



Women United for Affirmative Policy Change

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**PROJECT TITLE: CIVIC EDUCATION ON THE HARMONIZED
DRAFT CONSTITUTION**

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WOMENS' REGIONAL ASSEMBLIES' REPORT ON WOMENS' GAINS IN HARMONISECD DRAFT CONSTITUTION.

BACK GROUND

A Constitution is conventionally viewed as the document that embodies the social contract between the State and its Citizens, setting out the structure and organization of the State and spelling out the rights and duties to the Citizens and corresponding duties to the State.

The Constitution captures the aspirations of the people and their core social values. It outlines how different groups are to be represented at national and regional levels and provides managerial mechanisms for the distribution of resources, ownership of property and protection of the rights of individuals and communities.

The lack of a gender sensitive constitution in Kenya has provided a gap that has seen Kenyan women's rights violated and women denied a fair share of the national cake. Despite concerted efforts by women's organizations in the country to sponsor bills that would generate women friendly policies women are still not given a fair chance as far as representation and participation in decision making and economic empowerment are concerned. Women continue to suffer social, cultural, economic and political discrimination in this country.

The 1990s saw the rise in clamor for constitutional reform, which culminated in the constitutional amendment that saw the return to multi-party politics in Kenya. Women have actively engaged in the process through the period both as lobby and pressure groups and by offering technical support and input to the content. A lot of gains have been made, compromises allowed and firm stands taken in the bid to ensure that the new constitutional disposition will see women better placed to realize and protect their rights and not continue to suffer discrimination. The final phase towards a new constitutional disposition affords women an opportunity to reflect on the journey, take stock and forge a united way forward.

A close scrutiny of the Harmonized Draft reveals specific gains in the following areas: -

1. The Preamble.
2. Chapter 1: Supremacy of the Constitution
3. Chapter 3: National Values, Principles and Goals
4. Chapter 4: Citizenship
5. Chapter 6: Bill of Rights
6. Chapter 7: Land and Property
7. Chapter 9: Leadership and Integrity
8. Chapter 10:Representation of the People
9. Chapter 11:Legislature
10. Chapter 12:Judiciary
11. Chapter 14:Devolved Government
12. Chapter 16:The Public Service
13. Chapter 18:Commissions & Independent Offices

To ensure that the gender provisions in the Harmonized Draft are considered and adopted, The Caucus in partnership with Africa Women and Child Feature Services has embarked on a Civic education exercise in selected districts across the country, to create awareness on these gains and keep the debate alive among the women of Kenya.

INTRODUCTION

The Caucus as the lead agency of an umbrella women's movement (The G10 Coalition) convened a meeting of women leaders from all over the country on 14th, November, 2009 at KICC Mbagathi for consultative National Women's meeting on the Harmonized Draft Constitution of Kenya. Published on 17th November, 2009 by the Committee of Experts on Constitutional Review Pursuant to section 32 (1) (a) (i) of the Constitution of Kenya Review Act, 2008.

A clear exposition of various chapters was made during this meeting, so women of this country would then forge a common front and stand with regard to the harmonized draft constitution.

Pursuant to the outcomes of the women's conference, and in line with already agreed upon strategies, it was decided that the Women's Movement move their lobbying and advocacy to the grassroots level, in order to rally support for the retention of gender gains and provisions in the harmonized draft.

The Caucus has since selected six districts in which to sensitize women on their gains within the Draft Constitution and seek their recommendation and way forward in respective districts, in terms of engaging the electorate at large and lobbying for the retention and adoption of clauses that will herald a new beginning in terms of women's participation in both private and public life.

OBJECTIVES

- Sensitization of women on the Harmonised Draft Constitution in six district women's forums, namely; Mombasa, Kisumu, Uasin Gishu, Kuresoi and Nairobi's Mathare and Kibera
- Preparation of the women for the second stage of the constitution process which is the referendum. Enlightened women who will carry the message of the gains at the grassroots level, at the end of the meetings.
- Documentation of the views in the reports highlighting the process and the way forward to the process
- Address the needs of the marginalized or vulnerable groups by making sure that they have access to information on the constitutional processes
- Assess levels of understanding with regard to issues at hand, which will lead to the women meeting with key people well versed with the issues and who can speak to them in a language understandable to them

MOMBASA DISTRICT

The Assembly converged on 16th December 2009. Among the invited Participants were Assembly members, Maendeleo Ya Wanawake, Women Development Mombasa, Sauti ya Kina Mama and other women organizations in Mombasa. Former Commissioner in the CKRC at Bomas Dr Mohamed Swazuri was present. There were a total of 98 participants.

Outcome of discussion

Chapter 1 Art 12(1) - Public holidays

Women have been celebrating International Women's day every 8th March. It has been a very essential day for evaluation of women's gains and challenges in relation to Political, Social and economic life and the day to day challenges faced and overcome by women.

Recommendation; Women recommended that this day be included among the public holidays in the Draft Constitution of Kenya.

Chapter 6 Art 35 Right to life

Every person has the right to life, none of religions subscribe to putting an end to life except under strict and specialized confirmed medical condition.

Recommendation; The right to life should not be deprived under any circumstances rather than confirmed medical condition.

Art 76 Human Rights and Gender Commission

Gender Commission as currently enacted by the Parliament has been effective in lobbying and advocacy on the rights of women. Its mandate is to initiate, lobby, advocate for legal reforms on issues affecting women, and formulate laws, practices and policies that eliminate all forms of discrimination against women and all institutional practices and customs that are detrimental to dignity of women. The merging of two Commissions will dilute the gains.

Recommendation; Gender Commission should remain autonomous so as to strengthen its functionality.

Chapter 19 Art 125(a) Membership of the senate

It is necessary for the senate members to be elected by registered voters rather than the Electoral College within the County. This process is likely to be manipulated by tycoons.

Recommendation; Senators be elected by the registered voters within the jurisdictioned area.

Art 143 Quorum in Parliament and Senate

The $\frac{1}{4}$ being the quorum for any house business is too low; the members are vested with significant responsibilities which should be honored. Concern was raised on criteria for electing two women from each Region to sit in the Senate.

Recommendation; The quorum for each house be $\frac{1}{3}$ instead $\frac{1}{4}$.

Chapter 12 Art 180 91) (a) Appointment of the Prime Minister

The Member of the National Assembly who is the leader of the largest political party or Coalition is automatically supposed to become the Prime Minister; there no need for appointment by the President.

Recommendation; The appointment phrase should be replaced by endorsement by the president.

Chapter 13 Art 209 (4) & (5) Kadhi's Courts

Kenyans professing Islamic Religion are spread all over the country. It is Human Rights violation to deprive other Muslims in rural areas by limiting the number of Kadhi's Court to three.

Recommendation; Expansion of Kadhi's Courts throughout the country and with an improvement of Court of Appeal to be established in the country.

The Way forward

1. Continuous creation of awareness on the Draft Constitution
2. Unity of purpose among various women's Organisation
3. Mobilization of women in the referendum

Conclusion

The women of Mombasa support the Draft Constitution, bearing in mind of the gains that will improve and impact positively the political, socio-economic and cultural aspects of women in Kenya.

KURESOI DISTRICT

The meeting was held at Keringet on 29th December, 2009. Fifty women attended the meeting; they were drawn from the four divisions of Kamara, Keringet, Olenguruone and Kuresoi. Ethnic diversity was well represented; the Kikuyu, Kisii, Kalenjin and Luhya.

The sessions were conducted in Kiswahili and translated to vernacular to improve understanding. Achami Laurence and Liza Chelule of Regional Assembly co-chaired the discussions which ended at 4.45 pm.

Outcome of discussion

Participants were taken through the various sections of the constitution beginning with the Preamble. The following provisions were identified as having positive impact on the women's democratic and social rights.

Chapter 3- Art 13 (2) (i) (j) Participation of women

There is guaranteed full participation in the political, social and economic life of the nation. Affirmative action principle is enforced by ensuring that not more than $\frac{2}{3}$ of the members of elective bodies will be of the same gender. The male dominated elective and appointive bodies will be a thing of the past.

Chapter 4. Citizenship Art 17(1-3), 18 Right to confer citizenship

For along time, citizenship has been conferred by men. It's a milestone that women will now have the opportunity to confer citizenship to off springs and non Kenyan spouse. The protection of intellectual property-art 27(f) is paramount to the economic development of women. The involvement of self-help projects like basketry and weaving will entirely be owned and not be taken away as a brand name with an international organization as it was with the "kiondo" that is a brand name in Japan.

Chapter 6. Bill of Rights. Art 30(3) Standards for the achieving human rights.

It's a great opportunity for the Gender and Human Rights Commissions to join the Parliament in the establishing the required and acceptable standards in the achievement of the rights mentioned. Freedom to information is guaranteed in art 37(1), Gender equality- art 38, Equality rights for partners on child provision – art 41(5), Equal rights for married partners-art 42(4), Recognition of marriages-art 42(5), Right to reproductive health-art 62(1), the right to emergence treatment –art 62(2) and elimination of gender discrimination in land and property-art 77(2).

Chapter 9 Leadership and Integrity

This chapter is important for it will ensure that elected leaders are of good moral thinking and integrity. The moral fiber of the society and the nation will be upheld. The public offices will not receive bribe for the performance of official or non official function-art 96(2b) and public servant will not receive sexual favors or physical abuse to any person. Gender equality in elected bodies- art 102(b), election code-art 105,106, independent candidates –art 107, political parties to observe gender equality and equity-

art 114(1h), parties fund –art 118, affirmative action for political parties eligibility for being funded.

The provisions are catalyst for the participation of women in elective politics. Tendencies of political parties to lock out potential candidate will not hold, as candidate can choose to be independent. Desire for getting the political funding will force parties to ensure affirmative action principle is upheld in the national office holders.

Chapter 11. The Legislature

The provision of bi-cameral parliament will increase participation and representation.

Two women elected from in each region, acting as Electoral College for the Senate.

Art 125 (b). Membership of the National Assembly will comprise of one woman per county and seven persons with disabilities, in which no more than four will be of same gender, art 126(b&c).

Effective legislative representation of women is guaranteed in this provision. Quality participation of women in the legislation will be enhanced. Influence in policy formulation and legislation is inevitable with the increased number of women in parliament.

Chapter 14. Devolved Governments

Devolution is a good idea because the local people will feel the impact of the government in terms of social services and the creation of employment opportunities at local level. Affirmative action is emphasized in art 216(3) and 240(1).

Devolved government is an open opportunity for the voices of women to be heard. Since the majority is at the local level, they do understand clearly the challenges and opportunities. Devolution will culminate to bottom – top approach to policy formulation and implementation in Kenya.

Recommendation

- ✓ There should be a clear centre of power
- ✓ There should be strategic approach to devolution, to ensure that it's not expensive
- ✓ The country's Chief Executive; either President or Prime Minister should be directly elected by the people.
- ✓ The exit of Provincial Administration should be gradual, and note immediately after the new Constitution is passed at referendum.

Way forward

1. Since most participants about 70% had not read the Draft Constitution, more awareness meetings are required.
2. Literacy levels affect delivery of information, hence need for more than one day. At least 2 days.
3. There is urgent need for distribution of more copies of the Draft Constitution.

UASIN GISHU DISTRICT

The Uasin Gishu district held meetings in three phases. A local forum, church meeting and a visit to Eldoret main prison.

- ✓ The open forum in Eldoret was attended by 40 Women's group leaders on 31st December, 2009.
- ✓ The church meeting at The Seventh Day Adventist Green Field Church in Eldoret was attended by 150 people on 2nd January, 2010.
- ✓ The Prison visit on 9th January, 2010 was attended by 12 women inmates who were finishing their sentences within January, 2010, as well as two women wardens in attendance.

The Outcome of discussion

Three forums as detailed above, discussed chapter 4, 5, 6 and 12, the following gains were identified;

Chapter 4: Art 17(1-3), 18 Right to confer citizenship

Women will legally confer citizenship on their children and spouse. Dual citizenship is also allowed. It's important because currently it's only men that confer citizenship to children. Cases where women are married in foreign countries, their children have been considered to be foreigners.

Chapter 5: Culture

Art 27(f) Provides for the protection of intellectual property, it could contribute to women's economic empowerment since they are custodians of culture in respective communities.

Chapter 6: Bill of Rights.

Art 37(1), 38, 41(5), 42(4& 5), 62(1& 2) are important in ensuring respect to human rights. The Draft Constitution guarantees equality to all persons and freedom from discrimination on basis of sex, pregnancy and marital status. Recognition of the rights will preserve the dignity of individuals and communities, hence promotion of social justice and realization of the potential of all human beings. Gender is guaranteed in regard to political, economic, cultural and social activities. The state has a duty to protect the youth from cultural practices that undermine their dignity and quality of life.

The draft provides for equal rights for marriage partners at the time of marriage, during and dissolution of marriage. There is a guaranteed recognition of marriages concluded under traditional and personal law. Recognition that women are not homogeneous is made with provision of women in their diversity. For instance women with disabilities, women from marginalized communities, elderly and young women.

The draft spells out mechanisms that will be employed in the of the Bill of Rights and allows the right to complain on behalf of one self or another and institute court

proceeding. This provision is strengthened with the absence of provision for filing fees in seeking an enforcement of the right being denied.

Chapter 7: Land and Property.

The entire chapter provides for total elimination of Gender discrimination in access to land. Legislation will be made with regard to matrimonial property and protection of interests of dependants of deceased persons relating to land and property. Currently there many cases where widows are disinherited from land and property in some communities.

Chapter 12: Executive

The draft provides for the position of President and The Prime Minister. This is a good paradigm shift from the imperial presidency, characterized by unaccountability, corruption and impunity.

Recommendation

- ✓ There is need for direct election of the Chief Executive of the country with executive powers.
- ✓ The clause on dual citizenship and provision for women to confer citizenship to spouse should provide some restriction to avoid the influx of foreigners in Kenya

The Way forward

There is need for more awareness creation workshops on the Draft Constitution.

Conclusion

The Harmonized Draft Constitution clearly recognizes women's rights and protects them in relation to the national, regional and international instruments. Kenya made commitments towards achievement of agenda four item in the National Peace a code of 28th February, 2008. Given the gains for women within Draft Constitution, women support the Harmonized Draft.

STAREHE DISTRICT

The meeting was held on 23rd January, 2010. It was attended by 40 women and 40 men. Participants were taken through a general over view of the Draft Constitution/

Outcome of discussion

Women guaranteed participation in social & economic life of the Nation Art 13:2(j) Chapter 3.

Women have in the past not been guaranteed full participation in the social and economic life of the nation. The contribution of women to the national development will be enhanced.

Affirmative Action Principle enhanced, Art 13:2(j), Chapter 3

The Principle of affirmative action has been applied through the presidential directives. The 30% women in Public appointments had not been adhered to. The draft constitution enshrines it, hence again for the women.

Citizenship Art 17: 1, 2 & 3, Art 18 – Chapter 4.

The current constitution does not allow women to confer citizenship to child and the spouse if a foreigner. Incase such couple choose to stay in Kenya, and then the husband is considered as foreigner. Mothers' right to confer citizenship to the offspring is guaranteed.

Dual citizenship Art 21 –Chapter 4

Many Kenyans a broad can acquire double citizenship. This is an advantage especially for women who could be married outside. This would contribute to the economic development

Protection of intellectual property Art 27(f) - Chapter 5

Women are the majority in innovation; basketry and weaving has been attributed to women in different communities in Kenya. This provision will ensure ownership and control of the economic activities that will improve the standard of living.

Promoting Human Rights and Gender Commission Art 30 -Chapter 6

The provision of this Commission will promote the respect for human rights and gender related policies and practices.

Recommendations

- ✓ There should one centre of power to avoid constant disagreements as it is the case with the current Coalition government
- ✓ There should be a clear system of governance in place that is easily understood by people
- ✓ The Cabinet ministers should not be Members of parliament; the ministries should be run by technocrats with relevant professional training

The way forward

1. Increased mobilization of women to support draft constitution during referendum
2. Distribution of more copies of the Harmonized Draft Constitution
3. More awareness workshops

KISUMU DISTRICT

The workshop was held on December 29ths. An overview of the draft constitution was made by Ms Dorothy Awino- the District Convener. Expectations for the participants were to understand and conceptualize the harmonized draft constitution with an aim of explaining the same to other members of the community.

It was noted that the draft constitution had drawn different perceptions from the public even without having read the provisions. Understanding of gender sensitive gains is important in safe guarding the constitution before, during and after the referendum. Various legislative measures had been made to protect women and the girl child but the struggle must continue. Land and property rights for women have always been violated against in Nyanza and Western province. The draft constitution provides an opportunity for correcting such stereotypes.

Outcome of discussion

Participation of women –chapter 3 Art (1) i& j

Women's active role and participation in Social, Economic, Cultural and Political life of the nation is provided for in the draft. The women's opportunity in elective bodies will contribute positively to the national development. The provision of not more than $\frac{2}{3}$ of Members of elective or appointive bodies shall be of same gender. This will ensure that the principle of affirmative action is followed.

Citizenship and Marriage Chapter 4 Art 18(1)

A person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen. The current constitution only accords the right to the male partner to confer the right to citizenship to his spouse and children. It's an opportunity for women to confer citizenship to the spouse and the children.

Gender commission Chapter 6 Art 76(2) (b) (i)

The Gender Commission has been very instrumental in advocating for the rights of women. There is a positive development to wards realization of fair treatment. Enshrining the Commission in the Constitution is reinforcement for the women's rights.

Gender equity in Political Parties- Chapter 10 Art 119(3)

Political parties will not be eligible for financial support if more than $\frac{2}{3}$ of its registered national office holders are of the same gender. Political parties will be forced to go back

on drawing board. It will be a major boast for women in taking leadership positions within the political party.

Women in the Senate and National assembly – Chapter 11 Art 125(1) b, 126(1) b

Each county will elect woman representative to the senate, and the women elected in each constituency representing the county in the National Assembly. Women have struggled for long, this is a great opportunity.

Gender is to be strictly considered in regional and county assemblies.

Gender equity in public service commissions Chapter 16 Art 272(1) j

All the public service commission that shall be formed will adhere to the principle of gender equity in their compositions.

Recommendation

The Gender Commission should not be merged with Kenya Human Rights Commission

LANGATA DISTRICT (KIBERA)

The meeting took place on Friday 5th February at Methodist Guest House in Nairobi. Lillian Adongo led the introductions and facilitated a session on the expectations of the participants' expectations summarized as:-

- To know more about the rights of children
- To understand all that was to be discussed from the workshop
- To understand the TJRC process
- To learn more on Agenda 4 , how it will be implemented and the impact on the lives of Kenyans
- To know more on the draft constitution and the constitutional review process
- To obtain some advocacy skills to protect women and children

The reform process in Kenya: an update

The facilitator -Carole Waiganjo introduced the Agenda 4 by putting it in simple terms noting that it was all about reforms in government institutions. The reforms include: Constitutional Review Process, Police Reforms, Judicial Reforms, Electoral Reforms and addressing the issues of youth unemployment.

Constitutional Review Process

The participants pointed out that they needed someone to walk them through the draft constitution as they had scanty understanding of the document. They undertook to ensure that they read the draft ahead of the referendum.

There were some who did not have access to the document while others had only read it partially.

Carole noted that the views of the population were collected and forwarded to the Committee of Experts (CoE) for considerations. She noted that it is unfortunate that the views of the participants were not among those that were included as they had several complaints about the review process. She also explained the role of the Parliamentary Select Committee that met in Naivasha to make some deliberations on the draft constitution. She said that the PSC took into consideration a number of views but these did not touch on contentious issues.

Views concerning crucial issues were not considered. Concerning women and constitutional review, Carole explained that a clause giving women equal rights as men before and after marriage (in case of divorce) was struck out from the draft document by the PSC and this was an indication that women's rights did not rank high on their agenda. This clause would have prevented men from oppressing women and it would also empower them.

Participants were urged to participate in the civic education that is expected to precede the referendum, and get to understand more about the draft constitution. In this way they shall have the ability to take an informed vote in the referendum.

The way Forward

1. The participants were positive and agreed that they will participate in the TJRC process and will definitely attend the organized sessions.
2. They understood the issues in Agenda 4 especially the on going debate on the constitution review.
3. They will go back to the villages and educate the women they left behind on what they have learnt

INTENDED OUTCOME

- ✓ Comprehensive workshop reports in the six districts covered under this project
- ✓ Views from the Communities on the harmonised draft
- ✓ Recommendations agreed upon and submitted to the COE and PSC

Conclusion

The struggle for women's rights has been for decades with notable achievements, the gains within the Draft Constitution are evidence of better days to come if it's accepted at the referendum. Women support the Draft Constitution and will not relent in creating awareness on the need for the long over due constitution.