novel first published in 1983 in Luo language as *Miaha*, and translated into English by Okoth Okombo in 1989, ponders on the discrimination against the African woman in traditional society. The story starts describing the quiescent life of the village of Got Owanga. Their god Were Nyakalaga has been taking care of these people for centuries as long as they didn't disappoint him; they don't do any work, for their god has given them one special hoe and an axe that do all the digging and cutting. For centuries things remain the same, until the day the beautiful Nyawir (the strange bride) marries Owinyi, the chief's son. As soon as she settles in the household, she is keen on learning all about the magical hoe, and angers the god by using this same hoe to dig, which was against the covenant the people had with their god. What Nyawir does brings about a lot of change in Got Owanga – she steers Got Owanga from a village highly dependent on natural powers into an agricultural community. Whereas the traditional myth tried to explain why the Luo people now have to work to earn a living, while in the past work was unnecessary, Grace Ogot used the myth to attack the patriarchal privileges of the traditional African setting. She departs from the foundational myth that condemns women as villains who provoked god to force people to labour for a living. Instead she uses Nyawir's challenging personality to portray the power of a woman to transform society.

Although renowned as a novelist, it is her ability as a short story writer that gave Grace Ogot the reputation of the best-known woman writer of East Africa. In her two most famous collections of stories *Land without Thunder* (1968) and *The Other Woman* (1976) the absolute majority of the stories are dealing with women's problems and feature leading female characters. In these collections, Ogot creates one of the founding female character types in Kenyan women's writing – woman as a victim. At that, it does not matter which background they have – victimisation knows no differences, it takes multiple forms, and it comes from one and the same source – male-created and male-dominated society. Women in Grace Ogot's stories are victimized by age-old (and, again, men-made) customs in pre-colonial days – a young beauty Owini (*The Bamboo Hut*) suffers through no fault of hers for her mother's mistake, also caused by the demands of male domination (her mother, being unable to conceive a son, leaves Owini in the forest as a sacrifice to the gods), and both women – although innocent – are saved from cruel punishment only through the mercy of the village chief. The community suffering from long draught chooses a virgin, Oganda, as a sacrifice to bring the rain (*The Rain Came*). The traditional world is so male-centred, that for a young woman, Nyamunde, the death of her husband, however greedy and marauding Nyagar, means the crash of her entire universe (*The Green Leaves*).

The modern world, 'the world of progress', for Kenyan women in the stories of Grace Ogot means mostly more intense and variegated ways of victimisation – modern Kenyan women are left at the mercy of literally any male around: ruthless officials in Cairo customs, who put a young Kenyan female tourist under unmotivated arrest (*Karantina*), local criminals, who torture an elderly school assistant Awino and her stepdaughter Anyango to squeeze from the lady her humble savings (*The Pay Day*), neglectful doctors – Asuna Yambo in *Real Electric Train* makes futile attempts to summon various doctors, including their family one, to the sick bed of her son, until the boy's life (and mother's sanity) are saved by the mercy of a young physician Jacinda.

Family life in the modern world hardly brings to women any consolation – instead, victimisation in the family circle becomes almost the order of the day. Christine Ayembo, a village beauty (*The Ivory Trinket*), is driven to suicide by the reproaches of her educated (!) husband Semo – he constantly gnaws at her for being unable to conceive a son. In the same story, the heroine Sara, after trying to choose a life partner against her parents' will, is nearly killed by her mother and disowned – for, as she is reminded, marriage is a family matter. The epitome of a female victim is given in a much-anthologised story *Elizabeth*, where the heroine, young, beautiful, intelligent, educated and, moreover, committed to serve her country, is victimised by the entire society – raped by her current boss (after numerous advances from the previous ones), she is rejected by her fiancé, her family, and, despite the attempts by her fellow women to help her, commits suicide.

The imperatives of a male-dominated world may turn even the fellow women into the agents of victimisation (moreover, frequently physical) – the modern and educated beauty Jedida Oda (*The Other Woman*) tries to assert her freedom of action by refusing to sleep with her husband; but when she finds out that her Jerry finds solace with their house-help Taplalai, Jedida, with a kitchen knife in her hand, attacks not the adulterous husband, but a poor house girl, cutting her ear. The honourable minister from the eponymous story is caught by his wife with a young beauty in a hotel room – and again, the wife, armed this time with a *simi*, attacks not the unfaithful spouse, but his young flame – who decided to offer her love in exchange for a loan for a house. A somewhat different angle of woman-by-woman victimisation is given in the story *Night Sister*. Mrs Ochieng, already suffering from the trials of her first pregnancy in the hospital ward, is terrorised by the brutal night sister Smith (whom the poor lady even calls a 'mubeberu'); and, very symptomatically, is saved by a merciful male doctor – for even the release (if any!) from victimisation lies solely in male hands.

A few female characters in Ogot's stories give a shade of hope that women may at least sporadically survive in the male world. Achola, a young school teacher (*The White Veil*), since their school days is madly in love with a clerk Owila – but Owila, obsessed with the idea of pre-marital sex, leaves her for a 'bush girl' Philumena, whom he intends to marry. Desperate (in fact again victimised, on the one hand, by the male-designed custom, demanding virginity, and on the other by the 'modern' male lust), Achola, with the help of a woman sorcerer, still manages to

contract marriage with Owila. Abura, an educated woman writer (*The Middle Door*), being harassed by the policemen on the train, manages to scare them away with what proves to be her nephew's toy gun. In the above-mentioned story, *The Ivory Trinket*, the main character Sara manages to break her engagement with the cheater Semo after learning the story of his late wife.

However, even the brave attempts of these women to avoid victimisation in a particular case do not save them from their general fate as victims. Achola goes out of her way only in order to restore her ties with lustful and cheating Owila, still being bound to bow to both tradition and Owila's 'modernity'. Abura still on every occasion has to rely on male mercy – of the train ticket examiner, for whose help she has to belie her reputation as a writer, of the policemen at Kisumu railway station, who spare her from the arrest only after breaking her expensive watch, and all in all she is still openly shown her place in the male-dominated world. Sara, after leaving Semo, returns to her parents, re-installing herself into the patriarchal universe.

It may be asserted that Ogot's stories comprise a very sensitive reflection of Kenyan society, characterized by strong and rigid hierarchical relations. All this is presented in the image of a woman who is openly and violently shown her position in this hierarchy, dominated by men in all spheres of life. And this position itself makes her prone to victimization – and the attempts (however isolated and sporadic) to break free from it only increase the victimization at all levels and in all spheres. Thus, Grace Ogot has shown to her fellow writers, and especially her successors 'what to fight against', and left them with a task of creating a new type of heroine – the one who would be able to fight and win, changing the patriarchal society in its various ambits.

### 11.3 1970s-80s: The Maturing

The 1970s and 1980s witnessed Kenyan women's writing coming of age; names that appeared at that period now comprise the pride and joy of Kenyan literature. Following the founding figure of Grace Ogot, there came her Western Kenya 'landswoman' Asenath Bole Odaga, a prominent novelist and the founder of one of the first independent publishing houses; Lydia Mumbi Nguya with *The First Seed* (1975), a Kenyan text standing close in its problematics to Chinua Achebe's *Things Fall Apart*. Other writers were introducing various new literary forms – "novel in verse" (Muthoni Likimani), magical realist prose (Rebecca Njau), youth and adolescent novella (Miriam Were). This period also saw the emergence of the first female poets and playwrights, such as Micere Githae Mugo, who became famous with her poetry collections and plays (a brief survey of her poetic works is given below).

The late 1970s and early 1980s saw the first novels and poems of Marjorie Oludhe-Macgoye (1928-2015), who became one of the most prominent figures in Kenyan women's writing. British by birth, she married her husband, a Luo medical doctor, in the 1950's, thus breaking a white settler's 'code of behaviour'. Marjorie Oludhe Macgoye devoted all her novels to the theme of the birth of a new Kenyan woman. One can hardly come across a 'white Kenyan lady' in most of her novels; the heroines are native Kenyans from different regions of the country, whose life was drastically – and often tragically – changed by the forces of history; but these women were

not only able to overcome the trials and tribulations of this change, but through the change they received new opportunities of altering their fates, estranging from customary appanage and stepping onto the trail of self-determined living. Paulina, in *Coming to Birth*, (1986) faithfully follows her arranged marriage to Nairobi, but later, being abandoned by the husband because of her seeming barrenness, is able to put up living on her own, achieving economic, social, and spiritual independence, and afterwards accepting her wretched husband under her custody. Wairimu in *The Present Moment* (1987) flees from her native village to the city, avoiding both the hardships of the Emergency and supposed forced marriage; Victoria (Macgoye, *Victoria and Murder in Majengo 1993*), having passed through all the hardships of city life, finds her consolation in her children and work. In spite of minor differences, all these women are united in their discontent (obvious or hidden) with patriarchal ways of life, which turn them into the property of their husbands, elders, etc. And even more they are united in the assurance that a modern woman can live on her own and men begin to play lesser and lesser role in their lives. “The more men you meet on your way”, tells Victoria one of her female relatives, “the more you have to rely only on yourself” (Macgoye, *Victoria and Murder in Majengo 1993*: 113). At the same time the writer is far from being didactic; she does not impose upon her readers a certain ready-made ideological stand. At most, she invites them to ponder over the questions she raised, not giving to any of them a straightforward answer. She does not deny the eternal value of a happy marriage – but at the same time she always, however unobtrusively, implies that a modern woman has other opportunities for self-realisation. For example, the fate of Paulina – the main character of *Coming to Birth* – who reaches at last a long-desired matrimonial bliss, is provided by the author with an ‘alternative’ symbolised by Amina, a business lady, who gradually builds her own ‘trade empire’; she owns a clinic, a store, a workshop, etc. When Paulina, who is pregnant with long-awaited son, meets Amina in the street, and the two talk about their lives, Paulina sighs: “I learned to take from life what it gives and make it a little better”. “And what is needed is to make your life what it is and take the best of it”, – Amina answers, revealing by this invective all the difference in their world outlook.

A new dimension in the world outlook of Macgoye herself could be traced in her novel *Chira* (1997). In that book, Macgoye revises – or, rather, expands – her former position; this time, as it seems, old and new values in Kenyan society should stop clashing and instead enter into a constructive dialogue. The pandemic of AIDS – for which the characters of the book use the term ‘chira’, meaning in Dholuo something like ‘disaster’, ‘incurable disease’ – makes the characters in the book change their view upon many taboos, which are prescribed both by Christianity and the traditional religion (Macgoye, *Chira 1997*: 49). The first victims of ‘chira’ are light-minded and inexperienced Julia, who earns ‘side money’ by sexual services, and Samuel, a school graduate, who had a love affair with his distant female relative, Njoki, who looks for rich lovers (Macgoye, *Chira 1997*: 117). At the same time, Otieno and Helen, who admit the reasonability and usefulness of many regulations inherent to both traditional and Christian marriage codes, preserve their physical and mental health. Narrating the lives of her characters, Macgoye urges her readers to preserve – in the face of new and mortal danger – that healthy and reasonable

element which is contained both in traditional and modern values. At the same time, the writer expands considerably the range of problems touched upon in the book. Her main idea seems to be to convince the reader of the importance of leading moral life in general. MacOwuor, the politician, starts to make an indecent use of his post – and only narrowly escapes the punishment, having atoned for his sins; Adhiambo, the scheming lady, falls victim to her own devices. The theme of female emancipation, which was central to the previous novels of Macgoye, does not disappear in this one – but here the writer shows that in some cases emancipation can produce a negative influence on immature souls; virtuous Otieno and Helen, as well as greedy Njoki and shady Adhiambo – all of them are the ‘products’ of emancipation. It should be stressed that, although all the accents are placed in quite clearly, the novel, like all the previous books by Macgoye, stands far from a straightforward didacticism – the writer again calls upon her readers to ruminate on the problem, without direct instruction (Macgoye, *Chira* 1997: 91).

In *Homing In* (1994), Macgoye presents yet another dimension of her work, supporting another powerful idea – that all women the world over are going through the same plight, and therefore, could and should understand each other. For the first time she centres the story on a white person – an English lady named Ellen Smith, one of dozens of ‘settler wives’ brought to Kenya from war-devastated Europe. Ellen’s life is interwoven in the novel with the life of Martha, Mrs Smith’s African maid, who turns out to be her only friend and comfort during Ellen’s old years (Macgoye, *Homing In* 1994). Ellen and Martha, two Kenyan ladies of English and Kikuyu origin, manage to survive through the Second World War, the Emergency, the first decades of independence, because they have to attend to their womanly duties and, moreover, because they are bound to each other, first by the relations of mistress and maid, later – by mutual love, respect and understanding. In that novel Macgoye reveals that any woman’s soul, regardless of her race, background, upbringing, etc., contains a certain substance that enables her to withstand all the tribulations of life without losing her essence. The last passages of the novel contain the question of Ellen’s old friend, when exactly had Ellen changed – implying her old age and loneliness. Martha answers: “Change, madam, Lily, I mean? Well, no, we are all getting older, of course. But my madam – Mrs Smith, mama Nigel – no I wouldn’t say that any of us has changed” (Macgoye, *Homing In* 1994: 204).

Macgoye’s poetic works also feature women-related themes, specifically those of female predicament. Her long poem *Song of Nyarloka*, which became also the title of her first collection, published in 1977, is deemed by Roger Kurtz as “Macgoye’s poetic masterwork and [...] one of the central literary texts of postcolonial Kenya” (Kurtz 2005: 73). The scholar describes it as “a grand summation of Macgoye’s first two decades of living in Kenya” (Kurtz 2005: 73). “At the same time, however, it captures the social texture, the political events” (Kurtz 2005: 74) and “related sub-themes: about nationhood and national identity, about the status of women” (Kurtz 2005). In the part titled *African City*, Macgoye metaphorically speaks of the plight of the city women – about “travel-ware abortions, virginity bartered for the fare home”, “tight husbands [...] and babies spilt round the bicycle spokes under a too-tight *kanga*”; in *The Song of the Unborn Dead* – about children’s mortality because of the women’s harsh life conditions (“we were

helped on our way by a dirty needle, kicks, blows, high heels, or simply the strained back and the all-consuming hoe”); in the part titled *For Miriam* she describes the hard life of a rural woman (Macgoye, *Song of Nyarloka and Other Poems* 1977: 20).

In other poems of the collection, the writer protests against the girl child domestic exploitation (*A Freedom Song*), laments about the hardships of woman’s life in *The Muffled Cry* (“I do not groan as I hoe, weep as I weed”) (Macgoye, *Song of Nyarloka and Other Poems* 1977: 50). She tells about widow inheritance in *The Last-Born*). A powerful image of suffering is given in the poem *My Brother* of an impoverished woman who “hoisted the child on her back not to see it starve”.

Another prominent poet of the same period, Micere Githae Mugo (born 1942), is also known as the author of plays (*The Long Illness of Ex-Chief Kiti*, 1976, and *The Trial of Dedan Kimathi*, 1977, the latter written in collaboration with Ngugi wa Thiong’o) and non-fictional works. But those were her two poetic collections that brought her the acclaim as one of the most expressive women poets in modern Kenya. The famous Nigerian poet Tanure Ojaide said that “Mugo is a poet with a mission in her society, which embraces the black race, the underprivileged class, and her specific female gender.”

In Mugo’s first collection, *Daughter of My People, Sing!*, published in 1976, most poems are marked with pronounced political message. She laments about the oppression of fellow Africans in the still colonised countries of the continent (*Rhodesia*) and castigates the imperialistic claims of the superpowers (*The War in South East Asia*). She writes about social stratification in the modern African society, contrasting the abject poverty of slums and the luxury of rich areas in Nairobi in *Up here, down there*, caustically drawing the portrait of a “fat boss in mercedez” in *Questioning Biologists* (Mugo, *Daughter of My People, Sing!* 1976). Generally, the state of African nations after independence is one of the dominant themes in Mugo’s poetry. She compares independence with the life-giving rain turning into “ruinous water” in *Has Judgement come?*, draws the pictures of colonial and neo-colonial exploitation in *Vistas of Violent History*, and dreams about new and united Africa without borders in the title poem of the collection (Mugo, *Daughter of My People, Sing!* 1976).

Feminist motives and themes, although already present in some of the poems from her first collection (e.g., in the poem *Wife of the Husband* in which she paints a satirical picture of the unequal distribution of duties in a patriarchal family), became the major direction in Mugo’s second collection *My Mother’s Poem and Other Songs* (1995). In the poem *To be a Feminist* she explain her own vision of a feminist stand (“to denounce patriarchy/and the caging of women”); in *Mother Afrika’s Matriots* she portrays the glorious women of African history, from Nefertiti and Cleopatra to modern activists of black women’s movements (notable are also her attempts at word creation, such as ‘matriot’ and ‘herstory’) (Mugo, *My Mother’s Poem and Other Songs* 1995). In *The Woman’s Poem* she achieves almost the effect of a traditional dance through the skilful use of repetition, calling her fellow women to “move our history forward-forward-forward, further-further-further”. In *Don’t be a Cabbage*, she advises women to reply adequately to any attempts of violence.

Another theme in Mugo's poetry, closely related to the theme of women's emancipation, is the theme of love. In her love poems, Mugo calls for harmony in gender relations, for love as mutual enrichment (*Look how Rich we are together*), as the highest form of content (*Contentment*), rejoices at the perspectives of her friend's future family life (*At an Age-Mate's Wedding*) (Mugo, *My Mother's Poem and Other Songs 1995*). Harshly contrasting in tone is the poem *Gambling with Life*, where Mugo severely attacks the "marriage of convenience" as the surest way to disaster.

#### 11.4 1990s: The Growth

In the 1990s, a new generation of Kenyan women authors came to the scene, featuring first of all novel writers of different generic orientation. For example, Monica Genya, Patricia Ngurukie and Francis Genga-Idowu entered the realm of the 'popular' novel, whereas Wairimu Gitau and Stella Kahaki Njuguna were developing the 'novel of manners' in its Kenyan version.

Among these writers, who came to the literary scene during the last decade of the twentieth century, the name of Margaret Ogola (1958 - 2011) became the most acknowledged by the critics and, undoubtedly, by the readers, since her novels remain among the most in demand – as readers' bestsellers, as critics' favorites, as school books. In all her books, Ogola's major task seems to create an ideal character of a new modern Kenyan woman, who manages to establish parity with the male gender – in order not to "beat men in their own game", but to build a harmonious society based on gender equality, respect and affection.

The foundations of Ogola's concept of the new Kenyan woman were laid in her debut novel *The River and the Source* (1994), where she had drawn a gallery of characters that received further development in her subsequent novels. In this book, she leads her female characters to a victorious fight with the whole range of problems facing them from times immemorial, rooted in the age-old traditions as well as brought about by more recent developments. Akoko, the 'source' of several generations of women fighters described in the book, started her struggle already in the first decades of the twentieth century, in the cradle of her native community, the Luo of western Kenya. She struggles with the custom that has always ascribed to women the role of 'second class people', totally subjected to the will of the male members of the community – and Akoko, by her deeds, asserts her right to her own decisions and choices. She independently and confidently behaves at the suiting ceremony, after her daughter's birth takes a 'unilateral decision' to name her after her late grandfather, and does not accept the slightest offense even from the relatives – when her mother-in-law unjustly accused her of witchcraft, she demonstratively left for her native village, and it took quite an effort on the part of her husband and relatives to talk her into coming back (Ogola, *The River and the Source 1994: 29*).

Later, when the demands of the custom ostracise her daughter Nyabera (she remains a young widow without a male child) Akoko not only hails her decision to join a Catholic mission, but soon herself joins her daughter on a way to the new life. "It is a changing world", repeats Akoko throughout her life, and this change is positively embraced by her, as the way to emancipation

and self-empowerment of women. In the mission, Akoko and her daughter are dependent only on themselves, and through devoted effort they not only manage to survive without any male support, but to raise two children – Nyabera’s daughter Elizabeth and her cousin Peter, who becomes a priest. Akoko keeps saying to her female descendants that “A woman must be intelligent, fast on her feet and hardworking”, and these values assist her in breaking the image of a submissive and silent traditional woman (Ogola, *The River and the Source* 1994: 200). Akoko understands that intelligence is increased by education. She not only encourages her children and grandchildren to study, but even herself takes a course of Christian education at more than mature age.

Elizabeth, Akoko’s granddaughter, inspired by the values learned from her mother and grandma, takes from them the baton of struggle – for even in the post-war Kenya of the 1940s she has to struggle with age old prejudices, for instance, against girls’ education. This struggle she wins successfully, having finished the colonial primary school among the best (and being the only female student) and joining the teachers training college – also to establish the fact that a girl child may become “the centre of the world”, the pillar upon which the wealth and the future of the family will be built (Ogola, *The River and the Source* 1994: 120). Elizabeth further supports that standpoint by her marriage – she gets married by her choice, out of love and, of course, with benevolent approval of her mother and grandma, to young Mark Sigu, who, fascinated by the personality and intelligence of his young bride, does not retreat to the woman-subjugating attitude of his ancestors, but is rather inspired by the same set of values established by Akoko. He believes in the power of education and advantages of matrimonial parity. Their elder son Aoro Sigu breaks age-old ethnic prejudices – he marries Wandia, a young medical doctor, who comes from a different community, the Kikuyu. Wandia, with her strong personality, intelligence, loving and hardworking nature became a new living embodiment of Akoko’s spirit and ideals (Ogola, *The River and the Source* 1994). The very fact that she is of different ethnicity strengthens the authorial message – people cannot be assessed by their ethnic or racial belonging, but only by their humanity. Elizabeth, at the end of the book an elderly woman, finds in her young daughter-in-law the fulfillment of all her hopes for the future. Wandia is intelligent, hardworking and makes the most successful career. She is the first woman professor of medicine in Kenya; she is a loving wife, and mother of not only her own three children, but also adopted kids of Aoro’s sister Becky, who dies at a young age.

The sequel to *The River and the Source*, titled *I Swear by Apollo* and published in 2002, shows the development of the characters featured in Ogola’s first novel. Here we again see a chain of role model personages, whose success in life is based on the set of values defined in *The River and the Source*. We meet again Wandia and Aoro, aged but even more loving and compassionate to each other, and even more so to their children, biological and adopted; the story of the latter, Alicia and John, the children of Becky, the late sister of Aoro, lies at the centre of the novel. Both of them are initially suffering from identity crisis – being of mixed black Kenyan-white Canadian origin, they try to fully identify themselves with Kenya, where they live, totally neglecting up to a certain point their Canadian part (Ogola, *I Swear by Apollo* 2002). With the course of time

(and with the help of the people, and primarily their family) they reconcile with their Canadian father and restore the harmony between ethnicities, races and families, Alicia gets married to Brett Stanley, a white Canadian (brother to her father's second wife Cybil), and John marries a Kenyan beauty Kandi Muhambe. It is also remarkable that the novel portrays (although briefly) what can be called "the topmost role model" – the character of the first woman president of Kenya, "a tough and fearless woman" but "also a darling of the international community and the intellectual fraternity", who "had made many Kenyans dare to dream again, to hope again" (Ogola, *I Swear by Apollo* 2002: 8).

*Place of Destiny* (2005) largely features a diary of a woman bravely fighting with the mortal disease of cancer. This novel also is founded on a concept of a fighting spirit running in the family – here the place of Akoko is taken by the main character Amor Lore, who, having grown up in a traditional patriarchal background, where her brothers were treated like princes, and all the hard work was laid on her and her sisters' shoulders, through intelligence, hard work and determination made her way to school, started her own trade, and slowly made herself into the owner of a business empire, a holder of two university degrees, a loving wife and mother of a son and three daughters, who apparently inherit and develop their mother's virtues. Imani, the elder daughter, receives a degree in education, but rejects an offer to join a prestigious school and instead becomes a teacher first in a remote village, then in Nairobi slums, and later together with her husband founds a slum orphanage, making a change in the life of destitute children (Ogola, *The River and the Source* 1994). Her younger sister Malaika is pursuing a degree in architecture, intending to design decent houses for the poor. Thus, one of the topmost merits for these women lies in putting their skills to the service of the society – especially helping its less lucky members. It is confirmed in the first place by Amor herself, when she drastically changes the lives of people she meets – such as her house-help Karimi Inoti, whom she sheltered after she, with her little son, had been kicked out of the house by her husband. In the same way Amor changes the life of Lanoi Sompesha, a girl of humble background (as once Amor herself), who joins her company after quitting her previous job because of her boss's sexual advances, and becomes Amor's devoted personal assistant – to get, with Amor's help, her second degree and later become the director of the subsidiary company. Female characters in *Place of Destiny* rely on the same set of 'Akoko's values' established in the two previous novels. They achieve everything in their lives through intelligence (inseparable from education), self-reliance and determination, hard work, loyalty to family ties and compassion, but the latter they extend beyond the family scope, putting their virtues to the service of the other people on various scales – from her employees (Amor) to slum children (Imani); Malaika, an aspiring architect and politician, intends to assist her less fortunate compatriots in the whole country.

Ogola's last novel *Mandate of the People* (2012), although centered around a male protagonist, exemplary politician Adam Leo Adage, also features several role-model female characters – first of all, that of Adam's wife Suzanna Talam, "a modern-day female litigator", a lawyer by profession, who mostly defends those who were wronged by the state – the "generally activists of one kind or another, disadvantaged groups seeking justice, people suing government for whatever

reason... those wrongfully incarcerated, or persons otherwise injured by the rich and mighty who did not want to pay". Along with her, the book presents such characters as that of Bonareri Bikoti, campaigning assistant to Adam, who bravely resists the attack by the crooks hired by a rival politician, and Jamie Ekidor, an aspiring sportswoman and irreplaceable liaison officer in Adam's headquarters (Margaret 1994). It appears symbolic that at the height of Adam's campaign, the author "withdraws" Suzanna from the political arena to enjoy the duties of motherhood – to show that the banner of fighting for justice, which was carried by Suzanna during her own year of social activism as a lawyer, will be picked by the younger ones, who in their own turn, following the steps of Akoko and her descendants, will shed the fetters of traditional and modern patriarchy and subjugation and put their effort into bringing the change into the life of their compatriots.

### 11.5 The 2000's: New Horizons

With the coming of the twenty-first century, a new generation of Kenyan women writers features even more names and even greater variety. The current and the previous decade witnessed the further development of the wide-scale epic-like novel (Yvonne Owuor, Joy Odera), thrillers (Wanjiku wa Ngugi, Martha Mburu, Ciku Kimeria), "social documentaries" (Philo Ikonya), the adolescent novel (Kingwa Kamencu, Pasomi Mucha, Nancy Mwanzia), the romance novel (Moraa Gitaa, Wambui Githiora), and, of course, the well-established social critical women's novel by Georgina Mbithe, Ketty Arucy, Wanjiru Waitthaka. This generation also features a real "outbreak" of poetry. The Kenyan literature became enriched with a constellation of women poets, such as Sitawa Namwale, Philo Ikonya, Caroline Nderitu, Shailja Patel, Wanja Thairu, Shiku Waweru, .

One of the notable writers belonging to this generation is Florence Mbaya (born 1958) – notable due to the fact that in her works she mostly targets the younger audience, informing them in a captivating way about female rights, gender parity and a vision of the country's future.

Mbaya's first novel, titled *A Journey Within*, begins as Monika Saliku, the main character and a fresh Nairobi University graduate, is searching for a job. Like many fresh graduates, she hopes to get a job in one of the big government offices in Nairobi city, and is rather shocked when she is offered a teaching job at a secondary school in Murwet, one of the remotest areas of the country. To Monika and her friends (and even her family), Murwet is really a 'no man's land'. As people around her ask her what she is going to do (whether to take up the offer or not), Monika realizes that the time has come for her to make her own decisions. When asked why she would do such a job, she says: "I figured this was the point where I should start making independent decisions. Dilly-dallying on whether I like teaching or not isn't an issue until I can prove it to myself" (Mbaya, *A Journey Within* 2008: 30).

But the story does not revolve only around Monika. There are other people in Monika's world – people she cares about and loves, like Stella her best friend, Miriam her sister and guardian, and later Max, with whom she will learn that true love exists after all. All these help her in the

trying time she spends at the distant school. But the highlight of this story is Monika's ability to withstand the difficulties of living in a remote area, and she soon discovers she loves teaching, as she later admits: "Teaching has become me... And perhaps what I needed was a little nudge to realize my potential" (*Mbaya, A Journey Within 2008*: 163). Her determination to excel is also touching. As the head of the drama club, she helps put the school on the national map when they win the national drama competitions.

It appears that the main idea that Mbaya advocates in her first book is that of gender equality, and, more so, inter-gender equity and support. A notable thing in the system of the novel's characters is gender-wise equal distribution of their duties in terms of helping Monika. Thus, her elder sister Miriam provides Monika with constant and unrelenting support; her best friend and university mate Stella encourages her to her first and most important decision; colleague Elizabeth supports her efforts at the drama club; school matron Mama Lasei makes Monika's life at school more comfortable. At the same time, men play no less important role in Monika's life. Her colleague and future husband Max makes her life complete; school master Mulandi supports her career; Miriam's second husband Mike, a European, gives her and Max new chances in life; local patriarch Mzee Ibrahim warmly welcomes Monika and facilitates her life in Murwet.

However, already in this novel Mbaya started to reveal her generally feminist standpoint, which will be considerably strengthened in her subsequent works. It becomes obvious in her daring attempts to fight the male chauvinism, still characteristic of contemporary Kenyan society. Monika's younger sister Sarah, while visiting her at Murwet, 'dares' to challenge a traditional preference of a boy child in the family. Speaking about the son of their mum and their step-father, Sarah carpingly remarks: "He cannot even spell the word 'chlorophyll', and yet he expects to join secondary school. Thanks God mother didn't give birth to boys." To her sister's remark that "mama always hankered for a son", Sarah replies nimbly: "Whenever she is enjoying her tea sessions with friends, they always compliment her [for having only girls – AR]. They tell her that boys just become rascals, or forget their parents as soon as they get married" (*Mbaya, A Journey Within 2008*: 133–36). Later Monica herself has to put up a fight against the male chauvinism and frankpledge. When Mwendwa, one of the teachers in Kostas High School, is suspected of impregnating a student, his male colleagues, instead of starting the investigation, make feeble attempts to downplay the case. Monika becomes furious: "I now realize how far men can go to save each other's faces" (*Mbaya, A Journey Within 2008*: 160), and under her scathing criticism the inquisition is finally made. Fortunately, the alleged culprit is proven guiltless – but this cannot acquit the male gender in Monika's eyes of its false self-esteem and aloofness, at last sporadic, to female problems (one of the 'innocent victim' of her rage becomes even her sweetheart Max, whom she also reproaches severely: "Do I understand that you have no qualms about teachers seducing young girls? ... Sometimes I can't believe I got mixed up with you!").

Nevertheless, at the end of the novel Mbaya draws a picture of the life of bliss and happiness that all the characters well-deservedly enjoy. Monica and Max are getting married and advancing their education; Miriam starts a successful business project with her Swedish husband Mike;

schoolmaster Mulandi is re-united with his long-missing wife and two children. The novel ends with the sentence: “It had been a journey of sorts for Monika; a journey of challenges, heart-aches, but best of all a journey of hope. There was hope for the staff and students of Kostas Secondary School, and the community at large.” There is hope for all Kenyans, if they follow the examples set by the novel’s characters, upholding gender parity, mutual respect and constructive relations – this seems to be the message that the writer puts to her readers.

Mbaya’s feministic sentiments become more obvious in her second novel *Heritage High* (2011). The action of the book is also set in a school environment – but this time it is a prestigious Heritage High School for girls (hence the title), two hundred kilometers from Nairobi, and the students of the school, from different regions and with different backgrounds, bring to the school their different problems – with one common trait: all these problems are caused by the letdowns of contemporary Kenyan society. The novel highlights the stories of four main girl characters, students of the Heritage High bound by friendship, and it is their friendship that helps them overcome the multiple challenges that society faces them with (Mbaya, *Heritage High* 2011). Among those, the most notable are the stories of Jessica and Raelle – the oldest friends among the four, with ‘diametrically opposite’ backgrounds and the respective problems caused by their social milieus.

Jessica, who grew up in the prosperous family of a manager Jonathan Odari and his wife Grace, a nurse, suddenly discovers that the latter is her step-mother – her biological mother Lydia, currently a successful agro economist, left her daughter in the hospital immediately after giving birth, because, despite the pleas from Jonathan, the girl’s father, she decided to sacrifice her motherhood to career – she had just received a scholarship for continuing her education abroad (*Mbaya, Heritage High 2011*). Of course, Lydia is punished for her cruel deed – several years later an illness rendered her childless, she does not have a family, and decides to look for her long-abandoned child. Her appearance in Jessica’s life causes the latter a lot of trouble, but with the help of her relatives and friends she is able to make her decision – her true mother is the one that brought her up.

Unlike Jessica, who is the older child in the family of only two kids, and the apple of her parents’ eye, her best friend Raelle comes from the family of six children in a coastal community. For the father of Raelle, his daughter is simply a commodity, which he intends to use for the increase of his wealth – since it is permitted (and even encouraged) by the community’s traditions. As Raelle confesses to Jessica, “I discovered my father had committed me to something without my knowledge... My parents have someone lined up for me for marriage already” (*Mbaya, Heritage High 2011*: 11). Mayeke, Raelle’s father, is not even deterred by the fact that his daughter is only fourteen years old. To Jessica’s comment, that this is against the law, Raelle answers bitterly: “My father is the lawmaker of our family, our clan actually, and he will use customs and traditions to do and get what he wants” (*Mbaya, Heritage High 2011*: 12). As it turns out, what he wants is money – and he is even rather unwilling to waste it on his daughter’s school fees: “I think he is greedy,” Raelle said. “If it was not for my elder married sister, who was also married

off at thirteen, I would not be in school. She paid for my first term tuition fees, and perhaps out of shame, or pride, my father has been paying, but reluctantly... When it comes to tradition, a girl's education doesn't count for much" (*Mbaya, Heritage High 2011: 13*). Jesse gives Raelle a valuable advice: "The only way you can refuse, or escape, is for you to strive to make it to university. Even the most entrenched tradition cannot survive the onslaught of an educated woman" (*Mbaya, Heritage High 2011: 13*). Raelle tries her best to follow her friend's guidance, but her father has different plans – being afraid that his daughter's university dream may one day become a reality; he simply kidnaps Raelle from school to the custody of her prospective husband. However, the idea of the "onslaught of an educated woman" is already deeply rooted in Raelle's mind – she escapes from the shed, where her kidnappers keep her (in the process hitting one of them severely on the head), and reports the case to the police. Her father is arrested and imprisoned for 10 years; relatives disown Raelle, and she resides with her sister. She successfully passes the school examinations and hopes to make it to the university one day – her dream is to become a veterinarian.

As it can be seen, in the stories of the two girls, the author manages to clearly outline the main objectives of her militancy. Mbaya is obviously against the 'over-heightened' feminism, demonstrated by Lydia, for whom her career is more significant than even the future of her child, and which in fact can rather be seen as the satisfaction of egoistic sentiments than 'the road to empowerment'. In such cases, as she shows, the penalty is inevitable. At the same time, the writer is equally against the obsolete and ossified traditions that turn women and girls into a commodity of their husbands and fathers; of these, the writer apparently has such a strong rejection, that she allows her character Raelle to resort to the violent actions and even to the help of the law. The recipe for success is the same – good education, further employment and stable family relationships based on mutual respect and affection, as shown by the parents of Jessica, apparently the author's ideal characters in the novel.

A high-school student Abigail, heroine of Florence Mbaya's latest novel *Sunrise at Midnight* (2015), receives the first, and the harshest, blow in her young life from Richard, the elder brother of her best school friend Claire. Once, after a quarrel with her mother, Abigail ran to Richard's house – and he, pretending to be sympathetic to the distressed girl, gave her a sleeping drug disguised as aspirin to cure her headache and took advantage of fully unconscious Abigail. The horror of teenage pregnancy was aggravated for Abigail, among other factors, by the fact that she did not know how it all happened – and further by being badgered at school, which brought Abigail to the brink of serious depression.

For Abigail, salvation lay in the tender and understanding attitude of her relatives – first of all, her mother and her female cousin Constance – and her own determination to overcome all the hardships that befell her so suddenly, to bring up her newly born child and to complete her education. As put by Abigail's mother Erica at one of her daughter's hardest moments, "if you put your education on hold, you will end up giving up on it completely. Then, what will you do with your life? Get married?" (*Mbaya 2015: 7*). Unlike the old times, marriage is apparently no longer

a panacea for the woman's troubles – which Erica knows by experience, since her own husband Reuben deserted her when Abigail was a child – but education apparently is the remedy for these hardships. Erica herself went through almost the same plight as her daughter, but her situation was worse, because the times were different. “She herself had married Reuben when she got pregnant in school, but in her time such a misdemeanour had called for outright expulsion. She had been forced to abandon her education and get married, which she had regretted her whole life. She did not want Abigail to end up as she had, and going back to school was the only choice.” (Mbaya 2015: 40-1). Erica's character itself is one of the role-model figures in the book – patient, caring and reasonable, she not only persuades her daughter to keep the child (“abortion is a murder”) and return to school, but also becomes her guardian saint in many other matters of life, from child-rearing to building the relationships with her supposed relatives.

Another guardian saint and role model for Abigail is her cousin Constance – a brave, determined, intelligent and highly modernised young woman. She is focused on her work, she is single and does not hasten matrimony (“I am too busy with my work to have to worry about a boyfriend” – (Mbaya 2015: 83)). She is highly educated and impressively self-confident. On top of it all, Constance is a journalist, famous for her impartial and objective articles on burning social issues – some of these articles Abigail even pins on the wall in her room, because, as she confesses to her cousin, “I wish I could write like that” (Mbaya 2015: 84). Constance helps Abigail with securing a place in a new mixed school, where she is treated fairly and loved by the classmates and helps her re-acquire her self-esteem and confidence.

It seems that the feminist standpoint of women empowering women is expressed even more vividly in Mbaya's latest novel. This slogan runs throughout the text. It is her female relatives who brought Abigail back to normal life while her male relations occupy a much more modest place in the novel. Again, the author creates a pleiad of likeable secondary female characters, like a fair and loving Madam Momanyi, deputy principal of the school, Abigail's friends Betty and Celina, and others. It must be noted that Mbaya does not idealise women – the novel also features a group of quite unlikable female personages, such as Richard's mother and aunts (in contrast to his more reasonable and courteous father), Abigail's good-for-nothing friends at her old school, and maliciously minded Misri at her new one. But those are the ideal women characters that the author gives as role models – and among them, the heroine herself; as Abigail is told by her friend Celina on the novel's last page, “you are that role model that we grope around for in the wrong, far-off places” (Mbaya 2015: 206).

Another remarkable development of the first two decades of the current century was the emergence of a new generation of female short story writers through several projects initiated with the basic purpose of giving a new tribune for aspiring writers. The first one was *Kwani?* – “a journal founded by some of Kenya's most exciting new writers, and published by Kwani Trust” ([www.kwani.org](http://www.kwani.org)). Then came *Storymoja*, “a venture recently formed by a collective of five writers who are committed to publishing contemporary East African writing of world-class standard” ([www.storymoja.com](http://www.storymoja.com)). *Kwani?* almanacs and the *Storymoja* website have hosted so far

stories by about a hundred female writers, among them such authors as Muthoni Garland, Juliet Maruru, Muthony wa Gathumo, Andia Kisia. These stories reveal that present-day Kenyan women are faced with the same bundle of problems – such as gender-based violence, employment discrimination, and others – but at the same time they are more conscious of their rights, more self-standing and determined about their choices, as shown by the women characters created by the writers.

Finally, a few words should be said about the growth of women’s writing in Swahili, for Kenyan Swahili literature until recently hardly featured any prominent female names. However, with a general outbreak of Swahili writing in the country during the recent decades, women writers have started to open up previously unexplored areas. The most tangible success has been achieved in the realm of the short stories – women writers have currently participated in about twenty anthologies of short stories in Swahili, the leading authors being Rayya Timammy, Rebecca Nandwa, and Clara Momanyi. Clara Momanyi also gained a reputation as the country’s first Swahili woman novelist, having published two novels, *Tumaini* (2006) and *Nakuruto* (2009). Sheila Ryanga has published her novel *Dago wa Munje* in 2008 (*all the titles of these novels are proper names of the main characters – AR*). As their fellow women writers in the English medium, Kenyan female authors of Swahili expression dedicate most of their works to burning social issues related to gender problems, aiming their efforts towards establishing equal and constructive society, free of any painful remnants of the past and detrimental ‘modern’ developments.

In conclusion, it may be generally observed that Kenyan female writers in their works, of various genres and periods, are pursuing largely one and the same main aim – to accentuate those problems that Kenyan women are encountered with, in various walks of life, in the conditions of “social challenge of everyday patriarchy, typically supported by its institutional and legal discrimination” and to present their readers with their own vision of how these problems could be overcome. The first part of the task was mainly focused on by the writers of 1960s and early 1970s; in their works they portrayed the various ways in which ‘everyday patriarchy’ victimized the female folk. In the 1980s, the works of Kenyan women writers started to pose an opposition to those multiple ways of victimization by creating strong female characters, capable of overcoming the traps and snares of patriarchal environment in order to achieve their topmost aim – equality, equity and parity among genders, turning women into equal and full-fledged members of the society. The ‘recipes’ that the writers offer have been formulated as “emancipation through education, participation and equalization”. Education is seen by all these writers as one of the primary conditions for equality; education increases women’s awareness of their challenges, opportunities and rights. Professional knowledge allows them to occupy socially important posts, eventually entering even into the highest circles of power, fully participating in the country’s life on all levels, thus reaching an equal status with the ever-privileged ‘strong’ sex. In that, mutual assistance between women plays a substantial role – “women empowering women” is the slogan that permeates the works of Kenyan female writers, stressing the importance of gender solidarity in achieving the declared aims.

The writers, however, stand the farthest possible from advocating the ‘total’ emancipation, which eventually will even ‘liberate’ women from their natural privilege of being the creator and the guardian of the family. Happy marriage is one of the utmost values that they are propagating in their works; but in their view this kind of marriage should be based on mutual respect and, again, equality.

They are not ‘crossing out’ the importance of male roles – in fact, the success of most women heroines of the above mentioned works would hardly have been possible without the unrelenting support of their male partners, with whom they are bound with bonds of love, respect and mutual responsibility. As mentioned above, these heroines are not trying to ‘beat men at their own game’, strive to build a harmonious society. The power of a woman to transform society, to make the world of today a better place – that is the trait that the authors are trying to highlight in various ways.

All these issues are presented by women writers to their reading public in their works in captivating and enjoyable manner, owing to their high artistic abilities and literary experience. Thus, it may be said that through their literary works, Kenyan women writers have made their own tangible contribution to the journey towards gender equality – by being the ‘silent teacher’ for several generations of Kenyans.

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## CHAPTER 12

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# FEMININE *UTU*: RETHINKING FEMINIST WOMEN MOVEMENTS IN AFRICA WITH A SPECIAL FOCUS ON THE AGIKUYU OF KENYA

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MARY NJERI KINYANJUI

### 12.1 Introduction

In spite of the efforts made by feminist scholars and activists to popularize feminism, the term ‘feminism’ still attracts negative connotations. Women who define themselves as feminists are viewed with suspicion. Moreover, they are perceived to be anti-men, unhappy, influenced by Western values and dissatisfied with feminine roles. This perception arises from patriarchal and religious arrangements in the society.

Several types of feminist movements exist. They include Western (which includes ‘White Feminism’) and Third World Feminism (which includes ‘Black Feminism’ from African Americans, ‘Chicana’ from Latin America and Developmental or ‘Elite’ Feminism from Kenya). These categorizations attempt to describe the different experiences of women as they grapple with patriarchy, racism, colonialism and development paradigms.

I introduce another group of Feminism that I call ‘Feminine *Utu*’ (humanness) found among the Agikuyu of Kenya. This finds its inspiration from indigenous values and practices. Embracing the feminine *utu* will bridge the gap between other types of feminism and make a meaningful contribution to Africa’s socio-economic and political landscape. It will also make feminism applicable in everyday lived experiences for a vast majority of Kenyan women.

### 12.2 Theorizing African Feminism

Feminism movements date from time immemorial and different generations of women define their feminist struggles depending on the circumstances of their time. Analysts then interpret these struggles on the bases of their reflexivity and subjective experiences influenced by their academic discipline. Bell Hooks, Gloria Anzaldua, and Sarah Ahmed define feminism as the movement that seeks to overcome sexism, sexual exploitation and sexual oppression (Hooks 2000: 11; Anzaldua 2015: 5; Ahmed 2017: 1). They argue that lived feminist lives are the best indicators of feminism. The feminist movement calls for equality between men and women in everyday lived experiences. It challenges the laws and cultural practices that favour men at the expense of women. European scholars have written a lot about Western (or White) Feminism

while Latin American women scholars have written a lot about Chicana Feminism. Black feminism is a product of African American scholars. Chicana and Black feminism emerged as critiques of Western feminism. The Chicana and Black feminists argue that they are discriminated against on race and class grounds (Newman 2005: 306–07). Development feminism, which is a product of colonialism, presents the African woman as marginalized, beast of burden, victim, without agency, manipulated and deprived of space and opportunity. Her choices are limited, and she has to be rescued from her status by activists and development practitioners.

In feminine *utu* feminism, a woman is depicted as taking action, advancing an ideology, creating her space and opportunity and using collective action. Decolonial feminists such as Sarah Ahmed and Gloria Anzaldúa attempt to show how women can live feminist lives every day. Ahmed observes that such women articulate their concerns, take risks and have agency and creativity (Anzaldúa 2015: XXV). Living a feminist life is not just about overcoming sexism, exploitation, and oppression; it is also about advancing the feminine *utu* (humanness). This involves applying the feminine *utu* logic, norms and values in daily livelihood struggles. It means handling societal obligations, self-determination and being resilient in the face of adversity.

The academic theorizing about African women's realities was started by Africanist scholars based in Europe and North America. They include Esther Boserup, Luise White, Claire Robertson, Jean Davison, and Aili Tripp. Their works were inspired by the modernization and developmental theories and perspectives that present an African woman who is overwhelmed, marginalized and struggling for ascendancy in the modern capitalist economy. According to Aili Tripp, the feminist movement in Africa began with the 1975 Mexico Conference on women; was enhanced by the 1985 Nairobi Forward-Looking Strategies Conference; entrenched by the 1995 Beijing Platform of Action Conference and intensified by the advent of the multiparty politics in the 1990s (Tripp 2017: 37-40).

Works on African women written by scholars from the West have inspired a lot of scholarship and activism on African women experiences. They have perpetuated the paradigm of African women invisibility, under-representation, marginalization, and docility in a gendered social-cultural landscape. They have primarily informed policy and constitutional review. Adichie, for example, advocates for a feminist manifesto to teach women to bring up feminist daughters.

### 12.3 Kenya's Elite Feminist Movements in Kenya

Colonial and neoliberal cultural impositions have generated a different form of feminism in Kenya, which I refer to as Elite Feminism or developmental feminism. This kind of feminism includes the activities of outfits such as Maendeleo Ya Wanawake, the National Status Committee on Women, the Collaborative Gender Centre, as well as individual efforts by women such as Ruth Oniang'o, Tabitha Sei, Miriam Were, Maria Nzomo, and Wanjiku Kabira. Elite feminists fight for equality between men and women in public spaces, corporations and government boardrooms. They agitate for parity in representation, access to social amenities and oppose gender violence.

One of the notable movements that aimed at transforming women was the Maendeleo Ya Wanawake Organization (Wipper). The Organization was led by either the wives of government leaders, the daughters of government leaders or the first-generation Christians whose focus was the family. Maendeleo Ya Wanawake aimed at modernizing or bringing progress to the family through women. Membership was drawn from all over the country. It encouraged women to abandon the African ways of life that included household management styles, means of production and exchange.

The second generation of the Elite Women movement was inspired by the activities of the Nairobi Forward-Looking Strategies, neoliberalism and the advent of multi-party politics in Kenya. It was mostly led by women who had gone through college or university. These either acted as individuals or formed their own NGOs and professional organizations such as the Association of African Women Researchers in Development (AAWORD), the Federation of Women Lawyers (FIDA) and the Kenya Women in Media Association. Some of these groups were affiliated to global women associations such as the International Federation of lawyers or continental ones like FEMNET or AAWORD. Others, such as Wangari Maathai's Green Belt Movement, were locally created.

The second generation of Elite Women feminists used activist organizations to advance their interests. They mainly tackled issues that affected women participation in development such as education, health, politics, and public service. They carried out action-oriented research and sensitized women about gender equity and their rights. They were actively involved in the formulation of Kenya's new constitution.

They drew membership from a wide range of women. Some had acquired college or university education. Some had families while others did not. The pool had women who were single, married or divorced. Some had travelled overseas while others had not gone beyond the boundary of their country. Various types of professions, from lecturers, doctors, lawyers to civil servants were found in this pool. The majority of their programmes were carried out using donor funding.

Some women in this group, such as Prof. Wangari Maathai, undertook noble causes such as environmental conservation. Maria Nzomo, through the National Committee on the Status of Women, addressed the issue of political representation in government. Miriam Were embarked on primary healthcare campaigns. Jennifer Riria advocated for access to finance through the Kenya Women Finance Trust. Educationist Edda Gachukia promoted girl-child education through the Forum for African Women Educationists and founded the Riara elite schools. Ruth Oniang'o initiated work on nutrition and agriculture. Wanjiku Kabira founded the Collaborative Gender Centre as well as the African Women Studies Centre at the University of Nairobi. Lydia Gaitirira has been promoting women writers through the Amka writing forums. Tabitha Sei founded the Education Centre for Women in Democracy (ECWD) to increase women participation in politics.

The second generation of elite women feminists has been striving to move women from peripheral positions to the public domains through rights to voting, education, reproductive health, decent work, equal pay for job done and recognition of care responsibilities. They have fought against harmful cultural practices such as female genital mutilation (FGM) and domestic violence

through gender sensitization campaigns, influencing of legislation and economic empowerment programmes.

The third generation of elite women feminists or 'digital' feminists is beautiful and educated. They use digital technology and social media in their day-to-day practices. They call for greater sexual freedom and combine African values with modernity. They are not shy to say that they are mistresses, second wives or transgender. Kenya's Parliament has many 'digital' feminists who are drawn from different political parties such as Jubilee, the Orange Democratic Movement (ODM), Kenya African National Union (KANU), Party for Reforms; Wiper Democratic Party and Independent Party.

Kenya's elite women movements have made some achievements in the public domain. Some of their successes include:

- The passing of the Constitution on no more than two-thirds gender rule;
- Recognition of gender equity in the Constitution;
- Creation of the Gender Commission to follow and monitor the implementation of gender rules and regulations;
- Construction of gender bills;
- Creation of the gender sector;
- Passing of the Sexual Offenses Act;
- Affirmative Action on women representation in Parliament;
- Supply of sanitary pads for girls in primary schools;
- Special funds for women;
- Agitating for the Women Fund and Uwezo Fund;
- Outlawing of female genital mutilation;
- Passing of the Prevention of Domestic Violence Act;
- Creation of gender or women studies centres in universities;
- Gender desks in police stations;
- The Marriage Act.

The elite feminist movement has seen an upsurge in the number of female religious leaders and artists. These women pastors and gospel singers are struggling to feminize Christianity and gospel music. Examples of these women include Lucy Wangunjiri, Loise Kim, Chiru wa GP, Wamucii wa Kanyari, Sarah Kiarie, Teresia Wairimu, and Bishop Margaret Wanjiru. Although they do not have a robust feminist liberation theology, they have made women visible in religious matters. They provide a spiritual justification for women working hard in production and exchange to realize blessing which includes prosperity.

## 12.4 Weaknesses in the Elite Women Movement

The feminist movement in Kenya has fundamental weaknesses which call for its rethinking. It has not addressed the causes of the disadvantaged position of women in a skewed global economic order that undervalues efforts made by women.

Colonialism, as defined by Mignolo and Lugone, significantly affected women in Kenya by disparaging their indigenous knowledge, economic structures and cultural practices (Mignolo 2011: 8; Lugones 2010: 745). The loss of the granary epitomized this. Adoption of modern agriculture replaced the granary with shops and marts. For one to do business, she had to procure a license. This contradicted the principles of free entry into the African market where the women traded their surplus in the open. The song *mbia ciokire* (when money was introduced) laments, among other things, the loss of the granary, the use of money as the end as opposed to a means to an end.

The onset of colonialism also upset the traditional power structures. African women leaders such as Njunguru, a seer; Ndiko, a community mobilizer; and Njeri Wandugo, a Mau Mau freedom fighter, were stripped of their leadership (Njau and Mulaki 1984) because they neither had money nor Western education. Their influence was considered to be a product of witchcraft.

Colonialism frowned upon African initiation rites and dances, labelling them as primitive and anti-Christian. Clitoridectomy was discouraged for allegedly interfering with the female sexuality. Sex was only permitted in monogamous unions involving one female and male. Polygamy was also frowned upon.

The post-colonial state apparatus and the media have continued to present African women as docile, helpless, victims, overwhelmed and unfulfilled. This obscures the role that African women play in the global capitalist circuits of labour and food production. That is why there are no African women faces on chocolate bars, coffee tins or tea packets although they are the primary providers of labour in the production of these commodities. There is a concerted effort to deny African women visibility in the political, cultural and economic landscape.

In spite of the many interventions geared towards women by the government and NGOs, most women are still in disadvantaged positions while others are isolated in gendered elite enclaves. The subaltern women have been left to navigate their journeys towards a fulfilling and actualized life as peasants, artisans, and traders on their own.

Whereas some scholars argue that economically empowering women will liberate them, equating women welfare with material prosperity or entrepreneurship is a misnomer. The making of women into micro-capitalists without changing the logic of capitalism is counterproductive.

African women have been struggling with how to straddle between Western and indigenous feminist lived experiences in a bid to build an African feminism body of knowledge. Women like Prof. Wangari Maathai who opposed the destruction of Karura Forest were bashed for being radical or abrasive. Evidence that women have been present in feminist movements includes

Njunguru wa Kimere who led women's recovery from a devastating locust invasion and Ndiko wa Mbatia who organized men and women in trade exhibitions. These women leaders were engaged in the search for conditions to create flourishing families and communities (Njau and Mulaki 1984).

Women were also active participants in Kenya's pre-independence resistance movements (Nderitu 2017). They supplied food and ran errands while others were involved in strategy and made their homes bases of operation for Mau Mau war logistics. Examples of these women were Njeri wa Ndugo of Kairi, Gatundu North, Field Marshal Muthoni of Nyeri and Mukami Kimathi.

Such women fought for space and opportunity to actualize their self-determination and the right to nurture the next generation. They negotiated with patriarchy to entrench and secure their position in the home, community, and the nation. They opposed oppressive regimes which denied them secure and safe places to engage in mothering their children. They formed work groups, trade expeditions and motherhood support groups that served as the basis for the construction of human social order. Their footprints are found in myths, legends, and songs as well as in written and unwritten documents.

## 12.5 Motherhood Rights and Feminine *Utu* as African Feminism

Motherhood rights that are inspired by the feminine *utu* (humanness) are central to non-elite African women's lived realities. Motherhood involves the pursuit of women's right to spaces nurturing, production and exchange. Women resist any form of injustice to their children. In the Gikuyu women signature tune: *Ni ithui atumia* (we are the women) the women sing about their resilience, solidarity, and resistance as they carry out livelihood negotiation. *Mama mboga*, (a vegetable woman vendor) for example, resists modernity by preserving her traditional mode of production and exchange. *Mama Jua Kali* juggles with sexual exploitation and oppression as she goes about her livelihood negotiation in the *Jua kali* informal sector. She builds alliances so that she can provide for her offspring, flourish and connect communities.

Indigenous motherhood rights can be paralleled to reproductive justice rights espoused by Loretta Ross in her activist writing. Ross observes that reproductive justice rights include women's rights to have or not to have children, and to bring them up in secure places. Indigenous motherhood rights in Kenya are best expressed by the 1992 mothers' hunger strike led by Monica Wangu Wamwere to press for the release of their sons who had been incarcerated by the Kenya government for allegedly opposing the government.

Monica Wangu Wamwere mobilized the mothers of 52 male political prisoners to demand their release. They were detained because of their participation in anti-government campaigns for the restoration of multiparty democracy in Kenya (Kenya Film Commission n.d). Wangu's three sons were among the political prisoners.

The women implored Amos Wako, the Attorney General, to release their sons. When he did not oblige, they camped at what became known as the 'Freedom Corner' at Uhuru Park and staged a

hunger strike. They were accosted by police, beaten up and tear gassed, forcing three women to strip naked and curse the government. When the police did not relent, they moved to the basement of the All Saints Cathedral where they remained until March 1993 when the last prisoner was released. Multiparty crusaders such as Jaramogi Oginga Odinga, Masinde Muliro and Wangari Maathai joined the women and supported them in their endeavour. They encouraged the mothers to soldier on in their demand for the release of political prisoners. The mothers allied their struggle for motherhood rights with those of multiparty movement calling for the second liberation.

In the course of the strike, Wangu's husband, Wamwere, died. She refused to bury him arguing that she would only do so upon the release of her three sons. According to Agikuyu custom, the sons were obligated to bury their father. The burial took place after her sons were released. The funeral became an avenue for multiparty crusaders. Advocates of multiparty democracy addressed the mourners.

## **12.6 Indigenous Women's Movements and the Reclaiming of Motherhood Rights as an African Feminist Practice**

The feminine *utu* consists of indigenous motherhood rights led by ordinary women, who are peasants, artisans, and traders. It is based mainly on communitarian values of solidarity, gifting, sharing, and reciprocity. The feminine *utu* not only speaks to patriarchy but also to autocratic, oppressive regimes. The feminine *utu* is epitomized in the women's unbroken spirit of perseverance, determination and unrelenting experiences.

Ordinary or subaltern women have their indigenous movements that they use to mobilize for action, pool money, support each other and engage in productive labour (Wanjiru 2016). Through the groups, they transfer their ethos, norms, values, and structures. The groups participate in rituals such as bride wealth, weddings, *Itaara*, prayer and fellowships groups, funerals and baby showers, among others.

The women combine African practices with Christian practices. They use songs as a medium of resistance, healing, knowledge transfer and socialization. In some communities like in the Coast province, the *lesso* (wrapper) is an essential medium of communication. Traditionally, women advanced motherhood through *matega*, where they would meet to exchange gifts, for example, during childbirth and *ngwatio* where they would meet to pool labour.

### **a) The Nyakinyua Women Group**

The Nyakinyua Women Group is one of the surviving institutions of the indigenous women movement. In the first decade of post-independent Kenya, the Nyakinyua women movement was sustained by Njeri wa Ndugo (Secretariat 1996: 115). It was unattractive to elite women because of its dance component that was considered to be primitive as well as its composition of uneducated women.

The logic and philosophies of Nyakinyua have lingered on and have influenced today's women *chama* (self-help) groups. The logic of the Nyakinyua movement was for the women to *gwith-eremia* (flourish) and nurture life (Wanjiru 2016: 20). The avenues they used to transfer their ideologies include rumours, stories, myths, songs, castigation, praise, fireside chats, kitchen parties, baby showers, funeral rituals, initiation rituals, and marriage rituals. Their world has no difference between pedagogy and everyday livelihood negotiation. The pedagogy is carried through solidarity and collective action and is also experiential and performed.

### **b) *Kamweretho***

In the 2000s, the urban women, mainly from the informal sector, created a new socio-cultural institution known as *Kamweretho*. *Kamweretho* is derived from a Kikuyu word *kweretha* which means to speak out or explain something. *Kamweretho* involved women visiting their places of birth, paying tribute to their mothers, expressing gratitude to their parents and seeking their blessings (Wanjiru 2016: 130–32). Through *Kamweretho*, they renegotiated the position of motherhood in society, created women rights awareness, moralized womanhood and educated the masses about their identity. They brought the forgotten rural people and 'new woman' who are taking up new roles and responsibilities in the family and community to the limelight.

The women attracted much criticism from churches and fundamentalists who alleged they were usurping the male hegemony in disguise. Ironically, the Presbyterian Church that had ordained female clergy fought against the *Kamweretho* movement with a vengeance, accusing it of showing off and usurping the male roles of paying dowry.

While *Kamweretho* is about mothers liberating mothers, it was also about women constructing their own identity to befit the newly acquired roles they were playing in the household and community. They first dealt with the unfinished business of their marital status due to the poverty that was ignited by the structural adjustment programmes. The latter saw many marriages fail to be formalized due to poverty (Wanjiru 2016: 133). The price of commodities such as pots, blankets, beer and household goods which were also part of the dowry payment rose considerably. In a song: *Uthoni wa Kanyenyeini*, a young man laments about the high cost of dowry and explains the reasons for terminating his wedding negotiations abruptly. Many women feel insecure in their marriages if dowry is not paid. They think that they are likely to be disinherited if the spouse passes on. They also think that they have no parental blessings.

The single parent mothers also used the opportunity to pay their bride wealth. Custom demands that a mother should not receive dowry for her daughter unless her own dowry has been paid. By paying their dowry through *Kamweretho*, they open the doors to receive a dowry for their children. By paying dowry to their parents, their singlehood is recognized. They can thus inherit property from their fathers.

In *Kamweretho*, women are speaking out the politics of motherhood and constructing a discourse which is likely to shape the future of motherhood among the Agikuyu. In *Kamweretho*, motherhood is presented in an institutional context with clearly defined tasks, rules, and regu-

lations. It is for this reason that once a woman bears a child, the woman is no longer called by her name as a sign of respect. She is called, for example, *nyina wa Njeri* (Njeri's mother) as a sign of respect.

The dominant image of a mother in the Agikuyu context is one who is self-sacrificing, strong, persevering and who endures all odds to bring up her offspring. *Kamweretho* is bringing to the fore the politics of motherhood in the open space of politics, economy, and culture. One of the songs during a *kamweretho* dance narrates that motherhood is a painful experience (Wanjiru 2016: 129). When expectant, she experiences loss of appetite, nausea and poor mobility. After giving birth, she has to experience sleepless nights tending to the crying baby. The song thanks the mother for not practising abortion or employing birth control measures for if she had done so, she would not be a beneficiary of being feted. Through *Kamweretho* women are challenging marginalization and disempowerment, becoming agents of positive modernity and reclaiming control of their granary.

## 12.7 Building Consensus among Elite and Indigenous Women Groups

Attempts to build an African feminism body of knowledge began in the 1960s with works by Flora Napwa, Ama Ata Aidoo, Grace Ogot, and Muthoni Likimani, to mention a few. These women wrote fiction that was influenced by their internal conflicts arising from colonialism and African indigenous feminist lived experiences. Mugo wa Gatheru explains this conflict from a male perspective in his book *A Child of Two Worlds*. He tried to live his indigenous Gikuyu experience in the context of his acquired lifestyle through westernization. Ngugi proposes a way forward out of this dilemma through decolonization. According to Ngugi, decolonization of languages and names will help restore the African identity and remove the dissonance of living in two worlds. In gender and feminist studies, this dissonance has not been problematized as African culture is always the culprit as far as gender and feminist issues are raised. The women's works were followed by the works of Wangari Maathai and Margaret Ogola. Margaret Ogola documents the strength of women and their ability to connect humanity across generations and divides.

The elite women movement fails to realize that in a country where the majority of women have low literacy rates and are peasants, artisans, and traders, the benefits of representation in corporations and government boardrooms is a pipe dream. These women are struggling with systems that are bent on taking them away from their creative agency and self-determination to live and provide for their offspring. Developmentalism makes women work in other people's firms, or become consumers of other people's goods. It makes them lose ownership of self and their means of production.

Unlike White, Black and Chicana feminism, which is supported by a strong academy and theorizing, African feminism has not received similar attention. Not many universities in Kenya have strong gender and women studies programmes. Much of the African feminist studies discourse in Kenyan universities is informed mainly by Western theoretical concepts as analytical frameworks. There is no literary body of theory that addresses issues of the origin, nature and struc-

ture of African feminism epistemology in Kenya. The available literary body of knowledge begins with the hypothesizing that African culture was oppressive to women and Western culture is liberating. Most studies in sociology, economics, and religion demonstrate how the African culture oppresses women.

The Nigerian School of African feminism has tried to demonstrate how the Nigerian brand of feminism differs from Western feminism. Oyěwùmí proposes that gender is an invention in Western feminist discourse (Oyěwùmí 1997: IX). Nnaemeka observes that in the African context, gender relationships and interactions were negotiated in what she calls ‘*nego* feminism’ (Nnaemeka 2004). Ezeigbo (2012) observes that like a snail, the African woman can negotiate patriarchy through rough terrains with caution and flexibility in what she calls ‘snail sense feminism’.

The basis of theorizing African feminism should begin by addressing colonialism in the women movement and generating liberating theories and pedagogy through a decolonial feminism which can be realized by interrogating indigenous motherhood rights propagated by ordinary women. The complexity of these two perspectives was seen in the political contest between Anne Waiguru and Martha Karua in the fight for the Kirinyaga Governor’s seat. The contest showed that a soft womanist demeanour was more likely to win than a rough feminist approach. Waiguru was popularized as the soft *minji* (garden peas) as opposed to the hard and tough *ndengu* (green grams) that Martha Karua was. The choice of Waiguru represents the fact that politics is not a battle of sexes but the perceived role the woman leader is supposed to play. Martha had cut herself as the tough no-nonsense politician as opposed to Waiguru who was seen as soft. She was not involved in male controversies as Martha Karua was who had once walked out on President Moi and resigned as a Justice Minister in Kibaki’s government. Her Iron lady stance did not work in her favour (Wamai, forthcoming).

## 12.8 Conclusion

While success has been realized in creating the architecture and infrastructure for gender equity through legislation and policy in corporations and government, an ideological and behavioural change for the internalization and domestication of the culture of gender has not yet been realized. For example, it has been difficult to pass the no more than two-thirds gender rule Bill in Parliament. The ideological underpinning of the women movement in Kenya will only be realized if the subaltern or indigene women ideals are integrated or incorporated in the movement.

The indigene motherhood rights will make the elite Kenyan feminist movement to recognize that the individual has feminine *utu* which should be advanced and transferred to the next generation through reciprocity, gifting, solidarity, self-determination, collective action, self-respect, confidence, and productivity.

The women activist pedagogy should be replaced with a pedagogy that is reflexive, creative, insurgent, humanistic, resilient and healing rather than a market-based pedagogy. The funda-

mental weakness in the elite movement is the tendency to apportion all blame on socio-economic issues to patriarchy. The movement ignores human interconnectedness. Desmond Tutu observes that human beings are inextricably interdependent and connected. Mbiti says that “I am because we are and because we are therefore I am” (Mbiti and Mbiti 1990: 106). Both males and females are beings and have *utu* (humanness). That is, in every relationship, the female and male should work together to produce a global human experience.

Women should not strive to catch up with men using the masculine *utu*. They should strive to fulfil the aspirations of the feminine *utu* encapsulated in the following nine tenets:

- Continuity of life to the next generation;
- Peace and harmony in homes and the community;
- Body and psychological pain management and control;
- Food self-sufficiency;
- Make everyday work easier and tolerable;
- Socialization and education for the next generation;
- Connect human beings in the family community and nation;
- Creating thriving and flourishing communities;
- Creating solidarity and community

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## CHAPTER 13

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# HASHTAG FEMINISM: HOW WOMEN AND FEMINISTS IN AFRICA ARE LEVERAGING ON SOCIAL MEDIA TO COMBAT GENDER BASED VIOLENCE

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NICOLE WASUNA

### 13.1 Introduction

The phenomenon of online activism is relatively new and thus, there is little in the way of research on the subject, particularly in the African and, more specifically, the Kenyan context. Hashtag feminism, or feminist activism that unfolds primarily through Twitter hashtags, has become a powerful tactic for fighting gender inequities around the world. African Feminist media research, however, has yet to grasp the implications of this new form and social movement research has yet to model the conditions under which activists successfully mobilise online. Most of the published literature on the use of hashtags for feminist activism and combating sexual violence focuses on the Western, predominantly white perspective. There is very little that has been published about black women and even less about African women, specifically. This chapter, therefore, examines how women and feminists in Kenya are using Twitter hashtags to create awareness and mobilise resources to combat violence against women.

### 13.2 Digital Feminism and the Fourth Wave of Feminism

The New York Times (Solomon 2009), The Guardian (Cochrane 2013) and Campaign Magazine (Bainbridge 2014), suggest that we have entered the fourth wave of feminism – The Digital Wave. According to these publications, this is a wave that has unequivocally elevated the discourse surrounding social justice not only in online feminist spaces but also in the mainstream. In fact, thanks to the explosion of feminists organising online petitions, social media campaigns, blogs, podcasts, e-zines, etc. that have sprung up in the last decade or so, the women's movement has transformed the ways in which politicians, thought leaders, commentators, entrepreneurs, grassroots activists and the general public in many parts of the world discuss the most critical issues of the day. If ever there was a time when women's rights activism was in 'mode' then this is it.

What would have once seemed implausible and unfeasible – namely women around the world having instant access to a tool, which enables them to challenge the status quo, connect to one another and to change each other's lives – is now a reality thanks to the internet (Salami 2014).

The growth of social media has opened up a whole new frontier for new media and revolutionised how we use the Internet. In its nascent stages in the 1990s, the Internet was primarily a digitised library for academic and scholarship reference. However, as technology advanced, the World Wide Web became a more interactive place where users could not only consume information but also participate in its creation and editing.

In the early 2000s the concept of social media became apparent and it quickly became popular amongst many Internet users. Boyd & Ellison (2007) discuss how websites such as MySpace and Facebook allowed people to connect with friends and even complete strangers at the click of a button. These websites allowed for people to share their lives with each other in a way that could only previously be imagined.

In its current form, the Internet has revolutionised communication by not only combining all other forms of communication but also by doing so at a significantly more affordable cost. It has made it easy for us to produce and generate content quickly and effectively. Marginalised groups that throughout history have had problems making themselves be heard have, with the Internet, been given a new, inexpensive and effective remedy. Many groups in many different societies have been given a voice that was non-existent (Harp & Tremayne 2006).

Amai'cool Mpombo, a member of the Women Lawyers Association of Congo, confirmed the usefulness of the Internet in the 2013 Global Information Society Watch report on women's rights, gender and ICTs (APC, HIVOS 2013: 105) where she said:

Before the Internet, people had to head to libraries. Law books are expensive, so most people didn't have them readily accessible. But even then, women in the professional world didn't have much time to go to the library. Now, when I'm in my office, I can easily access the Internet and find the information that I need on the subjects that interest me. The internet is of fundamental importance and helps us greatly in our work, most notably in improving our research so that we can better help the people who contact us.

While Mpombo is speaking predominantly to the advantages that ICTs play in the legal field, it is important to note that they are equally advantageous to women across different sectors and demographics.

Women in Africa have leveraged on digital media and social media platforms to share experiences of sexual violence and harassment. Social media activism has also kept international attention focused on events that have slipped off the mainstream news agenda, such as the #BringBackOurGirls campaign, launched in 2014 after the abduction of more than 300 schoolgirls in Chibok, Nigeria. Within a year, the hashtag had over 4.5m tweets tagged to it (Ford 2015).

Clark (2015) opines that Hashtag feminism, or feminist activism that unfolds through Twitter hashtags, has become a powerful tactic for fighting gender inequities around the world. Feminist media research, however, has yet to grasp the implications of this new form and social movement research has yet to model the conditions under which activists successfully mobilise online.

### 13.3 Social Networking, Cyberfeminism and Networked Feminism

According to Gurak & Logie (2003), activism has always been based around networks and networking. However, since the development of 2.0, the Internet has become a popular platform for those with causes to make their voices heard.

Sadie Plant, Director of the Cybernetic Culture Research Unit at the University of Warwick in Britain, coined the term Cyberfeminism in 1994 to describe the work of feminists interested in theorising, critiquing, and exploiting the Internet, cyberspace, and new-media technologies in general (Consalvo 2002).

Cyberfeminism asserts an alliance between woman and new telecommunications technologies. Cyberfeminists emphasise the transformative power of cyberspace, or the notion that the virtual world allows women to transcend gender, class, ethnicity, sexuality and other identity categories to generate a more egalitarian reality within the virtual public sphere (Hand 2001).

Cyberfeminism can be seen as a fresh understanding of the relationship between gender, science and technology. Since the Victorian and Edwardian ‘first-wave’ feminism, feminists have debated the nature of this relationship (Wajcman 1991). This feminism is premised on an optimistic understanding of technology, or the perception of technology as a societal saviour rather than destroyer.

In general, Cyberactivism falls into three different categories: awareness/advocacy; organisation/mobilisation; and action/reaction. All three types are outlined below (Vegh 2003).

- *Awareness/advocacy:* This type of Cyberactivism aims to create public awareness around a certain issue in order to attract public condemnation and action to resolve the issue (Vegh 2003).
- *Organisation/mobilisation:* Essentially, this type Cyberactivism is the call for a particular action: offline action such as public demonstrations; action which could be taken on or offline, for instance, sending letters or emails to a public figure; or action which can only take place online like spamming or hacking (Vegh S, 2003). In each case it is important that the correct tools and processes must be used to create a successful impact.
- *Action/reaction:* In simple terms this type of Cyberactivism involves activists responding and reacting to some sort of event (Vegh S 2003).

Cyberfeminism, like feminism itself, is not a unified movement. In defining cyberfeminism, author Jessie Daniels wrote, “Rather, ‘cyberfeminism’ refers to a range of theories, debates, and practices about the relationship between gender and digital culture”; because cyberfeminism refers to plural practices, Daniels says it would be more accurate to call it “cyberfeminisms” (2009).

In similar fashion, Networked Feminism, which succeeded Cyberfeminism, describes a new and emerging phenomenon of women using the Internet as a platform to fight against sexism and misogyny. The movement is not simply used to describe one group of feminists, but is a term used to describe the ability that feminists have to use social media and networks to make previously unheard voices heard (Watson, 2013).

A report published in 2013 by the Barnard Centre for Research on women, finds that networked activism organised by a new generation of feminists is having a big impact on the social commons. The Report, titled *#FemFuture: Online Revolution*, however, notes that these online movements and initiatives require sufficient funding and long-term commitment by key institutions to keep them growing.

### 13.4 Creating Communities and Driving Agendas

While online media seem diffuse, community formation is a large part of digital interaction. Digital communities have been particularly useful for activists working to educate, organise, and activate followers. Manuel Castells (2012) theorises that activist hashtags act in a similar way as occupied spaces have traditionally worked for social movements. Castells argues that hashtags create community; they create a public space for deliberation, “which ultimately becomes a political space, a space for sovereign assemblies to meet and to recover their rights of representation” (Castells 2012: 11). In other words, occupied spaces are places that social movement activists reclaim as spaces of “autonomous communication” separate from controlling powers, which allows a movement to form and “relate to the society at large” writes Castells.

Social media creates “a new species of social movement” because the interactive, individual-driven communication system means that organisations are less hierarchical and more participatory than previous social movements. This diffusion of power, according to Zeynep Tufekci and Christopher Wilson (2012), makes authoritarian regimes vulnerable because they rely on information control and surveillance strategies to repress protest movements. Social media are a part of “a new system of political communication” that is supported by increasingly accessible new communication channels (Tufekci & Wilson 2012: 365). Effective hashtag movements are supported by in-person, broadcast, and print communication channels that connect diffuse communities.

In analysing the ways Turkish feminists have used social media, Eslen-Ziya notes that social media have particular utility for counter-culture protest groups that are trying to change mainstream cultures. Eslen-Ziya wrote that various studies have found that social media can create alternative public spheres that allow people to communicate in a “participatory and non-hierarchical fashion,” and they are being “used as a platform to initiate boycotts, protests, and demonstrations,” as was demonstrated by the Arab Spring (2013: 861). This is because blogs and social media have the potential to influence legacy media organisations, which communicate with broader populations (861).

The Internet allows for near-instantaneous transmission of information, which tends to be low cost and free from the usual barriers (such as gatekeepers) of traditional media (Michaelson 2011). Due to the ease of use and communication, it is relatively easy to spread information, educate the ignorant

and raise awareness surrounding issues through the internet (Scott 2014). Bakardjieva, Svensson & Skoric (2012) argue that because of this, there are new possibilities for mobilisation, organisation and discussion.

Social media has provided a platform for feminists to share their stories, which has aided in the building of feminist constituencies. This is the most important work of feminism, because it is making society more receptive to feminist principles and ideas, transforming our culture into one that can accept and fight for feminism's objectives (Giel 2015).

### **13.5 The Rise of Hashtag Feminism**

Having been active on Twitter for over six years, I have watched the platform transform from just another social media application to a place of community and networking for feminists and other social justice activists to combat cases of rape and sexual violence. I, therefore, believe that the scale and method of community organising that has been harnessed on Twitter can serve as an excellent model for other online communities.

When the social networking site Twitter was launched in 2006, it took social networking to a new level. Whereas previous social media sites such as Facebook and MySpace worked on a 'friends' basis (the two users involved would agree to link accounts on the site which allows both users mutual access to each other's information which is displayed on their profile page), Twitter worked on a 'followers' basis where anyone can see, access or search any data that had been published on the site (Lasora, Lewis & Holton 2011).

One of the most defining features of Twitter to date is the hashtag: functionality so ingrained in the platform now, that users of the platform rarely second-guess it. They seem so much a part of the service, as if Twitter shipped with them in its original version, even before it had vowels in the name.

The hashtag was introduced to Twitter by former Google designer Chris Messina one year after the website launched. In an interview with online magazine Business Insider (2013), Messina explains that he proposed the use of hashtags in response to a desire by the website's users to organise themselves in groups similar to other social networking sites such as Facebook and Flickr. According to Messina, however, since most Twitter usage occurred over SMS or other low-bandwidth channels, group management was tedious, if not downright impossible. Discovery of groups while on the go would be even more difficult. Messina's solution, therefore, was to embed a token, which could be used to track topics and conversations. He opted for the hash symbol as it was already in use by various Internet communication protocols, which would make adoption on the platform much easier. I wonder whether Messina envisioned that his simple proposal would play such an integral part of online organising.

Using hashtags helps users to categorise their content and create a stream of ideas around the same topic. Hashtags also help followers to faster discover the information for which they are searching. Hashtags are also an excellent way to gain followers by more precisely targeting an

audience.

During the past few years, scholars have interrogated the purposes for which people have used Twitter. Recent scholarly texts (Bowdon 2014; Potts 2013), have explored Twitter as a method for circulating information during a disaster as a way for companies to market their services (Ferro & Zachry 2014), as a space for community building (Wolff 2015), and as a site of activist gestures (Dixon, 2014; Loken, 2014; Loza, 2014). More central to the focus of this paper, Kitsy Dixon (2014), Meredith Loken (2014), and Susana Loza (2014) all identified the uses of hashtags for activist purposes to raise awareness and mobilise support among Twitter users in instances of misogyny and sexism.

Leading scholar Liza Potts (2013) offers four stages of how social media participants create knowledge: problematisation, interessement, enrolment, and mobilisation. The first two terms refer to the users' defining of the event and their efforts at encouraging more participants to accept their definition(s) via consistent hashtags (or "immutable mobiles"). The network becomes further stabilised during enrolment, when users accept the definition of the space by contributing additional content, and finally through mobilisation, when knowledge is effectively and efficiently disseminated. Potts' study offers a useful framework for understanding the rapid circulation of knowledge on social networks—particularly in critical moments such as disasters, when accuracy is paramount. Potts' study only references hashtags as organisational devices, however; she cites examples such as #mumbai, #eqnz (for the 2011 New Zealand earthquake) and #Japan (for the 2011 tsunami) to illustrate the capacity of Twitter to efficiently catalogue information. Aside from using hashtags as organisational devices, Twitter users may also harness them to advocate for causes. It is this latter use, which this paper aims to discuss.

The state of online feminism was the focus of a 2013 Report titled, *#FemFuture: The Online Revolution*. This report resulted from a meeting at Barnard College's Centre for Research and Women, which brought together nineteen feminist bloggers "to create a sustainable force that would build on existing alliances among feminist movements and between online feminists and their institutional counterparts; and to develop an infrastructure of support for these important voices" (Courtney E. Martin and Vanessa Valenti 2013: 2). Controversy arose when its authors invited readers to discuss online feminism on Twitter under #FemFuture.

Hashtag users critiqued the report for prioritizing dominantly white online spaces and erasing the contributions of marginalized feminists, who work without "institutional counterparts" or an "infrastructure of support" (Jessica M. Johnson 2013). The report overlooked feminists whose outlets are free social media platforms that enable independent activists to reach audiences without the support of a steady flow of capital. Despite the hashtag in its title, the report's biggest blind spot was Twitter.

The #FemFuture controversy highlights two aspects of contemporary feminism.

The first is its discursive nature, demonstrated by the report's focus on feminist "voices." While previous generations of feminists relied on discursive tactics, or tactics focused on communica-

tion, such as consciousness-raising circles, speak outs, and alternative press publications, this current generation's activism often takes place online and, at times, exclusively through social media platforms, leading to a heavier reliance on text-based interactions via social media (Clark 2014). The hashtags cited above, for example, never snowballed into street demonstrations.

The second aspect stems from the first: digital media have provided feminists of colour and feminists working outside of formal organisations with a new, effective means of exposing their work and connecting with others. While feminists of colour and those without organisational backing have always been active within feminist movements, these important voices have been marginalized within historical narratives of US feminism's development. This is due largely to their exclusion from the highly structured, well-resourced, and predominantly white, middle-class organisations that became focal points for feminism during the 1960s and 1970s, such as the National Organisation for Women, the Women's Equity Action League, and the National Women's Political Caucus, alongside more radical but still structured groups like the New York Radical Women and the Redstockings (Jo Reger 2012). Digital media, however, have eclipsed feminist movement organisations, providing access to a visible platform and wide audiences without necessitating membership within a formal organisation, league, or caucus. Organisations no longer structure communication within the feminist movement; rather, communication, itself, from blog posts to Twitter hashtags, has become an important organisational structure for the movement.

These features of contemporary feminism, however, have not been fully acknowledged by those feminists who inherited the organisational tactics of previous generations (Reger 2012) - the white, middle to upper class, college-educated women who historically dominated feminist organisations at the expense of feminists occupying various intersections of difference along axes of gender, race, class, sexuality, and ability (Kimberle Crenshaw 1989). The impetus to move towards a #FemFuture that includes infrastructural support stems from the movement's tradition of organisational strategies. And yet, as the recent surge of hashtag feminism shows, diverse voices of protest can turn into collective action on Twitter and other online platforms in the absence of traditional forms of feminist organising. How does digitally mediated discourse grow into collective action without the leadership of structured organisations? What is the political meaning and significance of this phenomenon? I draw on several theoretical concepts to outline an analytical perspective.

### **13.6 Hashtag Feminism and Violence against Women**

UN Women estimates that approximately thirty-five per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. However, some national studies show that up to 70 per cent of women have experienced physical and/or sexual violence from an intimate partner in their lifetime (WHO 2013). According to the Kenya Domestic Household Survey (KDHS) of 2014, thirty-eight per cent of women aged 15-49 reported physical violence, while fourteen per cent reported having

experienced sexual violence. The Report further indicates that in 2013, the Kenya Police Service received 3,596 defilement cases; 913 of rape; 242 of incest and 124 of sodomy.

Despite these statistics, the vast majority of rape cases go unreported. It is estimated that only one out of twenty women report a rape and only one in six will seek medical assistance (CSI Nairobi, 2008).

The laws against violence in Africa have been piecemeal and far less visible than, for example, laws promoting gender equality in politics, the workplace or education. In fact, in some African countries (Namibia, Swaziland, and Malawi, for example) the “rights to culture” enshrined in their constitutions mean that governments refuse to take responsibility for forms of domestic and familial violence, seeing these private and shaped by age-old and “sacrosanct” traditions. South Africa appears to be an exception, with its Domestic Violence Act (1998) and a range of policies for guarding women’s bodily freedoms in the workplace and educational institutions. But South Africa’s evidence of violence indicates that extensive policy-making and legislation are not the ultimate solution. Dzodzi Tsikata (1997) dealing with Ghana, explains this persuasively. Tsikata argues that gendered policy activism in many African countries problematically replaces civil society activism. Very often, governments are urged to implement reform by donor countries, or else tactically accede to certain demands from civil society. The result is a plethora of piecemeal and ad hoc progressive legislation, without the broader social, cultural and economic changes that can lead to their successful implementation, or to sustainable changes.

In the absence of robust structures to address issues of violence against women, many women and feminist are turning to Twitter hashtags to speak out and raise awareness on the violence perpetrated against them.

These hashtags are primarily about having a voice (Roy 2018). Sexual harassment, assault, bias are not new phenomena. What is new is women’s access to information and their access to each other. For women who have survived harassment, assault, bias, or all three, hashtags give them a way to stand up, speak out, and connect with each other. Women were once living in a world where their voices had been muted and many of them had been told it was their fault. Hashtags now give them a virtual connection with each other.

### **13.7 African Feminism Driven by African Women**

Feminism as a movement has seen women around the world make tremendous progress in various rights issues ranging from healthcare, education and sanitation, among others. Dean and Aune note that Feminism is considered one of the most successful movements of the twenty first century.

However, the notion of feminism as a western concept that has no place in the contemporary African setting persists in many communities both online and offline.

While the discourse around African feminism is beginning to pick up on the continent, there has been a real lag with regards to writing and documenting our experiences and our own discourse. While the term ‘feminism’ may be as new to us as the English language, the concept of feminism, activism and rebellion among African women definitely predates colonial days.

According to Sachikonye (2010), the issue of African feminism is of great importance to African women, not only with regards to our identities, but also as it relates to the issues that affect us and our role in the feminist movement. The assumption, however, that there is one simple African feminism is problematic and necessitates a precise definition as African feminism is not a clear-cut concept that can be precisely defined and delineated.

As a movement, feminism has mobilised for reproductive rights, affordable health care and improved working conditions amongst many other causes (Korany, Sterba & Tang 1993). Hence, one can assume that African feminism as paradigm and movement is shaped by African contexts and experiences. Prominent African feminist Nnaemeka (2005) states:

The issue of balance is neglected in the one-dimensional Western constructions of African women - usually poor and powerless. We African women have witnessed repeatedly the activities of our overzealous foreign sisters, mostly feminists who appropriate our wars in the name of fighting the oppression of women in the so-called third world. We watch with chagrin and in painful sisterhood these avatars of the proverbial mourner who wails more than the owners of the corpse. In their enthusiasm, our sisters usurp our wars and fight them badly - very badly.

Nnaemeka suggests that contemporary western feminism does not acknowledge the agency and potential of African women. Would a credible African feminism portray African women as 'powerless'? Okome (1999) notes that in most feminist writings African women are portrayed as "confused, powerless and unable to determine for themselves both the changes in their lives and the means to construct these changes."

Okome notes that Western feminists usually act as superiors who seek to help and enlighten African women. In relation to this, Nnaemeka defiantly proclaims:

The arrogance that declares African women 'problems' objectifies us and undercuts the agency necessary for forging true global sisterhood. African women are not problems to be solved. Like women everywhere, African women have problems. More important, they have provided solutions to these problems. We are the only ones who can set our priorities and agenda. Anyone who wishes to participate in our struggles must do so in the context of our agenda.

During the Commission on the Status of Women (CSW) in 2015, Mollie Vandor, product manager at Twitter, stated that conversations on Feminism on the platform grew by 300% in 2015. She added: "I definitely feel like there's a moment happening right now, where we're reaching a tipping point," Vandor said. "It's easy to dismiss these social media moments as just 'talk', but I really believe that the more we talk about what gender equality means and why it's important, the more that conversation picks up volume and the harder it is to ignore."

From studying this use of Twitter as a tool for activism among Kenyan women and feminists, the successes, limitations, and problems of the concept can be seen. The successes lie in the fact that activism has become accessible to a whole variety of women.

In this way, women in Kenya have come to see claiming feminist ideas as African and not a foreign import. These Twitter campaigns are providing space for African women to explain and engage others on feminism in their own words, allowing their ideas to be articulated and contextualised within their experience rather than as a reaction or adjunct to Western feminisms. This is particularly important, as face-to-face processes in the East African region and writing by African feminist academics, only reach a small number of people. Further, increasing the visibility of African feminists is powerful. The self-identified feminists involved in the campaigns are compelling and articulate, and their visibility provides role modelling for other women and men.

The story of a sixteen-year-old schoolgirl known by the pseudonym ‘Liz’ was reported for the first time in a Kenyan national newspaper, *The Daily Nation*, on October 7, 2013. In June that year, Liz had been gang-raped by six men, who then threw her into a pit latrine and left her to die. Thankfully, Liz survived and despite suffering serious injuries, she was able to make a formal report at the local police station, naming three of her attackers.

In a series of grievous failures on the part of the police, the “punishment” handed to these three men was to work in the garden of the police station, cutting the grass. The police made no attempts to identify or apprehend the other three rapists (Rugene, 2013). The news story which was published online, as well as in print, immediately caught the attention of Nairobi-based women’s rights activists, including Terry Konini at the Coalition on Violence Against Women (COVAW) and Nebila Abdulmelik at the African Women’s Development and Communication Network (FEMNET).

Kunina and Abdulmalek began organising material support for Liz and her family, particularly in relation to medical costs, and Abdulmelik started an online petition demanding that Liz’s attackers be brought to justice. Liz’s situation, the news article, and the petition began to be circulated among Kenyan Twitter users via the hashtag “#JusticeforLiz,” with prominent individuals including journalists and television presenters among its earliest adopters. In less than four weeks, the use of #JusticeforLiz spread the campaign around the world, with the petition gathering more than one million signatures, and a protest on the streets of Nairobi on October 31 making international news. Since that date, the campaign has succeeded in bringing Liz’s case to court and drawn attention to the wider problems in the justice system’s response to rape (Equality Now 2014).

#JusticeforLiz demonstrated that online and offline activism are symbiotic, each strengthening and growing the other. This powerful connection of networked protest and activism drove #JusticeforLiz onto the national agenda.

The outcome of Liz’s case was seen as a breakthrough in Kenya’s justice system. Unfortunately, it came at a very high price. Liz and her family were forced into hiding because of reprisal attacks and threats from the families of the men. In a 2015 interview with the Observer, Liz’s mother stated that the family have had to move from their village in Busia and relocate to another county. Even at their new home, they still depend for security on Kenya’s Witness Protection Agency.

On September 19 2014, almost a year after Liz’s story was first reported, we were back at square one; this time with a Kenyan middle-aged woman who was waiting for a bus at a stop in Nairobi. When the bus

stopped, a group of men surrounded her, and started to strip and assault her for wearing a miniskirt in public. She screamed and cried out for help, but only a couple of brave people reached out and gave her clothes to cover herself (Streamers AJE 2014, 0:03).

This kind of sexual violence against women is not unprecedented in Kenya, but this time was different. The brutality of the violence was caught on camera and went viral online. In November 2014 alone, at least four such attacks were recorded across Kenya. The numbers for violence against women are disturbing: according to the Gallup World Poll conducted in 2010 in Kenya, 48.2 per cent of women feared that a household member could be sexually harassed.

Seeing the videos prompted indignation and courageous actions. This is where the Internet and social media have proven an important tool for sharing information, organising events, and mobilising others, all of which can be done at an almost zero economic cost. These videos went viral under the hashtag #mydressmychoice and sparked the “My Dress, My Choice” movement in Kenya. The Facebook page of “My Dress My Choice Challenge” has about 12,000 likes; the twitter account has more than 2,300 followers.

The online campaign and a demonstration on November 17, 2014, which gathered nearly a thousand people in the centre of Nairobi, prompted Kenyan leaders to respond. William Thwere Okello, chief of staff of the Inspector-General’s Office, denounced the mob in the videos as “criminal[s]” and promised the public that “the police will take action.” Similarly, Kenyan Deputy President William Ruto denounced the attack as “barbaric” and ordered a criminal investigation. As a result, the accused were arrested on November 27 and, if convicted, they will face minimum sentence of ten years to maximum of life time imprisonment. This is an important milestone, as the existing law (The Sexual Offense Act of 2006) is rarely applied in Kenya. Yet, the real challenge lies in changing social attitudes and behaviours towards women. The local news reported various interviews with local men who think that the mobs “did the right thing,” arguing that there is “moral decay in society” and that the victim learned a lesson. Others were critical of the “My Dress, My Choice” movement out of a belief that a woman wearing a miniskirt lacks “decency.”

Despite the remaining challenges, the fact that “My Dress, My Choice” gained as much momentum as to generate large demonstrations, affect legislation and raise general awareness on issues of gender discrimination and violence signals a strong push in the society for gender equality.

As was the case in Kenya with “My Dress, My Choice”, the Internet and social media are increasingly playing a key role around the world in spurring and expanding collective action, especially around ‘explosive’ issues. More recently, for example, similar protests took place in Turkey where men also demonstrated in skirts to protest violence against women (triggered by a brutal murder). Phenomena like “My Dress, My Choice” also show, however, that social media can be part of more profound and long-term changes, including issues that are persistent and deeply-rooted as social norms regarding gender. The 2016 World Development Report on “Internet for Development” examines in more detail how to harness the potential of the Internet to generate collective action, sustain those efforts and promote bottom-up accountability.

MSNBC news correspondent Nisha Chittal (2015) intimates that Social media democratised feminist activism opening up participation to anyone with a Twitter account and a desire to fight the patriarchy. By removing the barriers of distance and geography, websites such as Twitter, have made activism easier than ever, facilitating public dialogues and creating a platform for awareness and change.

Twitter activism and hashtags have created a space for women and feminists in Kenya to build solidarity in easier and more convenient ways regardless of their geographical locations. #Justice-ForLiz and #MyDressMyChoice grew from communities of like-minded women and groups. The campaigns are fostering a sense of belonging to a regional feminist sisterhood that often does not exist at the national or regional level. Connections with the Kenyan women and feminists highlighted in or actively following these campaigns (for example, through new followers, friendships, co-organising, etc.) and opportunities for more virtual and offline exchange beyond the campaigns is creating a community of aligned individuals and groups who otherwise would not have been in touch with each other.

In addition, women and feminists are constantly and repeatedly exposed to diverse ideas, theorems and critical thought. Social media is enabling activists to have access to new ideas, current thinking, and new resources and perspectives that are not well known or easily available. Now, feminist ideas are readily accessible on smartphones and organisations can maintain intensive exposure to ideas curated from various sources.

As a result, activism on Twitter has strengthened offline organising. Social media provides a space for Kenyan women to know the perspectives of other groups and to support each other through tweeting, retweeting, and sharing of events, opportunities, resources and activism.

As Martin and Valenti point out in the earlier mentioned Fem Future report (2012), there is fragility to the “leaderless” movement that is hashtag feminism; its creation was largely accidental. The beginnings of online feminism were primarily in the form of online journals, websites, and blogs, developed in response to the need for a public platform where Kenyan women could voice their opinions about the state of the world around them. That platform grew significantly with social media. The results are obvious to those who have been on social media over the past five years. Mainstream misogyny that used to slide by to smirks or quiet frustration now faces a withering full-scale counter-attack. Companies have to be more responsive. Prominent figures face consequences. And the network can move public opinion - and rapidly.

The limitations of Twitter as a tool for activism lie primarily in the question of whether activism on the platform can cause social change offline. Twitter activism is primarily a luxury for those who can access the Internet, leading to many women being under-represented in the Twitter community.

Despite the considerable progress made in terms of Internet accessibility in sub-Saharan Africa, connectivity remains limited, with a focus on urban areas and within groups of higher socioeconomic status (GSM Association, 2016). Furthermore, there is a lack of safety in online activism especially as governments shrink space for social justice work. The arrests of activists such as Uganda’s Stella Nyanzi (Burnett 2017) and the recent introduction of a Social Media Tax in Uganda (Busari 2018)

are painful examples of how social media activism does not offer the protection of an in-person community or local network for support.

Moreover, Twitter is a largely unstructured and informal platform. The nature of the application makes it sometimes difficult to have complex and comprehensive conversations. Social media favours content that is light and populist, with flash appeal. Breaking down feminist concepts and explaining complex ideas in Twitter's two hundred and eighty characters can mean oversimplification, making critical ideas pithy or shallow. In addition, with a barrage of messages and ideas, the transient nature of social media requires constant creativity to capture and maintain the attention of followers.

The fact that East Africa is a region that is fraught with conflict and poor governance, topics on democracy and politics trend at a staggering pace. Competing with breaking news and topical political discourse is challenging. Feminist narratives that challenge the status quo and question male privilege seem less urgent or topical. Therefore, considerable time is needed to keep up with trending topics in order to use them as hooks and unpack them with a feminist analysis and put them in the violence against women frame.

Finally, attribution for declared shifts and norm change inspired by social media is problematic in multiple ways. First, measuring attitude and behaviour shifts among Network members is difficult to do with accuracy. Second, it is impossible to attribute change to a single platform. Donor demands often include specific attributable impact from an organisation's efforts, which may not be possible within a social media context.

#JusticeForLiz and #MyDressMyChoice showed the potential that cyber-communities have for guiding the mainstream media's attention and mobilising public conversation in Kenya. Social media communities can be a tool for shaping the public agenda and creating real-world change, but their limitations must be addressed for them to have meaningful impact and influence.

There is a lot of room for activism on Social Media, especially as more and more people shift their consumption priorities from traditional media to the internet. However, Social Media's greatest appeal as a tool for activism could easily be its downfall. The biggest challenge to online activism remains sustainability of conversation and attention beyond the phases of outrage and instantaneous anecdotal solutions. Online activism cannot stand on its own. For real change to be actualised, it has to translate to offline behavioural change. Trending on Social Media frequently requires backing from influential persons and organisations with a wide reach of active audiences, something that is unavailable to the average user. For every case like #JusticeForLiz that darkens the doors of a courtroom thanks to visibility from Social Media 'influencers', there are countless others that die a digital death with no resolution beyond momentary catharsis for the originator of the cause or movement.

East Africa and Kenya in particular, has been instrumental in harnessing the power of Social Media for online activism and feminism. Hopefully the region will also be a pioneer in terms of sustainability of the medium as a driver of social, economic and political justice for women.

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## Appendices

### *Definition of Terms*

The following are common terms on Twitter as defined by the social networking application (n.d)

#### ***Follower***

A follower is another Twitter account that has followed you to receive your Tweets in their timeline.

#### ***Hashtag***

Any word or phrase immediately preceded by the # symbol. When you click or tap on a hashtag, you'll see other Tweets containing the same keyword or topic.

#### ***Retweet (n.)***

A Tweet that you forward to your followers is known as a Retweet. Often used to pass along news or other valuable discoveries on Twitter, Retweets always retain original attribution.

#### ***Retweet (v.)***

The act of sharing another account's Tweet to all of your followers by clicking or tapping on the Retweet button.

#### ***Timeline***

A real-time stream of Tweets. Your Home timeline, for instance, is where you see all the Tweets shared by your friends and other people you follow.

#### ***Trend(s) or Trending Topic***

A topic or hashtag determined algorithmically to be one of the most popular on Twitter at that moment. A user can choose to filter Trends based on their location and they you follow

#### ***Tweet***

Every update that a user post to their followers on Twitter is called a tweet. Every tweet has a 280-character limit.

#### ***@Username***

How a user is identified on Twitter and is always preceded immediately by the @ symbol. For instance, Twitter Support is @TwitterSupport.

## AUTHOR BIOGRAPHIES

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### Wanjiku Mukabi Kabira



Wanjiku Mukabi Kabira is a professor of Literature at the University of Nairobi and Director of the African Women Studies Centre. She is a writer, a literary critique, a gender and policy analyst. She has taught oral literature for many years, carried out field work in many parts of this country and published widely. Her first publication done in 1984 has been translated in many languages and set the pace in the field of oral literature in our schools and in the region. Her latest publication in oral literature was in 2010. It is titled *Reclaiming My Dreams*. There are many other publications in between. She is also an expert in Eastern Africa and West African Literature

where her focus has been on the broad areas of leadership, colonialism, ideology, philosophy of leadership, women in Literature, the role of the people in social transformation, nationalism, change and transformation, corruption, exploitation, among others in addition to theoretical and conceptual issues. In addition to addressing issues of style, language the writers use and the whole area of literary discourse. She specializes in African American, Caribbean literature and Black Aesthetics: This has been her area of expertise for over three decades. She has taught at the undergraduate and post graduate levels and has contributed to the teaching of this course and supervised post graduate students at masters and PhD levels. She has also contributed to the development of literary criticism by reviewing manuscripts for publishers and writers including famous writers such as Ngugi waThiong'o.

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She was a Commissioner and a Vice Chair of the Constitution of Kenya Review Commission and has documented the role of women and their gains in her book *Time for Harvest: Women and Constitution Making in Kenya - 1992 to 2010*. Prof Wanjiku Mukabi Kabira has worked with and has led various women's organisations in Africa. She has been awarded the national honour of Chief of the Burning Spear and Elder of the Burning Spear.

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Prof. Patricia Kameri-Mbote is a Professor of Law and former Dean at the School of Law, University of Nairobi. She is an Advocate of the High Court of Kenya and was conferred the rank of Senior Counsel in 2012. She was a member of the Committee of Eminent Persons appointed by His Excellency the President of Kenya in February 2006 to advise the government on the way forward for the stalled constitution review process. She was also awarded an honorary degree in law by the University of Oslo (UiO) in 2017 for outstanding contribution to research through ground-breaking work cutting across established fields

such as Women's Law, Natural Resources Law, Human Rights and Law and Development. Kameri-Mbote earned her doctorate from Stanford University in 1999 specializing in property rights and environmental law. She had earlier studied law in Nairobi, Warwick and Zimbabwe. She has taught law globally for the last 29 years and currently teaches Women, Access to Resources and the Law at the Southern and Eastern Africa Research Centre on Women's Law (SEARCWL); Property Law and Equality Law at the University of Nairobi.

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Nkatha Kabira is a poet, author and lecturer at the University of Nairobi, School of Law. She is also a fellow at the Intercontinental Academia (ICA), a postdoctoral fellow at the Ife Institute for Advanced Studies, Nigeria and a visiting scholar at STIAS in Stellenbosch, South Africa. She completed her doctoral degree at Harvard Law School (HLS) in May 2015. She has professional and research experience in several areas ranging from law and language to democracy and the legal process and to gender and the law. She lectures widely and has taught extensively both in Nairobi and at Harvard and has received awards in recognition of excellence in teaching. Prior to completing the LL.M. Programme at HLS in 2008, she worked as a legal associate and pupil at Kaplan and Stratton Advocates

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### **Maria Nzomo, PhD, EBS, MBS**



Maria Nzomo holds a PhD in Political Science and International Relations (Dalhousie University, 1981); an MA in Political Science (McMaster, 1975) and a BA (Hons) in Political Science, (UoN, 1974).

Nzomo is Professor of International Relations & Governance and Director of the University of Nairobi's Institute of Diplomacy and International Studies. She has over seventy (70) publications in the form of books, book chapters, journal articles, monographs and technical reports, covering issues of International Relations and Governance, Diplomacy, women and gender studies and Human rights in Africa. Her recent publications

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Nzomo has served in various UN bodies and continues to play various prominent roles in Kenyan public service as promoter and crusader of gender and human rights. From 2003-2009, she served as Kenya's ambassador and permanent representative to the United Nations and WTO, Geneva, and prior to that as Kenya's ambassador to Mozambique, Zimbabwe, Swaziland and Lesotho. Nzomo has been a senior Fulbright scholar and is a recipient of several Presidential honours and awards in recognition of her distinguished service to Kenya, the world, the Academy as well as gender and human rights. The presidential awards include: *Elder of the Burning Spear (EBS)*, 2018 and *Moran of the Burning Spear (MBS)*, 2005 in recognition of her outstanding service to Kenya in promotion of Education, Diplomacy. She has also been honoured by the University of Nairobi (2017) as a distinguished female scholar and an "an incredible achiever in academia and public service".

### **Nancy Baraza, OGW**



Hon. Lady Justice (RTD) Dr. Nancy Baraza OGW, was the first Deputy Chief Justice of the Republic of Kenya and Vice-President of the Supreme Court under the Constitution of Kenya 2010. She holds a PhD from the School of Law, University of Nairobi. She is currently a Law lecturer and the Chairperson of the Department of Law at the same school. Previously she served as a Commissioner with the Constitution of Kenya Review Commission (CKRC) where she spe-

cifically chaired the thematic committee on the Bill of Rights and was the Rapporteur for the Bill of Rights Committee at the National Constitutional Conference (Bomas). Hon. Baraza also served as the Vice Chairperson of the Kenya Law Reform Commission, a position she effectively used to influence the drafting of Kenya’s current Marriage Act, matrimonial property Act and the Protection from Domestic violence Act, among others. She holds a diploma in Legal Studies from the Kenya School of Law and is an advocate of the High Court of Kenya. She is a founder member and past Chairperson of the Kenyan Chapter of the International Federation of Women Lawyers (FIDA-Kenya). She served as the chairperson of the Media Complaints Commission of Kenya. She served as a Council Member of the Egerton University Council. She represented Kenya as a legal expert in presenting Country Reports on the status of women in Kenya to the CEDAW Committee of the United Nations in 2007 and 2011 and 2017 in New York and Geneva respectively. She has undertaken several consultancies with the World Bank and the United Nations on Constitutional, Gender and Human Rights issues. Her areas of research at the university include gender, human rights, family law and feminist jurisprudence and theory. She was awarded the Order of Grand Warrior (OGW) by the state. She is the mother of two sons.

### **Ruth Aura Odhiambo**



Ruth Aura Odhiambo holds a Doctorate in Law from the University of Pretoria, a Masters in Policy Studies from the University of Fort Hare and a Masters in Women’s Law from the University of Zimbabwe. She is a Lawyer with more than 20 years of experience in International Law and Development, 15 of which have focused on Gender, Law and Human Rights. She is a Senior Lecturer and Associate Dean at Faculty of Law, Egerton University. She served as the First Coordinator of the Egerton University School of Law, overseeing its establishment and providing strategic directions.

She has previously taught at the School of Law, University of Nairobi and at the Institute of Women, Gender and Development Studies, Egerton University. She is a Gender Specialist and has served as Member of the Technical Committee for the Beijing +15 Review under the auspices of the United Nations Economic Commission for Africa and the African Union Women, Gender and Development Directorate. She has undertaken research for ARD Inc. (Washington, DC) both in Kenya and Sudan, Landesa, Association for Co-operative Operations Research and Development and Family Health International. She has been a key facilitator of various legislative and policy reforms in Kenya, Zimbabwe and South Sudan. Dr Aura has also served in the National Council for Science and Technology, National Council of Administration of Justice, Election Observation Group and UNESCO EU Regional Bioethics Management Committee, amongst others. She is also a member of Everywoman Everywhere Coalition, an initiative advocating for a global treaty to address violence against women. She has served as the Chairperson of the Federation of Women Lawyers (FIDA) Kenya. She currently serves in the Board of International Economic Social and Cultural Rights – NET (New York), representing Sub-Saharan Africa.

## Agnes K. Meroka-Mutua



Agnes K. Meroka-Mutua is a researcher, teacher, gender equality advocate and human rights advocate. She is a lecturer at the University of Nairobi, School of Law, where she teaches and supervises in the following areas: Law and Development; Gender and the Law; Human Rights; Disability Rights; and Property Law. She is a board member at the Africa Co-ordinating Center for the Abandonment of FGM (ACCAF). She is also a member of the Technical Working Group on Accountability and Monitoring of the African Partnership to End Violence against Children. She is also the Editor in Chief of the East African Law Journal, which is published by the University of Nairobi, School of Law. Dr. Meroka-Mutua works directly with communities, sensitizing them on the need to protect the rights of women and girls. She uses research as a tool to promote gender equality and social justice.

Dr. Meroka-Mutua holds a PhD in Law from the University of Warwick, School of Law, where she researched on the gender dimensions of land, law and politics in Kenya. She was awarded the Warwick Postgraduate Scholarship in 2009 to enable her pursue doctoral studies. She also holds an LL.M in International Development Law and Human Rights from the University of Warwick, School of Law and is also an alumnus of the Commonwealth Scholarship Association, having been awarded the Commonwealth Shared Scholarship in 2007. She holds an LL.B from the University of Nairobi, School of Law, a Post-graduate Diploma from the Kenya School of Law, and is an advocate of the High Court of Kenya. Dr. Meroka-Mutua is a mother of four young boys.

## Mary Njeri Kinyanjui



Dr Mary Njeri Kinyanjui is a writer, researcher, teacher, volunteer community organizer and a firm believer in the principle of social economic justice, self determination, solidarity and self-reliance. She is a senior research fellow at the Institute for Development Studies, University of Nairobi. She holds a PhD in Geography from Fitzwilliam College, University of Cambridge. She has researched on economic informality, grassroots and indigenous institutions in the organization of economic behavior, small business, gender and trade justice and peasant organizations. Her current research is on the positioning of women peasants, artisans and traders in the global economy. Her publications include: *Coffee Time; Women and Informal Economy in Urban Africa: From Margins to the Center; Vyama Institutions of Hope: Ordinary People Market Coordination and Society Organization; Traders and Artisans: Utu-Ubuntu Model Africa Metropolis and Cultural Villages*. She has been a visiting associate at the Five Colleges Women Studies Research Center, Mount Holyoke, Stellenbosch Institute of Advance Study, Rockefeller Belagio Centre, Nordic Africa Institute and Open University.

## Eddah Wacheke Gachukia



Eddah Gachukia holds a PhD from the University of Nairobi. A career educationalist, she holds professional education qualifications from Makerere University (Diploma), Certificate in the teaching of English as a foreign language, Leeds University; and a certificate in Curriculum Research and Development (International Association for the Evaluation of Educational Achievement (I.E.A.), Granna, Sweden).

Her career combines teaching at various levels of Education: primary, secondary, university; and curriculum research and development. She serves as the Vice-Chair, Riara University Governing Council and is the Founding Executive Director of the Forum for African Women Educationalists (1993). She chaired the Task Force on the implementation of Free Primary Education; the Task Force on Affordable Secondary Education whose reports were adopted by the Government and their far reaching recommendations have made a tremendous impact on enrolment, participation, and transition throughout the country. She has served as a Trustee at the United States International University (USIU) –Africa and Vice-Chairperson; Trustee Population Council; Kiambu Institute of Science and Technology (KIST). She chairs the Board of the African Women’s Studies Centre. She served as a Nominated Member of Parliament representing women’s interests (1974-1983) and in the leadership of the National Council of Women of Kenya, the Maendeleo Ya Wanawake Organization, and the Collaborative Centre for Gender and Development.

She played leadership roles in the UN conferences on Women – Mexico (1975), Copenhagen (1979), Nairobi (1985) and Beijing (1995), representing the Government of Kenya, and national and regional Non-Governmental Organizations. Her publications include *Literary Criticism; Language Studies; Gender and Development; Education and Child Development Related Issues*. She has been awarded numerous honours by various institutions, including Elder of the Order of the Burning Spear (EBS) (2018) for contribution to education in Kenya; the African Leadership Magazine with African Women of Influence Leadership Award (2009); Kenyatta University with an Honorary Degree of Doctor of Education (Honoris cause) for achievement in education, contribution in various organizations, and leadership excellence (December 2008); H.E President of Senegal for Service to Girls’ Education in Africa (1997); the Mount Holyoke College, U.S.A for service to Women’s Development (1986); The Kenya Teachers’ Service Commission as a Pioneer Teacher (2018); among others. Together with Daniel Gachukia (husband) she founded the Riara Group of Schools (1974), where she serves as Academic Director. They support a co-educational Community Secondary School in Kandara, now in its 20th Year. They have supported needy girls and boys in schools and even in universities. She is a mother of four (4) children and grandmother of ten (10).

## Tabitha Kiriti-Nganga



Tabitha is a Professor of Economics in the School of Economics, University of Nairobi with over 30 years University teaching experience. She attained her PhD from the University of Queensland in Australia. She headed the Department of Economic Theory in the School of Economics for 6 years and was the Co-Chair of WTO Chairs Programme for 7 years. She is currently the Coordinator of UNCTAD Virtual Institute and the Chair of the WTO Chairs Programme in the University. Her areas of interest are gender issues, international trade and other socio-economic issues such as poverty, social protection and health. She has done a lot of research in gender and also held gender and advocacy training workshops not only at the local level but also at the regional and international levels. She has also been the Chair of the Board of Management for Githambia Secondary School since 2007.

She has won research grants from various organisations such as the International Health Policy Programmeme-1997, African Technology Policy Studies-1998, AERC Research Grant-1997 and 2001, DPM Scholarship in 2000, UNDESA-2005, Senior Scholars Research Grant by the Organisation for Social Science Research in Eastern and Southern Africa (OSSREA-2008, UNTAD Vi Research Grant-2009, WTO-2009, IDRC-2010, WTO Chairs Programme- 2011, Australian Leadership Awards-2012, UNCRD-2013, UNDP-2015, ICTSD-2015, University of Adelaide (Institute of International Trade) - 2011, 2012, 2013 and 2014, UNCTAD-2014, COMESA- 2016, CETRAD-2017, UN Women-2017, COMESA- 2018 and many others.

She has published, alone and with others, 46 journal articles, 26 book chapters, 6 books, 1 discussion paper, 1 working paper, 2 book reviews, 6 policy briefs, and 26 research reports. She has supervised 7 PhDs and more than 50 Masters Students. She has attended 163 workshops and conferences locally and internationally where she has presented papers, acted as a resource person, a discussant or just a participant.

## Joy Mueni Kiiru



Joy Mueni Kiiru is a Senior Lecturer at the School of Economics, University of Nairobi. She holds a PhD from Bonn University, MA in Economics from Chancellor College, and a BA from the University of Nairobi. Joy's research interests are in the area of development economics and more specifically on issues of economic inclusion. She has researched on issues of Social Protection, Microfinance, Gender and Development and Food security. She has several publications in peer reviewed journals, book chapters as well as working papers and several conference presentations.

## Alina Nikolayevna Rinkanya



Alina N. Rinkanya is an Associate Professor at the Department of Literature, University of Nairobi. She teaches European, Eastern African and American literature. She obtained her MA in Literature at the Leningrad State University; Ph.D. in African Literature (dissertation on Kenyan novel in 1980s – 1990s) at Gorky Institute of World Literature (Moscow); Published a number of articles and book chapters on East African writing, namely novel, women's literature, poetry and code-switching. She has participated in a number of international conferences in Europe and Africa.

## Elishiba Kimani



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## Wanjiru Gichuhi



Wanjiru Gichuhi is a Senior Lecturer at Population Studies and Research Institute (PSRI) at the University of Nairobi. She is a social demographer and holds a PhD in Rural Sociology and Demography from the Pennsylvania State University. As an Associate Researcher at Tuskegee University she worked with young adult black males in the Black Belt of Alabama. As a researcher, she has published in population related areas including infant mortality, domestic violence, HIV/AIDS and reproductive health, and women and food security. As a trainer, she has trained extensively in the areas of population studies and monitoring and evaluation. She coaches and mentors local and international women on matters related to women and reproductive health. She has keen interest in matters that affect the family, women, youth and children.

## Prof. Philomena Mwaura



Philomena Njeri Mwaura (Kenya) is a professor in religious studies at Kenyatta University, Kenya, teaching in the areas of African Christian history and theology, new religious movements and African instituted churches, the development of Christian doctrine, world Christianity and religion, and gender. She is the African region coordinator of the Theology Commission of the Ecumenical Association of Third World Theologians (EATWOT). Mwaura is the current president of the International Association for Mission Studies (IAMS) and has published several articles in journals and books on women and religion in the African context.

## Nicole Wasuna



Nicole heads the Digital Communications unit at Kenya Revenue Authority. Part of her day to day work involves planning and executing digital marketing campaigns on KRA's digital platforms; Developing marketing content for the KRA website, microsites, intranet, blog and social media accounts; Ensure brand consistency is delivered online across all digital platforms.

She holds a Bachelor of Information Technology (Hons) Multimedia Systems She is also studying at the University of Nairobi and is pursuing a Masters degree. Her Master's field of study: Women, Leadership and Governance in Africa and expects to graduate in 2019.

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