

KENYAN WOMAN



AWC

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Reviving momentum on gains

...By Joyce Chimbi and Jane Godia

Issues of importance require urgency as was illustrated by the women's meeting organized by the Urgent Action Fund Aid Africa on February 9 and 23.

These meetings have been a part of a series of other such gatherings with a common agenda to ensure that what has generally been considered as women's gains is not lost in the heated temperatures rising around the review of the Harmonised Draft Constitution.

There have been a number of meetings that have called for urgent action. Such notable meetings have included women organizations holding a forum with Minister for Gender, Ms Esther Murugi Mathenge, a day before they met with the Kenya women parliamentarians who included those sitting on the Parliamentary Select Committee.

The women who are worried that they are going to lose ground on what they term as their gains have regarded the Harmonised Draft as the best attempt in enshrining women's empowerment measures within the Constitution.

The minister asked the women to go beyond Nairobi so that women in the grassroots can also understand and participate in the review process. "In sensitising wananchi, we must lobby our women so that they understand our issues," Murugi said. She added: "The grassroots women must be brought on board by all women's organisations."

The same sentiments were echoed in the meeting with KEWOPA where women agreed to revive momentum on gains and in keeping the fire burning by lobbying from all fronts.

They were warned that there is a strong brotherhood out there that goes on across all parties and it was therefore important that the threads of sisterhood are kept tight.

Nominated MP Ms Sophia Abdi Noor, who is also a member of the PSC told the women that they must go to the villages so that they are together with the other women and to enable them read from the same page.

Noor said: "As a strategy you must mobilise the women at grassroots level so that they are able to engage the MPs at that level."

The meeting with the MPs came after the one of the women's organisations dubbed "Meeting on the Parliamentary Select Committee (PSC) Harmonised Draft Constitution" that was inspired by the need to facilitate an understanding of the PSC draft which came out of the Naivasha retreat.

This was also the reason why they later met parliamentarians to ensure that,

as women they were all reading from the same page. They also needed an assurance from the Parliamentarians that their issues will be protected as debate on the Constitution gets to Parliament.

The earlier meeting at the Nairobi Safari Club was also a forum to assess women's gains and losses in the PSC draft and more importantly, to consolidate women's voices through a collective strategy as a way of moving the gender agenda forward and to solidify its position in the draft review processes.

According to Ms Catherine Mumma, an advocate, the history of the Constitutional review begun from a very narrow drive for change.

"There was this opposition against particular people amassing power to themselves which led to a clamour for more political space which later set the stage for the demand of multiparty," Mumma told the women gathered at the Nairobi Safari Club.

She explained: "This led to various attempts at reviewing the constitution which saw a failed referendum but with it we have come to see a significant call for comprehensive reforms. This is why we are gathered here, to find out whether the Draft still seeks to address both perceived and actual inequalities."

Since the Draft, as developed by the Committee of Experts (CoE) is bound to undergo various stages of change, there has been overwhelming discomfort within the women's movement with regard to the extent to which these stages may distort or water down the women's gains.

Ms Jill Cottrell, a Constitutional lawyer with a wide knowledge on the Constitutional making process, made a critical presentation that brought into sharp focus certain aspects of the Draft that have changed.

"There is a clear reflection that PSC desired to keep various clauses short, to employ legalese language that may affect interpretation of the constitution among other things," Cottrell told the gathering. "This, therefore, calls for a careful reading of the Draft so that decisions are made from an informed position."

Participants at the meeting, having been taken through various presentations with regard to what the PSC draft has in store for women seemed far from pleased with what they termed as radical changes.

The question of women and their participation in governance has remained a thorny issue with opponents claiming that everyone should compete for whatever seat they would want to occupy.



A maasai woman from the grassroots. "The grassroots women must be brought on board by all women's organizations." Minister for Gender, Ms. Esther Murungi Mathenge

For instance, with regard to the issue of Representation to the Senate, there was a feeling that it was not clear exactly what it is that it is meant to accomplish.

"This will be used as smokescreen where women will be dumped in the name of Affirmative Action but what powers would they have? How would they influence government processes? All this remains unclear," emphasised Ms Deborah Okumu, Executive Director, Caucus for Women Leadership.

She said: "Women want real power because that is exactly what we are fighting for, it is why we are here, to send a strong message and to entrench our voices within this review process."

The question of women and their participation in governance has remained a thorny issue with opponents claiming that everyone should compete for whatever seat they would want to occupy.

Although the review process does not and should not narrow down to the gender agenda, it is impractical not to weigh all the issues contained therein through a gender lens because they touch on people who are either of the male or female gender.

The continued revision of the Draft has nonetheless left many with the feeling that it no longer resonates with Wanjiku's thinking and that the CoE draft spoke more strongly to the Kenyan woman than the PSC draft.

As the women wait to review what the CoE says of the draft from PSC, they have set a date with themselves and are agreed that the fire must be kept burning, visibly and silently to make sure that what they are now holding in their hands is not taken away.

EDITORIAL

Constitution must form the foundation for human rights

This year is important for Kenyans. It will be the year, hopefully, that the country will get a new constitution.

A new constitutional dispensation reflective of their voices will be a score for women, and ordinary men in general, who for the last 20 years have fought hard boardroom, street and political battles for their human rights entitlement.

It will be a new dawn if the economic, social and cultural rights that women want entrenched in the constitution are considered. The Committee of Experts on constitutional review must have realised this inherent entitlement to the rights whose main basis is the various international treaties and conventions, which the country is signatory to.

For years, majority of Kenyan women have resigned to fate because as citizens they feel less valued, unprotected and underrepresented. A best case in point is the women of Samburu who were allegedly raped by British soldiers. The women had to build their own village after they were ostracised. For years, they marched in the streets of Nairobi to implore the government to demand for compensation and an apology from the British government. After fruitless search for justice, the women resigned to fate and chose to get their lives together the best way they knew how. They were left with nothing but to fend for themselves and children their community refused to embrace.

The tales of injustices for Kenyan women are many.

In terms of development at the moment, the best bet for women is the *chamas* (merry-go-round groups) where there is some sort of economic and social relief. These groups are a powerful tool to alleviate poverty, but due to little economic and legal hurdles, most women's *chamas* can never go beyond buying household items.

It is the hope of many women that economically, socially and politically they can grow beyond the *chamas* to form companies that can trade internationally. The economic, social and cultural challenges facing women need to be considered seriously. One way is through entrenching the principals that guarantee such rights.

For example, why wouldn't the law set stiffer penalties for those who circumcise or marry off underage daughters? Why leave such issues that affect the girls' health and development at the whims of chiefs and village elders? Why wouldn't the law also commit the State to cater for women's health to, for example, reduce maternal and infant mortality?

The new constitution must guarantee rights for all Kenyans and especially women who have endured great injustices.

Debate on draft continues

...By Joyce Chimbi

The process of making and reviewing a Constitution is long, bumpy and marred by intense levels of verbal confrontations and disagreements based on choices of judgment and opinion.

When the public was given the Harmonised Draft Constitution by the Committee of Experts (CoE) to make recommendations, there was a general feeling that finally Kenyans had been presented with a document that they could work with, a document that spoke hope for change towards a better country.

This document was regarded as the answer to an improved life for the minorities and the marginalised. The women, youth and disabled among others glowed with satisfaction because they had been specifically and clearly mentioned and their rights were well enumerated.

However, the same cannot be said now particularly after information has continued to trickle down with regard to changes made by the Parliamentary Select Committee (PSC).

It is against this background that a group of Civil Society Organisations convened a meeting with the objective to present a forum to enhance the decision making powers of Kenyans with regard to the Constitution review process.

Safeguarding gains

It was also a forum to strategise on a process to reclaim gains lost through the PSC revisions while safeguarding the gains. But also to expand a campaign which has been inspired by the need to promote the participation of all Kenyans in the all important process.

The campaign, which runs under the banner "Katiba Sasa" is meant to agitate for the success in achieving a document that can govern Kenyans based on principle and within this period because it has been over 20 years since the clamour for a new Constitution begun and many are now feeling that this is a make or break review process.

"However, 'Katiba Sasa' doesn't mean just any Constitution, it means a Constitution that responds to our needs and has clear checks and balances," expounded Mr Kawive Wambua, from the Civil Society.



Women delegates to the meeting that compared the Parliamentary Select Committee versus Committee of Experts drafts. (Inset) Mr Tom Kagwe of the Kenya Human Rights Commission

strong gains for women but PSC has in a surprising move watered them down.

"Under the Bill of Rights, the Constitution doesn't guarantee for necessities such as housing, water, food and reproductive health among other things," Maingi-Kimani said.

She added: "The issue of equality within marriage has also been removed which was an extremely significant gain for women."

Enumerates issues

In response to these views and other similar sentiments, the Chair of PSC, Hon AbdiKadir Mohammed said: "It would be beautiful to make a Constitution where everyone is mentioned, a perfect document that enumerates issues as everyone would want them."

He explained: "However, the Constitution is a small document, an elaborate document that is not perfect. We are not aspiring for perfection but for political settlement, for a legal document that is true to the values and aspirations of the

people."

With the issue of PSC having collapsed, the National Human Rights Commission and Gender Commission into the Equality Commission, the Chair made it clear that it was guided by "the fact that everyone wanted their Commission mentioned in the document". He asked: "Why do we have all these Commissions and Ministries that deal with the same issue? A Commission is set up for very special reasons."

He added: "Again with regard to the Bill of Rights, the reason why it appears condensed is, why claim that the State will provide housing, food or water if it cannot." He went to elaborate that "it would be violating the Constitution when in future you claim your house from the government and it is not granted".

Although there is a clear disparity of views, it was a necessary forum for Kenyans to progress the review process in a manner that is constructive to the Constitution making process.

Our views have been ignored, women say

...By Wanjiku Mwaura

Women are saying the Revised Harmonised Draft Constitution did not include their views especially on political representation, social, economic and cultural rights.

They say the Draft by the Parliamentary Select Committee on constitutional matters has set aside issues of concerns that Kenyans have fought for the last 20 years to.

While agreeing that the country has waited for far too long for a new Constitution, they say Kenyans' struggles for equality, justice, peace and development should be taken into account while drafting the new laws. The women leaders say the basis for initiating the Constitutional Review process was informed by the fact that there was need for change.

"The aftermath of the 2007 General Election has made the urgency for this change more evident," say the women's leaders who come from various organisations.

The women who have joined together from what was initially the G-10, and have mutated into a bigger grouping say the Constitution should not be vague on protection of all persons including social and cultural rights. They say the rights of Kenyan women including reproductive health rights must be fully recognised and guaranteed by the new Constitution.

Legal recognition

In the PSC Draft, there is no specific entitlement to these rights even though the Government is a signatory to many treaties and conventions that call for legal recognition of such rights. They have raised concern that Affirmative Action principle has been thrown through the window by lumping women, who are the majority, in the category of marginalised communities.

They say the proposed power devolution does not adequately address the political representation imbalance that has been the norm since independence. On political representation the women want a 50/50 representation at all levels of leadership and decision-making. They also want the new Constitution to entrench the one third minimum representation by women in any elective body including those at the local government level in Parliament and the Senate.

There are also concerns that the issue of Governance has been trivialised in the PSC draft. "The provisions on Affirmative Action in the Draft by the Committee of Experts should be upheld and not be interpreted as favour to women or any group."

Speaking at a meeting that sought to clear any grey areas that might be in the Constitution, the women say: "It is a principle and a right to correct historical imbalances in the Kenyan society between men and women in terms of representation in leadership and decision-making structures."

As a way forward, they are calling for entrenchment of international and regional human rights instruments that provide for the basic rights of citizens and protect them from all forms of discrimination and human rights abuses. They say that once the government signs an international instrument, ratification should be automatic. This, they say, must be entrenched in the constitution as was proposed in the CoE harmonised draft.

This means, political parties should fund their candidates and at the same time declare their sources of campaign money. Urgent Action Fund Executive Director, ms Jessica Nkuuhe says women need to speak in one voice and penetrate new spaces to rally other Kenyans to join the new push for a representative constitution.

She says women need to be heard as a single entity. "That way, the issues we are putting to fore will be heard and entrenched in the constitution," she says.

What do the numbers mean for women?

...By Wanjiku Mwaura

Politics is said to be a game of numbers. Since independence numbers have been elusive for women. So far, the Tenth Parliament has the highest number of women — 22 — elected or nominated.

The Eighth and the Ninth Parliament ended with little promise for Affirmative Action for women. A bid to pass a 50/50 sharing of seats was defeated in the Ninth Parliament. And so was the bid to entrench the 2/3 principle.

The third attempt to review the Constitution has brought to fore the principal of Affirmative Action and the State's commitment to ensure equity in political representation of all Kenyans.

On the face of it, the proposed devolution of power and increase in number of constituencies to 290 may seem as a better fighting chance for women in the political arena.

But legal analysts say the proposed structure where there will be a Senate with 47 representatives, with women's slots being 16, from different counties is

not a guarantee for fair presentation.

The article on principles of devolved government says: "Not more than two thirds of the members of representing bodies in each country government shall be of the same gender."

Does it mean, for example, if say 30 women are elected in the counties the election shall be nullified?

Women leaders say the Revised Harmonised Draft assumes there is no inequality in the current political representation and that elections are always free and fair.

"If the proposed devolution is adapted, what happens if few women are elected to Parliament in the next General Election?" poses Ms Rebecca Kitana of Women Empowerment Society.

She says there is no assurance either that women will participate fairly even in the elections for the Senate seats.

This is because political parties will be involved in nominating the women to take part in Senate elections. Though there will be an opportunity for independent candidates, with the current political setup, it is unlikely such aspirants will have a fair chance.

The Senate as envisioned in the Revised Harmonised Draft will be inferior to Parliament. "This means even if, for example, all counties pick women as their representatives, there will be little political impact," says Ms Catherine Mumma, an advocate at the High Court. Then she poses: "Where on earth is Parliament superior to the Senate?"

The same provision of numbers is made in parliamentary representation.

The Revised Harmonised Draft Constitution states that the National Assembly shall consist of: "Forty Seven women each elected by the counties; each county

Success of women should not be measured by how many seats, but by what it means to women across the board.

Constitutional protections weakened

...By Ajiambo Akelloh

The legal terms in the Harmonised Draft Constitution mean very little to Ms Lillian Ngaira. However, what Ngaira would like to know is whether the government will guarantee her children access to free education, health, food, water and security.

"I walk for so many hours every day in search of water. . . getting food is a struggle and these are the basic things that pre-occupy my mind. My children are now in primary school but I hope by the time they reach secondary school they will have access to free education because my husband and I cannot afford to pay fees at that level," Ngaira says.

The drafting of a new constitution will only be marked as a milestone if Ngaira is guaranteed that through this legal document, the government will be expected to ensure her children can access education.

However, if the Parliamentary Select Committee (PSC) is to have its way, Ngaira and her family may never be able to hold the government accountable with regards to ensuring they have access to their basic human rights.

The PSC watered down the language in the draft by the Committee of Experts (CoE) that guarantees these rights, living the onus of ensuring provision of the same to Parliament.

According to Ms Grace Maingi-Kimani, acting Executive Director, FIDA-Kenya (FIDA), the PSC Draft seriously weakens constitutional protections for economic and social rights.

"What the PSC did is consolidate into one article the freestanding rights to social security, health, education, housing, food and water as they were elaborated in the CoE Draft," explains Maingi-Kimani. She adds: "It then frames these rights solely in the context of progressive realisation, stating that the 'State shall take legislative, policy and other measures, including the setting of standards to achieve the progressive realisation of the rights of every person to' these rights." This has weakened the contents of these rights.

The PSC further removed the provisions which would allow oversight and accountability for ensuring it meets its obligations. It also deleted the clause on the freestanding right to information and

other clauses which would guide an accountability body in determining whether the government is complying with its obligations.

Lawyer Catherine Mumma argues the wording in the draft by the CoE should have been maintained to ensure Kenyans are guaranteed these rights and there are oversight bodies to hold the government accountable on provision of the same.

"Some of these fundamental rights are provided for by international legal instruments which Kenya is signatory to. By removing these rights, the PSC is showing a general fear around recognising international legal instruments that the country has ratified," says Mumma.

The Coalition on Economic, Social and Cultural Rights has also castigated the PSC for removing these rights and urged the CoE to reinstate them in the draft. They argue these rights must be entrenched in the constitution to guarantee citizens' the right to health, education, housing, food and water.

Ms Priscilla Nyokabi, Executive Director Kituo cha Sheria says entrenching these rights would in turn obligate the government to ensure equal provision to all citizens.

"Should the Constitution state that every person has the right to these services, one can enforce the right where they are not provided. For instance, the Constitution should clearly state that all citizens are entitled to adequate health-care. A policy would then be produced to stipulate how this will be achieved," she says.

The argument by the PSC that the rights can be adequately provided for by Acts of Parliament has been met by scepticism with pundits arguing members of the August House cannot be trusted. In its Draft, the PSC mentions these rights but leaves it for Parliament to come up with policies for their provision.

The PSC removed details on the rights provided by the CoE saying that they were not necessary in the Constitution. They argued that the supreme law should comprise of basic principles and not details.

However, Kimani says Acts of Parliament are not sufficient safeguards to guarantee these rights. "You cannot leave basic rights to the whims of individuals in Parliament. You need to have them where they belong so that failure to provide them, people can move to court and enforce them," she argues.

Mumma says economic and socio-cultural rights are problems that the common woman residing in West Pokot, Turkana and other parts of the country face everyday and the constitution must adequately address these problems.

The PSC Draft eliminates language that 'every person has the right to social security' which affirms state obligation to provide appropriate social security to persons unable to support themselves or their dependants.

The right to health is also tampered with by eliminating language which specifically elaborated that 'every person has the right to health, which includes the right to health care services, including reproductive health care and that no person may be refused emergency treatment'.

The PSC Draft also eliminates language that 'every person has the right to education' which affirms State obligations to institute programmes to implement the right of every child to free and compulsory pre-primary and primary education as well as take measures to make secondary and post-secondary education progressively available and accessible.

Other rights whose language has been changed include housing, food and water. The PSC Draft further removes the language that would ensure government accountability for progressive realisation.

With the removal of such rights, Kenyans are most likely to be abused by a few individuals out to satisfy their own whims.

"You cannot leave basic rights to the whims of individuals in Parliament. You need to have them where they belong so that failure to provide them, people can move to court and enforce them."



A woman hawking oranges to make a living. Many women are hoping that the Constitution will take care of their basic needs.

Bill of Rights falls short of expectations

...By Wanjiku Mwaura

Women are raising concerns over the redrafting of the Bill of Rights in the Revised Harmonised Draft.

The say the Draft by the Parliamentary Select Committee does not bind the government to the principals it has promised to uphold.

The provisions as envisioned in the Revised Harmonised Draft, women leaders say, does not create entitlement to the stated rights. Many gaps have been left out especially in regard to economic, social and cultural rights.

Legal experts say the PSC Draft departs from the initial version by creating a differentiation between first generation rights (political and civil) and the second and third generation rights (social, economic and cultural rights).

The decision, they say, has introduced a hierarchy between these traditional categories of rights. The PSC Draft is not specific and doesn't give the entitlement to every Kenyan.

"The State shall take legislative, policy and other measures to achieve

the progress realisation of the rights of every person," reads Section 40 in part.

If adopted the way it is, the Bill of Rights in the Revised Harmonised Draft will be a step in the wrong direction. According to Mumma, in an attempt to edit Bill of Rights chapter, Parliament made them vague.

Her views are supported by Ms Maimuna Mwidau, Executive Director League of Muslim Women of Kenya. She says: "They watered down the entitlement to economic, social and cultural rights." Eunice Mwangi from Mathare also agrees and says: "All along, the call for constitutional review has been to bring change, thus PSC's revision of the Bill of Rights is an affront to ordinary Kenyans."

According to Ms Jill Cotrell, a constitutional lawyer, during the CKRC and Bomas period people were motivated by desire for justice and inclusiveness.



Ms Jill Cotrell, a constitutional lawyer.

"The PSC changes mark the last phase in a shift to a less open approach. Politicians are very suspicious of the people. This is the reason they, for example, watered down the Recall Clause.

The PSC Draft maintained the clause but also gives Parliament powers to decide when an MP can be recalled," she says.

There is the feeling it is unlikely any MP will lose their seat because of under-performance.

Women leaders are also concerned that diversity in gender has been thrown out in the preamble of the PSC draft. Part of the PSC Draft preamble reads: "We the people of Kenya are proud of our ethnic, cultural, religious diversity..."

The Draft by the Committee of Experts had included gender diversity.

This, women say, shows misunderstanding of gender as implying women.

"I read suspicion. It shows politicians do not think women's concerns should be addressed in the Constitution," says Mwangi.

They say the affirmative clause in article 26 on equality and freedom is tempting, but it gives no guarantees to women. It states: "... the State shall take legislative and other measures, including but not limited to Affirmative Action programmes and policies to redress suffered by any individuals or groups as a result of past discrimination."

Women say the Affirmative Action principles should be specific because the statement is vague. They also say the provision in the PSC Draft that any person can seek legal redress if 'they so feel their rights have been violated' is an empty assurance.

"It is a fact women are discriminated against especially in political representation. Can you envisage a case between women of Kenya and the State?" poses Ms Rebecca Kitana of Women Empowerment Society.

Kitana says the safer bet is to have clear entitlement enshrined in the constitution.



Members of the Parliamentary Select Committee in Naivasha. The proposed system of governance by PSC will be at mercy of central government

...By Duncan Mboyah

The Parliamentary Select Committee's (PSC) proposed amendments in the revised Harmonised Draft Constitution are unfair to and are aimed at weakening the participation of women in devolved governance units as proposed in the Committee of Experts draft.

The proposed amendments as arrived at in Naivasha have rendered the proposed devolved system weaker leaving it at the mercy of a strong central government.

"From the look of things, if these amendments are included in the final draft constitution, the government will cease from being a government of the people by the people to a government of the few," says Ms Maimuna Mwidau, Executive Director of League of Muslim Women of Kenya.

Mwidau says Kenyan women prefer the devolution as captured in the original Committee of Experts draft because it had clear provisions on women's representation, right from the national to the grassroots level.

The CoE draft had established three levels of devolution — national, regional and county — with well defined processes for women's representation. These levels were, however, reduced to two by the PSC during the meeting in Naivasha.

Two chambers

At the national level, representation was to be through a two chamber parliament — Senate and National Assembly. The Senate, which was to be the upper house, was to have two women's representatives elected from the regions. With regions pegged at 41, women were assured of 84 seats. The National Assembly was to have at least one woman elected from the proposed 72 counties.

Proposed governance system at mercy of central government

Further the CoE draft compelled Regional Assemblies to take cognisance of ethnic and other diversities, including gender represented in the region, while political parties had to ensure County Assemblies had no more than two thirds of membership from the same gender.

But while in Naivasha, the PSC removed regional government as the second level of government in a decision that has solidified the long held stereotypes against women, while a new provision limiting women representation in county governments was also inserted.

And as if that was not enough, the deletion of the word devolved and addition of the word 'council' on the county irked crusaders of women's rights, who argue this proposed system of governance borrows heavily from the existing county councils that do not come anywhere near devolved governance.

County councils as enshrined in the current system are known not to serve women well as units of representation. They are purely masculine and have a singular characteristic of undermining women participation.

The women are concerned that PSC proposal to remove regional governments was a vague way of dismissing women from representation in the Senate as suggested by the CoE.

The women hailed the devolved system of government as the way to go because it entails the equitable sharing of national resources unlike the present situ-

ation that has not only isolated some regions but at the same time favours some regions over others due to political gerrymandering.

Political affiliations

Arguing that women make over 51 percent of the total population, the women lauded the CoE Draft which they said was, for the first time since independence, more responsive to women needs. They said the draft provided leadership opportunity to women in all regions of the country irrespective of their cultural backgrounds and political affiliations.

Ms Catherine Mumma, a legal consultant faulted the PSC draft for failing to indicate the exact quota of women's seats in the 349 earmarked parliamentary seats.

"The fact that the clamour for a new constitution has been going on over the last 20 years is reason enough to include all stakeholders views for the sake of peaceful co-existence of all citizens irrespective of gender and tribe," Mumma said.

The women are concerned that PSC proposal to remove regional governments was a vague way of dismissing women from representation in the Senate as suggested by the CoE.

She noted that the success of the long overdue new constitutional dispensation will be measured by how its contents relate to Kenyan women.

Mumma questioned the rationale behind the removal of the provisions relating to the composition of the Senate in the CoE draft.

Where the CoE had proposed the Senate to consist of two women elected from each Region, the PSC revised draft proposes the membership of the Senate shall consist of 16 members all of whom shall be women, elected in such manner as may be provided by legislation.

It is not just that the numbers have been reduced, but it leaves the fate of the proposed Senate at the mercy of the selfsame male dominated parliament that has traditionally undermined attempts to empower women.

Similarly, under the PSC arrangement, the Senate has been downgraded. It is the lower house with no legislative power. Worse still, it meets only four times in a year.

"The PSC has used the Senate as a ground to dump the gains women have painfully and painstakingly made for a long time through intense lobbying," Mumma argued.

Amend the draft

Ms Jill Cottrell, a law lecturer, said the PSC proposals had left people more confused than ever. "The proposals on the Senate have left people with no idea of how women members will be elected to the House," she reiterated. However, she advised women against using the Judiciary to stop the process and instead encouraged them to consider putting up a strong lobby that will help them amend the draft through Parliament in future.

The women lamented the reduction of number of membership in the PSC proposed Senate to 47 from the CoE's proposal of 97 representatives.

Agnes Leina, a women's leader from Samburu lauded the CoE Draft saying never before has the system of governance been taken to the people.

"Even though the draft has been diluted by the PSC, it is slightly better as it includes decentralisation of resources under the aegis of devolution," Leina argued.

Lamenting that women have been slaves for many years, Leina told the meeting that this slavery is bound to end with a new constitution because women too will be allowed to own property.

Affirmative Action should be given its rightful place

...By Joyce Chimbi

One of the most misunderstood principles with regard to the fight against gender inequality and its subsequent social injustices is the concept of Affirmative Action.

Many have dismissed this ingenious tool to correct marginalisation of a certain gender in key social, political and economic processes labelling it as feminist.

This grossly misunderstood principle is actually a policy inspired by the need to promote equal opportunity and its focus ranges from employment, education, health as well as various other social needs. All aimed at addressing real injustices in the society.

Although the issue of Affirmative Action has been around for years and its momentum fuelled by various international women conferences such as the Beijing Conference, it has recently gained even more momentum due to its

inclusion in the Harmonised Draft Constitution.

In regard to the chapter on the Bill of Rights and fundamental freedoms, the section touching on Equality and freedom from discrimination, Clause (26) states that "To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including but not limited to Affirmative Action programmes and policies, designed to redress any disadvantage suffered by individuals or groups as a results of past discrimination."

This Clause holds no undertones of seeking to favour one gender over the other as it has been consistently misconceived. Whether it is the male gender that is perceived to be disadvantaged or the female gender, the principle should apply.

"It has always been said that Affirmative Action is a way of making it easy for women while they should be out there battling it out with their male counter-

parts, but look at history," says Ms Mary Wanja, a social worker.

She explains: "Women have been boxed into traditional roles of bearing and rearing, and generally raising families as men go out to conquer the world. Now that things have changed and it has become necessary for all to share in the national cake, men want to hear nothing of it even though for years, they largely had it all to themselves."

Lucrative business

Her remarks are echoed by the Executive Director, Urgent-Action Fund Aid Africa, Ms Jessica Nkuuhe: "With the situation as it is now, unless women's seats are guaranteed under the Affirmative Action principle, women can never hope to get into the 290 seats to Parliament." She adds: "Being an MP has become a lucrative business, people will do anything to get seats, women need this consideration."

Although many, particularly those that

are gender sensitive, have received the inclusion of Affirmative Action into the Draft positively, there is a feeling that the principle needs to be time bound or else at some point, the underprivileged gender will surpass the privileged, further violating the very same policy that is meant to facilitate equal opportunities for all.

As it appears in the Draft, the principle is not bound by time and may lead to reverse discrimination. Opponents of the principle have always argued that this policy promotes unequal opportunity by paying attention to one gender while totally ignoring the other. However, the situation as it is remains very clear.

"There is need to employ certain measures for women to stand on a level ground with the men in every field. It has been happening in the education system where girls are allowed slightly lower points compared to the boys during admission into certain fields in public universities, the principle needs to spread to other sectors," Wanja expounds.

Even so, there is need to bind this principle within a certain timeframe else at some point, the male gender will be in need of the same principle in future. The principle is not, as has been argued by its opponents, a strategy to 'fix' the male gender but a way of expanding the social, economic and political context to offer equal room for growth for all. It is basically an equaliser.

Looking at the Kenyan parliament for instance, in all the 47 post independence years, the highest number of female parliamentarians is the current 22 which rose from 18 in the previous house. Of the 18, only ten were elected and the rest nominated. Of the 22, 18 were elected and four nominated pitching them against 200 other male parliamentarians and we still believe there is no need for Affirmative Action?

This is a question that must be answered as the country rewrites its Constitution to avoid further inequities and inequalities.

Raising stakes over leadership roles

...By ROSEMARY OKELLO

As Kenyan women are trying to redefine the perception of women's leadership through the proposed draft Constitution, there have been more questions than answers on whether the leadership of women, which has been built on the women's movement, is being seen as women's leaders or women leaders.

The question begging, therefore, is whether leadership is collective or singular?

This notion became apparent when a group of women leaders from the various women's organisation recently met to deliberate on the nature of women's leadership in Kenya and whether their kind of leadership is being recognised at policy level.

Multiple roles

Using various symbols to illustrate the way women look at leadership, Ms Deborah Okumu, Executive Director Caucus for Women's Leadership picked the symbol of a ball and set the tempo: "A ball unleashes the potential of teamwork, and supports initiative. It also represents competition and represents competing priorities of women's multiple roles. The goal represents the ultimate achievements women are striving for."

Next was Ms Wangechi Wachira of the Centre of Women's Rights and Awareness (CREAW) who picked a leaf: "Kenya has gone through a period of drought and now we are experiencing positive weather. What can we do as women to ensure surplus and a store of surplus to tide us over in the times of want? Women carry the responsibility of feeding their families."

Then Helen Otieno from Women Fighting AIDS in Kenya (WOFAK), picked an adaptor as her symbol and said: "An electrical adaptor, one side is locked the other side is unlocked. The lock speaks to the hindrances that are barriers to women advancing into leadership. They need to be unlocked."

Real strength

While Ms Jessica Nkuuhe, Executive Director Urgent Action Fund, illustrated women's leadership using a heart. "A heart shaped carving is a symbol which can be used to show how women tend to lead from the heart. People think this is a weakness but the fact is it is real strength."

Nkuuhe added: "It does not mean that a woman does not use her brain — the heart and brain are not mutually exclusive but are in fact complimentary. At

the same time, many women are over-worked and develop stress conditions on the heart, we need to balance issues and take care of ourselves. Work but also be able to love, laugh and dance."

The women who were perturbed that women's leadership was not being felt where it matters — at the top — attributed some of the challenges to the following issues:

Women are very diverse and this describes women's approach to leadership, yet they are always boxed into thinking their leadership must adopt a masculine approach to be effective.

Women are operating on the periphery — they are always working to "mainstream" their issues. They need to get into the mainstream. They need to strategise and be central in politics so that they have a bargaining chip and not get stuck in lobbying and campaigning to get their issues 'taken on board'.

Women need a new wave, a new movement that is defined by women and that is about women in the centre. They need to organise as a political and social movement.

Political goodwill has been lacking and women are easily divided and distracted by the sideshow issues by those who oppose women's participation rather than caucusing on the main issues. Women don't have a policy framework and they don't know how to convene to actualise a transformative leadership.

Strategising

What is effective leadership by women and how do can they facilitate it all levels.

You cannot have effective female leadership within structures that are tailored along masculinity and patriarchal frameworks. Women must engender the structures even as they talk about engendering the numbers.

Women have not trained people at community to appreciate the gender aspects of governance.

Effective leadership entails fairness, servitude and creating opportunities for others to come through the door. Women leaders have not tapped into women in positions of authority to bring them into the discussions on good, effective leadership.

As women's rights organisations they need to focus on grooming women for political leadership.

Our agenda is reactionary — women need to address what they want, the timeframe they want to see it done and the milestones that is tell them, they are getting there. While remaining responsive to arising issues, women leaders need to have an agenda that they are driving.



Women leaders compare notes at a forum where they were discussing gains in the draft constitution.



"A heart shaped carving is a symbol which can be used to show how women tend to lead from the heart. People think this is a weakness but the fact is it is real strength. It does not mean that a woman does not use her brain."

— Jessica Nkuuhe,
Urgent Action Fund

- Women leaders need to study the Rwanda women's leadership — women in Kenya overemphasise national leadership at the expense of grassroots leadership.

- Women need to focus on the devolved fund; turning the women's movement into an economic powerhouse.

- Women need to match results and actions. They need to ask 'what is the change we are seeing by the actions we take so that we don't continuously do the same thing even when it has ceased to yield results'? Continuous assessment allows for flexibility and will enable women to adapt approaches to the context, need and challenges.

- Women leadership must integrate leadership training into its programmes and start being leaders early in life.

The personal is political, how women engage socialisation and re-socialisation so that at personal levels they are already spreading the message that women are leaders who can lead.

The need for alternative media — the media seems to set the national agenda and issues that are considered discussion-worthy.

Women's work is seldom a part of this unless it ties in directly to a political issue.

- **How do women operationalise these issues and ideas?**

- **How do we meet as women to build a movement and to strategise across thematic areas?**

Institutionalisation of women empowerment — lessons from Rwanda. Despite our intellectualism in Kenya, we have not seen the women's movement significantly affect the political and even community leadership structures. We must ask the question why. Issue-based activism has not yielded much result.

- **What do women leaders need to do differently?**

- **What is our strongest identity — do we identify as ethnic persons then as women?**

- **How do we engage these questions?**

Women leaders need to have an agenda:

- **How will they achieve it?**

- **What do we want to see by end 2010?**

Let us pick one thing, one issue to focus on. Start from there and then align our agendas to the achievement of this issue. We need to identify an issue.

Beyond morality on right to life clause

...By Jane Godia

The inclusion of a clause in the Draft constitution that explicitly states that life begins at conception has rubbed many, particularly women, the wrong way.

Their discontent is built on the premise that the only person who knows the burden of a pregnancy can only be one who has carried it.

Responding to the section on right to life, women leaders emphasised that women could be jailed and or divorced if they lost a pregnancy by being accused of wilfully terminating it.

A meeting of women's organisations and members of the Kenya Women's parliamentary Association (KEWOPA) came out openly fighting strongly that the specific clause on the right to life in the draft

constitution be amended before the document goes into referendum.

Further, the women also accused the church of playing double standards. While the Christian fraternity has been asking that the Kadhi's Courts be removed from the constitution, they are at the same time embodying Christianity in the clause of Right to Life.

Hon Rachel Shebesh said the issue of Right to Life appears to be pitting the church against the women and it seems that the church has won because they managed to have it entrenched in the draft reviewed by the Parliamentary Select Committee.

"Removing it from that document will be a big war," Shebesh said.

The women, who are apparently the largest audience that the church addresses, said that issues of health should not be mixed with issues of morality. They said

those who want to evangelise should not do so within the constitution.

They also asked men not to use women's bodies as battlefields. The women said the issue of right to life with regard to when conception begins is a moral issue that consequently pits the rich versus the poor. They agreed that while a rich woman will easily access services to terminate pregnancy, a poor woman is being restricted by law and will end up going to the quacks for a service that will see her die.

An MP who requested anonymity said what is entrenched in the Draft constitution "will criminalise normal abortion". She said that even the doctor assisting in a spontaneous abortion stands the risk of being prosecuted. Therefore, emphasising that this particular phrase must be deleted from the Draft.

The women MPs asked the women's groups to lobby the minister for Medical Services to put their case forward when the draft constitution gets to Parliament for debate.

The women who had a day before met with the Minister for Gender, Ms Esther Murugi were further strengthened by the Parliamentarians who were with them all the way to life.

Murugi also expressed her support on the issue of Right to Life. The inclusion of this clause on when life begins will not advance the Kenyan agenda in any significant way. "We should instead help our girls not to get pregnant," she said.

"What will they do to those who have been raped and fallen pregnant? Will the government take over the responsibility of being father to that child? Are they punishing women for being

raped?" Murugi posed.

The minister said that at the end of 2008 they collected close to 100 children whose mothers could not abort, but decided to carry the pregnancy from rape in the post-election violence to full term and then throwing the babies in the ditches.

The women agreed that they will engage the church so that they can move away from making the right to life a moral issue.

Reverend Jackson Kosgei, a member of the Gender Commission and coming from the Christian fraternity was shocked at the stark revelations that women gave. He said that he was more enlightened from his meeting with the women and suggested that they needed to educate the religious leaders on the issue. "I hope we can come to a common understanding with a religious angle," Kosgei said.

Reproductive rights remain a mirage

...By Jane Godia

Kenyans women will suffer consequences of untimely death from back street abortions, HIV infection and lack of access to family planning facilities if what is suggested by the Parliamentary Select Committee on constitutional review passes.

As this debate continues, it must be remembered that the Ministry of Public Health under whose docket reproductive health falls has dilly dallied in taking to Parliament the Reproductive Health Bill. The tabling of the Bill was rescinded as it became clear it was advocating for reproductive health rights. Many anti-abortion crusaders termed it an abortion bill.

While the ability to make an informed decision is key to women's empowerment, this may not be realised if the Revised Harmonised Draft is adopted.

Decision making

The patriarchal society that we live in has denied women a choice over their sexual and reproductive health rights. Communities have had more say over the number of children a woman can have without her being involved in making the decision. In the same vein, a woman cannot use any family planning unless she has consulted her husband or in-laws.

This means many women continue to bear children they cannot take care of.

Reproductive and sexual matters may seem 'non issues', but a woman can only make decisions for those she is leading if she is able to make decisions regarding

her own life. The proposed constitution gives no such guarantee; therefore very few women will be able to make their own decisions regarding sexual and reproductive rights.

The World Health Organisation defines reproductive rights as "the recognition of the basic right of couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence".

Reproductive rights also include right to receive contraception and make choices free of coercion, discrimination and violence.

The PSC has apparently opposed proposals by the Committee of Experts that had recognised the right to life.

Kenyan, as per the draft constitution, seem to be far removed from this considering that even culture as a principle has been removed by the PSC. It is clear that culture has been used very many times to violate women's rights and reproductive rights.

The administration of some forms of Post Exposure Prophylaxis (PEP) measures after sexual violence may become unconstitutional. The PSC has forgotten that rape and violation of women sexually has been on the rise daily.

However, with the new constitution as per PSC some forms of contraceptives will become unconstitutional.

The administration of some forms of Post Exposure Prophylaxis (PEP) measures after sexual violence may become unconstitutional. The PSC has forgotten that rape and violation of women sexually has been on the rise daily.

Interpreted negatively

The loosely hanging clause could be interpreted negatively to require clearance of the constitutional court before women are rushed in with ectopic pregnancies or conceptions that turn into tumours are operated on.

Women are in danger, therefore, of having unwanted pregnancies and children or dying from complications. They are also left at the mercy of God that the person who has raped them should not be HIV positive as they will not be able to access PEP and remain at a high level of being infected with the virus.

In the part two of the Chapter on the Bill of Rights, the CoE in Article 35 says of the Right to Life:

(i) Every person has the right to life and (ii) A person shall not be arbitrarily deprived of life.



A mother with her baby. With the proposal in the draft, women may not have much choice over some forms of contraceptives.

The revised draft from PSC on the other hand says of the same on Article 25 (i) Every person has the right to life; (ii) The life of a person begins at conception (iii) A person shall not be deprived of life intentionally except as authorised by this Constitution or any other written law and (iv) Abortion is not permitted unless in the opinion of a

registered medical practitioner, the life of the mother is in danger.

As Kenyans remain at a crossroads over which way to right of life, women will continue dying from unwanted pregnancies and backstreet abortions. Others will be infected with HIV and with no recourse to PEP because the law has failed them on sexual and reproductive rights.

Death beckons as abortion remains outlawed

...By Ajiambo Akelloh

The debate on the right to life goes on as the women review the parliamentary select Committee verses the Committee of Experts Draft.

The question begging has been to qualify when life actually begins. However, an amendment pressurised to what was contained by the CoE to read, 'life begins at conception'.

While it is appreciated that for the first time abortion is being discussed openly including with the faith-based organisations, it has as per the PSC, been outlawed in the constitution.

"The draft from the CoE was a progressive document that had solid human rights protections for women. However, what has been reviewed by the PSC has resulted in the reversal of these fundamental human rights which do not reflect the values of the Universal Declaration of Human Rights," says Prof Joseph Karanja, an associate professor at University of Nairobi.

Despite Kenya being signatory to international instruments that guarantee the right to health, the PSC has created a forum that will ensure poor women and teenage girls do not turn to the services of quacks to procure abortions.

"Despite the current law restricting abortion, the rich who wish to terminate pregnancies have access to the safe services. It is the poor women and teenage girls of this country who continue to die at the hands of quacks," says Karanja.

Following the successful lobbying by religious groups, Article 25 still protects life, but life is now defined as beginning at conception. The Article further outlaws abortion. Phrases in the draft that were guaranteeing the right to health care, including reproductive health care, and that no one may be refused emergency medical treatment, were also purged from the draft.

This move has been termed retrogressive and a silent war waged against women of Kenya by denying them their reproductive health rights.

Access to choice

Ms Grace Maingi-Kimani, acting executive director FIDA-Kenya says the PSC document will serve to limit access to choice for women and girls who are raped and end up pregnant.

She questions the rationale of the PSC making such an amendment in the stark reality of increased statistics of sexual violence in the country and cases of incest and child abuse.

"The PSC was not thinking about the women who were raped during the post-election violence and young girls who are abused by their teachers as well as those who are expected to care for them," Kimani says.

Ms Catherine Mumma, a legal consultant says the amendments by the PSC create room for mischief that could see Kenyan women denied their right to access reproductive health services including family planning services to space births.



in the case of spontaneous abortion, two people may be taken to court for murder, the woman who miscarries and the doctor who assists in cleaning up the products of conception.

"The definition of right to life can be manipulated to adversely affect the lives of women of this country. The definition that life begins at conception is a hanging statement that leaves room for a myriad of interpretations," says Mumma.

She adds: "The statement that abortion is not permitted is also hanging and could lead to mischievous moves such as denying women the morning after pill or post exposure prophylaxis which are administered in the case of rape to prevent pregnancy and protect against HIV infection."

Ambiguous phrase

Mumma says that the ambiguous phrase could be manipulated to deny women access to family planning services and may deny those who require treatment in the case of ectopic pregnancy leading to death.

According to Dr Otieno Nyunya, chair of reproductive health committee of the Kenya Medical Association, the current wording of the draft may cause doctors to deny women life saving treatment for fear of being arrested and charged with murder.

"Doctors have had a free hand in providing the needed care to women with medical conditions such as ectopic pregnancy which is a very common condition and is considered a medical emergency," explains Nyunya.

He adds: "Should the draft constitution go as it is now (where results of conception are accorded equal rights with a person) and become law, medi-

cal people will be liable for murder for intervening and treating these diseases," Dr Nyunya warns.

He adds that in the case of spontaneous abortion, two people may be taken to court for murder, the woman who miscarries and the doctor who assists in cleaning up the products of conception. "They will have failed in protecting the rights of the conceptus," he says.

Those opposed to the rewording of Article 25 state that the problem with protecting life at any stage before birth in a constitution, is it may hinder women's access to abortion, even when her life is at risk. It could also limit a woman's ability to use certain contraceptives, like the Inter Uterine Device or emergency contraceptives as such mechanisms could be interpreted as interfering with life, as defined in the constitution.

Prof Karanja argues a constitution is not a place to regulate medical procedures.

Abortion is already illegal in Kenya except in the case where it is necessary to save the life of the mother and two doctors have to certify this fact. However, despite this, abortions continue to be procured in the country majority of which are unsafe done under the hands of quacks leading to the deaths of many women.

Statistics show that 316,560 spontaneous and induced abortions occur in Kenya annually. Nearly 21,000 women are estimated to be admitted each year to public hospitals for treatment of complications from incomplete abortions, either spontaneous or induced.

Who are the marginalised? Women ask CoE



...By Wanjiku Mwaura

“We have been lost in the legal jargon.” This is the feeling women have in connection to the Bill of Rights in the Revised Harmonised Draft constitution.

In a meeting held by various organisations to assess the losses and gains in the Parliamentary Select Committee (PSC) Draft, women expressed disappointment at the fact that they continue being lumped together with the marginalised and vulnerable groups, who are vaguely described in the PSC Draft.

The meeting held under the auspices of Urgent Action Fund brought together the Federation of Women Lawyers of

Kenya (FIDA), Women Empowerment Society, Coalition of Women Against Violence (COVAW), FEMNET, African Woman and Child Features Service, Caucus for Women Leadership, Centre for Rights Awareness (CREAW), Development Through Media and League of Muslim Women among others.

The Revised Harmonised Draft lists marginalised and vulnerable groups as; women, children, older persons, persons with disability, marginalised communities, the youth and all other citizens in the political, social and economic life of the nation.

Various speakers in the meeting noted that such categorisation has been in the Constitution since independence. That, they said, has ensured nothing has

been done to uplift the political, social and political status of the so called marginalised groups.

“Who are the marginalised?” posed Hubbie Hussein, executive Director Womankind, from Northern Eastern Province.

According to Hussein, the Revised Harmonised Draft does not elaborate who the marginalised and vulnerable are.

“From a quick glance, it means everybody is in that group,” she said.

Different interpretations

Giving a legal interpretation of the Harmonised Draft Constitution vis-a-vis the PSC draft, Ms Catherine Mumma, an advocate of the High Court, said the language used could be open to different

interpretations. She agreed the current categorisation of marginalised and vulnerable people is vague.

Dhadho wondered how for example ‘special seats’ would be shared out within this categorisation.

She pointed out that the region and some parts of Eastern Province have for a long time been referred to as marginalised but little has been done to uplift the economic and social status of people living in those areas.

“Women in these areas face many challenges from early marriages and circumcision with little or no access to health care and poverty,” she said.

In the current scenario, she said, women in this region are unlikely to enjoy the rights guaranteed in the Constitution.

“It is true, a big percentage of women in Kenya are marginalised and vulnerable, but situations in different parts of the country are different,” she said. Consequently, she observed, such factors should be considered.

Her sentiments were supported by Ms Maimuna Mwidau, Executive Director of League of Muslim Women of Kenya. “Unless the Constitution recognises economic and cultural rights, listing groups under marginalised and vulnerable people will do nothing to change the current scenario.”

The women’s groups want the Committee of Experts to revise the language and say in specific terms who the marginalised and vulnerable groups are.

Draft retrogresses on culture

...By Jane Godia

Culture plays a very important role in our lives as it determines our way of life. This way of life can be progressive or retrogressive. For the women of Kenya culture has mainly been retrogressive due to our male dominated social setting.

The patriarchal social setting is indeed part of our culture which consequently makes it difficult for women to advance. For instance, Culture has in many communities barred girls from advancing in education and women from engaging in politics. Girls who are not even into puberty have been married to men old enough to be their grandparents with the argument being put forward that this is their culture. Consequently, many men have hidden behind culture to abuse the law.

When initially culture was included in the preamble to the Harmonised Draft Constitution, women were happy that they would be making inroads towards advancing in empowerment from all fronts.

Chapter Five of the Harmonised Draft Constitution looked at Culture as a whole topic. It states in Article 26: “The Consti-

tion recognises culture as the foundation of the nation and the cumulative civilisation of the Kenyan people and communities.”

In reviewing the Harmonised Draft Constitution in December 13, 2009 at the Multi-Media University, women were happy with gains that had been made in relation to culture. The Draft paid attention to women’s rights and recognised that most cultures have barred women from many things including inheriting property or land.

The Harmonised Draft recognised that women must not be discriminated against the background of culture when it comes to land and property. Chapter Seven recognised the issue of land and property. In Article 77, Clause 2 (f) states: The national government shall define and keep under review a national land policy ensuring elimination of gender discrimination in laws, regulations, customs and practises related to land and property in land.”

Commenting on some segments in the Draft, Mrs Rodah Rotino of Kenya Pastoralists Empowerment Forum said: “In the Bill of Rights, the Right of Family will address issues of Gender Based Violence. It



“Reference to customary law was absolutely necessary for women as most violations are related to customary law.”

— Catherine Mumma

must be recognised that many cultures encourage the man to beat his wife and treat her like the children.”

Rotino argued that the diversity of culture and tradition would allow Kenyans to embrace non-harmful practices. She said: “Retrogressive cultures such as Female Genital Mutilation, as well as forced and early marriages will be put on check and more girls will go to school.”

The Millennium Development Goals recognise that it is mainly through education that women are able to get in power and decision making positions. This is why the second goal sets the target of free primary education so that girls are not discriminated against on the background that there is no money to pay their school fees.

It is by going to school that women are empowered to take up political and decision making positions. If culture that fails to recognise women as leaders is not addressed, chances of Kenyan women attaining the required quota of at least 1/3 in elective and nominative position will remain a big dream.

However, there has been a significant transformation in the Draft as revised by the Parliamentary Select Committee

(PSC). The principle Chapter on Culture has been removed from the Draft as a consequence of deliberations held in Naivasha. With the removal of this chapter, women have lost key issues. According to Ms Catherine Mumma, an advocate, the removal of culture from the principles was unfavourable to women as well as Kenyans at large.

Mumma argues: “Reference to customary law was absolutely necessary for women as most violations are related to customary law. The removal of the chapter is an indication that violation is still acceptable.”

The questions women are raising are: “What interests are the politicians protecting. Is it their votes that they are defending? Why are we going back to recognition of cultures that suppress women?”

As women seek answers to these burning questions, leaders from women organisations that advocate for gender rights, held a consultative meeting at the Nairobi Safari Club where they made great emphasise on the need to give culture the prominence that it deserves by enshrining it within the law.

TJRC boss formally takes office

To have a woman appointed to the high office at the Truth, Justice and Reconciliation Commission was a big score. Mid-February saw Mrs Patricia Mande Nyaundi sworn in as the Secretary/Chief Executive Officer of the Truth Justice and Reconciliation Commission by the Chief Justice Evan Gicheru.

Her swearing in at the Chief Justice's offices at the Judiciary in Nairobi was witnessed by the Truth, Justice and Reconciliation Commissioners led by the Chairman Ambassador Bethuel Kiplagat.

Kiplagat said: "We are pleased to formally have Nyaundi on board as she brings with her a wealth of experience in human rights law practice which will be of immense value to our work."

He noted that she becomes one of very few women to hold such a position, underscoring the diversity of and equality within the Commission's structure.

Nyaundi who was until her appointment the Executive Director of the Federation of Women Lawyers (FIDA) Kenya, holds a Master of Laws degree in Human Rights Law from the University of Cape Town South Africa, Diploma in Legal Practice from the Kenya School of Law and Bachelor of Laws from the University of Nairobi.

"I am persuaded more than ever that this country is in need of healing and to do so we must speak the truth and where necessary seek appropriate justice for the victims who are core to the delivery of the Commission's mandate," Nyaundi said.

She reiterated: "Only then can we begin to heal and cease to use violence as a resolution mechanism to every perceived wrong."

As CEO, Nyaundi will oversee the management of the Commission's sec-

retariat and policy implementation to ensure successful delivery of its mandate.

The mandate of the Truth Justice and Reconciliation Commission is to inquire into human rights violations including those committed by the state, groups or individuals. It includes but is not limited to politically motivated violence, assassinations, community displacements, settlements and evictions.

It will also inquire into major economic crimes, in particular grand corruption, historical land injustices and the illegal and irregular acquisition of land especially as these relate to conflict or violence, between December 12, 1963, to February, 2008.

The Commission will receive statements from victims, witnesses, communities, interest groups, persons directly or indirectly involved in events or any other group or individual; undertake investigations and research; hold hearings and engage in activities as it determines, to advance national or community reconciliation.

Parliament enacted the Truth Justice and Reconciliation Act 2008 on October 24, 2008. The Act was assented to on November 28, 2008, and came into force on March 9, 2009.

The Commissioners were appointed by President Mwai Kibaki on July 22, 2009 and sworn in on August 3, 2009.

Members of the Commission are: Ambassador Bethuel Kiplagat (Chairperson Kenya), Kaari Betty Murungi (Vice Chairperson Kenya), Gertrude Chawata (Commissioner Zambia), Ambassador Berhanu Dinka (Commissioner Ethiopia), Ahmed Sheikh Farah (Commissioner Kenya), Tom Ojienda (Commissioner Kenya), Margaret Shava (Commissioner Kenya), Prof Ronald Slye (Commissioner USA) and Tecla Namachanja Wanjala (Commissioner Kenya).



Patricia Nyaundi shakes hand with Chief Justice Evan Gicheru after taking oath of office as secretary of TJRC. Looking on is Minister for Justice Mr Mutula Kilonzo (left) TJRC commissioners look on. She promised that by the end of their tenure, justice shall be seen to have prevailed.

A massacre too raw to be forgotten

...By Issa Hussein

For the women in Garissa town of North Eastern Kenya, the massacre of 1980, commonly known as the Garissa massacre or *Garissa Gubay* in Somali dialect is still fresh in their minds.

It all began when gunshots echoed around the town on November 23, 1980, at around 11.00 pm. This followed the entry of a renowned bandit, Abdi Madhobe.

Madhobe is said to have sneaked into Garissa town killing two businessmen before engaging security personnel in a fierce battle. He later outsmarted them before disappearing into the darkness.

Since he could not be reached to be punished, Garissa residents had to take the flak. Security personnel acting on the draconian law of communal punishment vented their anger on the local community for 'hiding and not cooperating with the government to give vital information on the culprit'.

Hundreds of innocent people were killed and houses torched as mothers and daughters were raped in front of their kin. Property worth millions of shillings were looted and damaged in the operation that had a combined force of the administration and regular police as well as soldiers from the Kenya army.

Men, women and children were assembled at two concentration camps at Jaribu and Garissa primary schools' playground where they were denied food and water with no shade to shield them from the scorching sun for two days.

Fatuma Aden, 51, remembers this



Women in North Eastern Province. In 1980 many people from the region were killed by security personnel.

day very well. "We were beaten for asking for water. They hit us with gun butts and threatened to shoot us. Others would angrily tell us in Kiswahili 'unywe mikojo yako (drink your urine)'."

Aden like many others is still questioning why they had to suffer at the hands of people who were deployed to protect them.

Aden is among the many victims of this brutal incident who are still yearning for justice. They are among a group who are scheduled to meet with the Truth Justice and Reconciliation Commission

(TJRC) when the team will come to Garissa to get views from area residents over the injustices that have been committed against them.

"We were beaten for asking for water. They hit us with gun butts and threatened to shoot us."

Mrs Halima Kadid, now 61 and her five children fled together with her husband to Modikar, about nine kilometres towards the north of Garissa town. They would hide in the bush in the morning hoping that the security personnel will end their inhuman actions.

However, this was not to be as with each passing day their hopes would be shattered whenever they heard the sound of an approaching military helicopter that was combing the area in search of those who fled from the security personnel.

Kadid remembers the military chopper had a submachine gun mounted on as it hovered over where they were hiding before landing next to their hideout. "We were shaking and the children who were scared by the helicopter desperately clung on us as we frantically tried to suppress their cries," she recalls.

"Luck was not on our side as four gun wielding military officers got hold of my husband, Mr Sirat Mohamed, a business man and hit him with a gun butt. They kicked him with boots before he was forced to dangle from the military helicopter as it hovered in the skies and we watched desperately."

Kadid remembers the helicopter vanishing and what she saw last was her husband suspended from the skies. One week later, herders reported a mutilated body with bones crashed and Kadid knew this was her husband since the body could not be recognised due to the impact of the distance from which he was thrown.

Like with many others, anytime you mention the Garissa massacre, Kadid recalls the images of her missing husband dangling from the skies and breaks down in tears. The horrors of that day are also recalled by Hussein Farah Waju who remembers how his pregnant wife Zeinab Ali was shot by a police officer at the Garissa Primary School playground when she insisted on being given water to quench her thirst.

Hussein still gets overwhelmed by emotion whenever he remembers this sad day. The pain gets worse with the fact that the officer who killed his wife is still serving the government. Hussein is, however, optimistic that justice will one day take its course when the TJRC finally comes calling.

Commission sets agenda of national unity

...By Jane Godia

On December 29, 2007 violence erupted in the country following disputed elections. The war took a tribal turn pitting neighbour against neighbour, father against daughter-in-law, brother-in-law against sister-in-law. Many people were beaten, maimed or killed by virtue of the fact that they belonged to a certain tribe, and women were not spared.

The nation was shocked by the image of a woman lying dead on her bed with the baby crying on the floor. But that was sadly one among many.

Scores of women in inter tribal marriages lost their husbands as families got deeply embroiled in politics as those who did not belong were forced to seek refuge elsewhere leaving behind the only place they called home. About 1,000 Kenyans were killed and 350,000 displaced in an unprecedented conflict that dealt a heavy blow to the thread of national unity.

In these dark times, February 28 shone the first ray of hope to a country torn apart by political strife because it was on this day in 2008 that the National Accord was signed bringing an end to the post-election violence. Consequently, this year Kenyans will mark the second anniversary of an agreement that saved the country from massive destruction and loss of life.

The Accord, which many associate with peace, was set up following a national dialogue between the Orange Democratic Movement and the Party of National Unity. A high profile negotiation was chaired by former United Nations Secretary General Dr Kofi Annan that brought the accord into the space of peace. In essence, the National Accord is an act of parliament on the principles of partnership of the Coalition Government, developed to foster national accord and reconciliation, with an aim to provide for the formation of a coalition government.



MZALENDO KIBUNJA: "It is our duty to tell Kenyans that tribe and ethnicity is a resource and they should not use it to kill each other."

With this process came the Agenda Four that was to focus on the much needed reforms.

One of the commissions that came up as a response to the post-election violence was the National Cohesion and Integration Commission (NCIC) which was set up through an Act of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds.

"The NCIC has the duty of creating awareness among Kenyans that they must live together for your neighbour is your sister, friend and not an enemy," says Ms Mary Onyango, vice-chairperson of the Commission. She recognises that stereotyping and ethnic branding was a big problem among Kenyans and efforts were needed to end this strong root of discontent among various communities.

Commissioner Millie Lwanga says at the time of conceptualising the Act that issues of ethnicity and race were key among Parliamentarians as is reflected by their support of the act. "The Act aims to enhance national unity and assimilation as the biggest form of disunity comes

from ethnicity," Lwanga said.

Addressing the media in Nairobi, the NCIC led by its chairperson Dr Mzalendo Kibunja gave a brief of its responsibilities as well as its expectations of Kenyans.

"It is our duty to tell Kenyans that tribe and ethnicity is a resource and they should not use it to kill each other," Kibunja said. He added: "As a Commission we are telling Kenyans that it is okay to belong to a particular ethnic group as it gives you identity and pride but one should not use it to discriminate or victimise others."

Kibunja reminded Kenyans that the national cohesion and integration of this country is a civic duty which must be adhered to by everyone. "We must all live together as there will never be another country that we can call home, this is our home," he reiterated.

It must be remembered that at the time of elections tribe played a big role to the post-election violence. Kibunja further reminded Kenyans that they have to co-exist peacefully as cohesion and integration are a national value that should be upheld by all irrespective of which community one identifies with. However, he acknowledged that changing Kenyans



MILLY LWANGA: "The Act aims to enhance national unity and assimilation as the biggest form of disunity comes from ethnicity."



MARY ONYANGO: "Stereotyping and ethnic branding was a big problem among Kenyan communities."

perception in relation to ethnicity will take a long time and is a process that will involve all Kenyans.

His sentiments are supported by Commissioner Alice Nderitu who said they will be working towards changing existing attitudes and perceptions among the public or what we think about each other and encourage cohesion and integration.

The Commissioners said among other things that they have powers to prosecute as the Act outlaws any discrimination on ethnic grounds of a person or a group of people. Discrimination by way of victimisation has also been outlawed by the Act.

"The Act also outlaws harassment of a person or a group on the basis of ethnicity and this is treated as a violation to that person or group," Lwanga explained.

Section 6 of the Act addresses Harassment on the basis of Ethnicity. It states on 6(1): This is when a person subjects another to harassment on the basis of ethnicity for the purposes of any provision referred to in section 4 (d) where on ethnic grounds, he engages in unwanted conduct which has the purpose of:

a) Violating that other person's dignity, or

b) Creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her.

The Commissioners said hate speech has been our biggest problem and particularly during electioneering period. They laid blame on politicians whom they accused of being the biggest culprits in fuelling hatred. Making hateful remarks, threats and abusive actions have been outlawed by the Act. Hate speech includes using threatening, abusive and insulting words or behaviour or displaying written material.

The Commission is meant to be the watchdog for both the government and public in controlling hate speech. Lwanga said: "The Act allows the Commission to name and shame by publishing names and organisations that may cause disunity. It's not a toothless body."

Kibunja said: "Let politicians know that they cannot just stand at a dais and start making hateful speeches and inciting people."

The Commissioners challenged Kenyans to keep strength in diversity even when "we do not have difficult issues".

The Commission will be visiting different parts of the country including areas where there has been a lot of infighting and also to areas that are quiet because they could also be having issues of disunity.

Commissioner Halakhe Waqo said: "We need full participation of everyone including visitors. The catchment for partnership in this process runs across a wide spectrum and must include religious and affiliated organisations as well as non-government and community based organisations." Although the Commission has an uphill task of among other objectives promoting tolerance and understanding of diversity which has the double effect of promoting elimination of all forms of discrimination on the basis of ethnicity or race, it is required of Kenyans to offer this unit all the support necessarily since it is to every individual's benefit to work towards a united country.

In case of another conflict, women will still suffer

...By Ibrahim Oruko

In the midst of the political apprehension over corruption allegations, the National Cohesion and Integration Commission (NCIC) is calling for calm and asking Kenyans to live together, co-exist peacefully and wait for the political class to sort out the issue.

Dr Mzalendo Kibunja, Commission's chairman, says the latest crisis to the Coalition Government was not a national crisis but an administrative issue that could only be solved through dialogue by the two principals.

"The National Cohesion and Integration Commission is asking Kenyans to live together, co-exist peacefully and wait for ODM and PNU to sort out the current administrative crisis," Dr Kibunja said while addressing the Press at The Stanley Hotel, Nairobi.

While urging national leaders to dialogue and interact constructively, Kibunja appeals to the political leadership to carefully analyse the current situation as the future of the country depends on their conduct and management of socio-political affairs of the nation.

The Prime Minister's move apparently raised political temperatures in some parts of the country. Security forces have been put on a high alert. Extra police officers have been deployed to the north and south rift regions with intensified patrols in Eldoret town especially within areas where people from different communities live.

"This time we are not taking any chances and we are on 24-hour alert to avoid being caught off guard," a police officer in Eldoret was quoted in the media.

Sacrificing lives

In his statement, Kibunja advised Kenyans that they had a responsibility towards each other. He warned them against resorting to violence and cautioned them against sacrificing their lives for the sake of a single political leader.

The renewed tension comes at a time when most of the 350,000 persons displaced in the post election violence — majority of them women — are yet to be resettled.

The rising tension could particularly hit hard women and children as they have been the major victims of the con-



Women displaced in the post election violence dash for cover as police throw tear gas to make them leave the IDP camps. It's hpe that the Natonal Cohesion will help make such scenes a thing of the past.

flict. Hundreds of women and children were raped during the post-election violence.

Evidence suggests that perpetrators exploited the conflict by committing sexual violence with impunity, and efforts to protect or respond to the needs of women and girls were remarkably insufficient.

Most children missed schools and had to repeat classes while gang rape was a means of humiliating women was advanced to high levels.

And while the Nairobi Women's Hospital recorded a two-fold increase in rape cases during that time, the government was totally unable to deliver justice even after the passage of a progressive sexual offence law in 2006.

Political situation

To this day, the risk of rape and sexual abuse remains high for thousands of young girls and women displaced by Kenya's post-election and the current political situation could make matters

worse if the coalition government were to fall apart.

The Commission was established to enhance national cohesion and integration. It offers to facilitate a process of fruitful, constructive and positive dialogue between the people and their political leaders.

As part of its legal mandate, the NCIC is expected to eliminate all forms of discrimination on the basis of ethnicity, promote tolerance and understanding of diversity among other objectives.

Memorandum from the women of Kenya on the PSC Draft Constitution of Kenya

The concerns of Kenyans since independence and in all aspects of life (political governance, economic development, land, use of national resources, access to services and opportunities in the public sector) have always been about breaching the inequalities and the consequent injustices they have caused various sections of the population.

Below are the specific concerns that women would want reinstated in the Draft Constitution. These issues are not contentious and have been common features in all past draft constitutions.

REPRESENTATION:

National values principles and Goals

This is very important for constitution making. The Committee of Experts (CoE) had properly entrenched these under Clause 13. They included key principles that are important for entrenching the culture of facilitating inclusion of vulnerable populations and ensuring equality for women and other marginalised groups. At Clause 13 (2) they had entrenched the principles of

- (i) Ensuring full participation of women, persons with disabilities, marginalised communities and all other citizens in the political, social and economic life of the nation.
- (j) Implementing the principle that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The PSC Draft has recommended the removal of this clause among others. PSC has located this Principle (j) in the general principles for the electoral system and process by (part I) — which talks about systems and processes but does not clearly place responsibility on ensuring the principle is actualised in practice.

Proposal.

We urge you revert to the COE Draft on the above provisions, or reconsider your recommendation.

Composition of the National Assembly

The allocation of the seats in the National Assembly does not respect the principle of no more than two thirds of one gender.

Of the 349 proposed parliamentary seats, only 47 (13.5 percent) are special seats for women, which is below the threshold for Affirmative Action. There is also no proposal on how the one third will be achieved.

Proposal:

The special seats for women are increased to 74, from the proposed 47 to effectively address the principle of Affirmative Action.

Affirmative Action measures are temporary measures that must cease after achieving the expected level of equality and should not be time bound.

Devolution - Public Finance

Chapter 12 (Section 195 (5) of the PSC Draft on revenue allocation from national government to county government, sets a minimum of 15 percent of total national revenue. Even in low income countries, this does not satisfy the threshold for equitable resource allocation and will further marginalise women and other vulnerable groups, defeating the principle of Devolution.

Proposal:

If a minimum is to be maintained, we propose at least 40 percent of the national revenue to devolve to county governments, to adequately address Kenya's development agenda.

The alternative to the above is to leave the criteria for resource allocation to legislation.

Other Issues:

3. Culture

The CoE Draft had helped to indicate what the parameters of culture should include. This is important for women and other marginalised groups because most of the violations they face are done in the name of culture and customary practices.

Proposal

Kindly reinstate the clause as captured in the COE Harmonised Draft.

4. The Bill of Rights

The CoE entrenched the different socio economic rights additional to the traditional civil and political rights, even though this would have been better achieved by outrightly recognising the rights in ratified international human rights instruments. They repeated the government's obligation to domesticate these instruments.

The PSC Draft recommended the deletion of the State Obligation to domesticated International Human Rights Instruments as had been provided by the CoE, deleted the socio-economic rights and relegated to parliament the sole power to decide, through legislation.

Effect — many interest groups will lose on inclusion of their rights — and the opportunity to share in the new constitutional order. Specific population groups have also lost in total; they include emergency populations, children and the elderly.

Further, the PSC Draft removes the provisions which would allow oversight and accountability for ensuring whether the government is meeting its progressive realisation obligations and removing the clauses which would guide accountability body in determining whether the government is complying with its obligations.

Proposal:

The recognition of the rights in ratified regional and international human rights instruments. This will be the greatest gain for all marginalised populations including women.

We insist that the recognition of these rights should not be downgraded to the level of legislation and at the discretion of Parliament.

The Right to Life

Whereas the definition of when life begins does not add value on the provision on abortion, it has the potential of negatively impacting the health of women in certain matters as follows:

Some forms of contraceptives will become unconstitutional.

The administration of some forms of Post exposure prophylaxis measures after sexual violence may become unconstitutional.

Because the sub-clause is not in any way linked to the others in 25 it could be interpreted negatively to require clearance of the constitutional court before women rushed in with ectopic pregnancies or conceptions that turn into tumours are operated on.

5. The Gender Commission

As the women's movement we propose that the Gender Commission be entrenched in the Constitution.

This memorandum has been copied to;

The Chairman and members PSC

Committee of Experts on the Constitution

KEWOPA

Submitted by:

Women in Law and Development Africa-Kenya (WILDAF Kenya), Kenya Women Parliamentary Association (KEWOPA), Development Through Media, Young Women's Leadership Institute (YWLI), The Caucus for Women's Leadership (CWL), Federation of Women Lawyers Kenya (FIDA K), Coalition on Violence Against Women (COVAW), the League Muslim Women Kenya, Action Aid Kenya, Bridge Africa, SOREC, The Women Political Alliance Kenya, Maendeleo ya Wanawake, Tomorrows Child initiative, Women for Justice in Africa and African Woman and Child Feature Service, African Women Communication and Development Network (FEMNET), Kangemi Women Empowerment Centre, The League of Kenya Women Voters, Women Empowerment Society (WES), Centre for Rights Education and Awareness (CREAW), Collaborative Centre for Gender and Development (CCGD) and National Council of Women of Kenya (NCWK) among others.



The Kenyan Woman is a publication of African Woman and Child Feature Service

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Design & layout: Noel Lumbama (Noel Creative Media Ltd)



This paper is produced with support from The United Nations Democratic Funds (UNDEF)