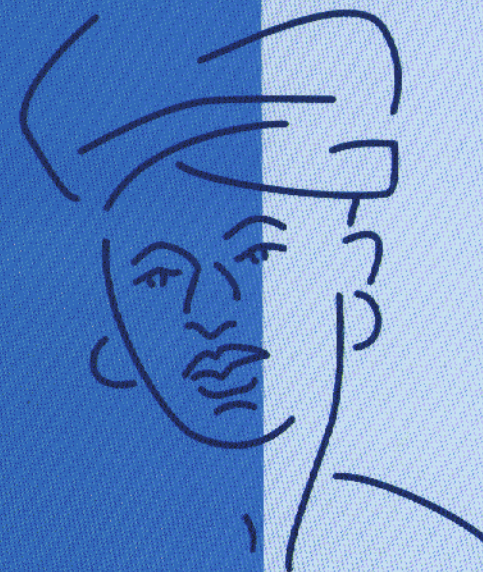


Women's Minimum Agenda for the Constitution

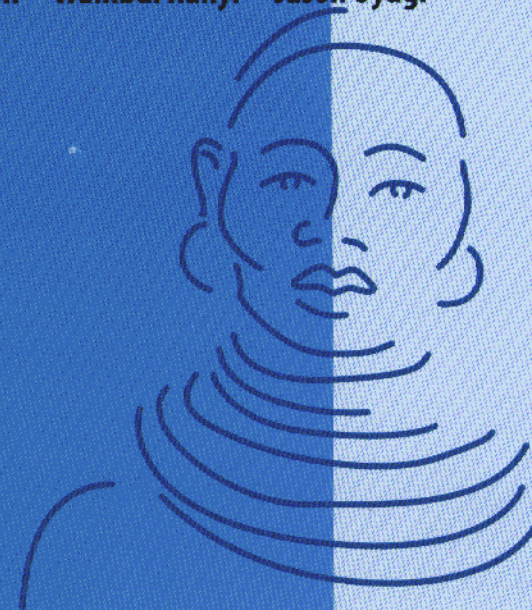
The Constitution review process calls for a people driven approach that will aggregate and integrate views and values held by diverse groups of Kenyans. Women are a part of these groups. A gendered approach in the process calls for the total transformation of all social, cultural, economic and political structures that impede the growth of any group in society. This will promote the creation of democratic institutions and structures that will facilitate development of the full potential of every woman, man, boy and girl.

This publication, *Women's Minimum Agenda for the Constitution*, outlines some of the issues that must be addressed in the current review process from women's perspectives. In this book, we experience Kenyan women perspectives on how they wish to be governed, participate in the process of self governance and what vision the women hold for the growing nation.



Women's Minimum Agenda for the Constitution

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Foreword

The cardinal aspiration of any Constitution is to aggregate and integrate societal values for the benefit of the citizenry that it seeks to serve. In this light, the Constitution has contractual obligations that indebted the government to the people in respect of social, economic and political considerations. Similarly, citizens are bound by their mandatory duties in their relationship with the state. The state commits itself to the protection of the inalienable rights and freedoms of the individual and in turn, the individual agrees to fulfil his or her role in fostering national cohesion.

The role of women in the Constitution review process can be placed within the historical context of our national existence. Women freedom fighters fought alongside their male counterparts during the struggle for independence, yet they remain excluded from the political arena and decision-making which are key areas in governance.

The struggle to establish a multiparty system in the early nineties was borne out of the struggle of both men and women. Some of the women included, Martha Karua, Wangari Maathai and Agnes Ndeti, among others. They were strong and vocal proponents of multi-partyism. In spite of their monumental contribution to national life, women's visibility in politics and decision-making remains blurred.

Women have remained unappreciated in our political sphere. Some of the reasons for this have their roots in the Constitution. Women's

citizenship rights, for example, remain subordinate to those of men. The Constitution bars women from passing on citizenship status to their spouses and children born abroad. In the same breath, it gives men authority to pass on citizenship to their spouses and children.

The property and inheritance rights of women have also been downplayed. The Constitution insists that any such entitlement can only be claimed after a woman has proved the credibility of her claim. This burden of proof is also applicable to women who have children with a deceased man and whose claims to property are not supported by statutory, religious or customary determinants. The ongoing Constitutional reforms must provide an entry point for women to receive equal, fair and just treatment.

This book is aimed at creating awareness and providing insights into what women's minimum agenda will be in the new Constitution. It targets civic educators generally and particularly, all those directly involved in the Constitution review process.

It is our belief that the adoption of the recommendations in this book will lead to a Constitution that is based on the fundamental principle of inclusiveness, gender sensitivity and democracy, among others. Above all, it is hoped that the new Constitution will deliberately reflect and integrate values of women, men, boys and girls of Kenya.

*Dr. Eddah Waceke Gachukia
Chairperson
Collaborative Centre for Gender & Development
Nairobi, November, 2001*

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All organisations that participated on developing the women's minimum agenda in the Constitution provided rich inputs. The Centre acknowledges their rich contributions for without them, this book would never have been a reality. The include:

- ✦ ABANTU for Development
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- ✦ Federation of women Groups
- ✦ International Federation of Women Lawyers-Kenya
- ✦ Friends of Esther and Deborah (FREDA)
- ✦ Grassroots Women's Association of Kenya
- ✦ Kenya Professional Business Women's Club, Kenya

- ✓ Alliance on the Advancement of Children Rights
- ✓ Kenya Oral Literature Association
- ✓ Muslim Sisters Network
- ✓ National Council of Women of Kenya
- ✓ Widows and Orphans Women Association of Kenya
- ✓ Women's Political Mobilisation Network

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Introduction

Kenya's Constitutional reform process seems to dictate that as many people as possible be involved in the development of their new Constitution. It is time for the people, (the ruled) and the state (the ruler) to negotiate what their rights and responsibilities will be in the new agreement (the Constitution).

Discussions on the Constitution reform have tended to concentrate, and sometimes, stall on the question of process. But pray, what has been the role of women in this fragile and winding process?

Looking back at our unequal history, it is notable that women have had a rich history of struggle to realise "fundamental rights and freedoms of the individual." The participation of women in the negotiations at the Bomas of Kenya, Safari Park, Parliament and outstandingly at Ufungamano House, have provided a big leap for women. They currently make up 29 per cent of the membership of the Constitution of Kenya Review Commission.

In 1963, and subsequently in 1992, the Constitution was made and revised by men alone. The immediate outcome of this has been dramatic. The male dominated political class, while suggesting some opportunities for genuine democratic openings, have instead created governing structures that are domineering, patronising and insensitive to women.

Despite these factors, women have united in a resistance movement aimed at encouraging the development of a democratic culture

with institutions that promote a democratic government for all women, men, boys and girls.

In the initial Bomas of Kenya Constitution review forum, women lobbied to ensure their representation as stakeholders in the review process. In all Constitution review fora held at Safari Park hotel, women organised themselves focusing on women specific concerns. The women representatives who were there negotiated for the affirmative action principle to be applied throughout the Constitution reform process.

In the 1998 IPPG talks, Ms. Abida Ali-Aroni, a lawyer and Hon. Martha Karua worked tirelessly to ensure that the IPPG adopted the principle of 50:50 representation of women to men. The results were the legislation of a law forbidding discrimination on sex, and although the 50:50 representation of women to men was accepted and adopted at the committee stage, implementation proved difficult. The principle was not fully adhered to.

The Bishop Philip Sulumeti Draft Committee on Constitution Review comprised five women out of the twelve members. These were Hon. Martha Karua, Mrs. Phoebe Asiyo, Prof. Wanjiku Kabira, Hon. Zipporah Kittony and Ms. Abida Ali. The team recommended that affirmative action be applied at all levels in the Constitution review process.

Lobbying for women's agenda did not lose momentum even when the process stalled. The negotiations culminated in the adoption of women's recommendations on affirmative action into the operational Constitution of Kenya Review Act 2001.

Women's efforts were rewarded with the nomination of seven of them out of a team of twenty seven commissioners. These are Abida Ali-Aroni, Salome Muigai, Prof. Wanjiku Kabira, Nancy Baraza, Phoebe Asiyo, Kavetsa Adagala and Alice Yano. Though the number falls short of the negotiated minimum third representation, it is a significant improvement in mainstreaming gender in the Constitution review process.

Now that the review process is underway, women are optimistic that their issues will be reflected in the new Constitution. Women would like to see the following areas addressed in a gender responsive way:

- (i) Bill of Rights
- (ii) women's participation in legislative and local authorities
- (iii) governance and decision-making
- (iv) elections
- (v) the State
- (vi) local governance
- (vii) property and land rights
- (viii) public finance
- (ix) citizenship
- (x) socio-cultural issues
- (xi) children's rights and family protection
- (xii) succession/transition

1.0 Bill of Rights

The Basic principle of the rights of the individual and our dignity in the Constitution is protected under the Bill of Rights. Its placing in the Constitution (chapter V), after the sections of the Declaration

of the Republic, the executive, parliament and judicature, in that order, probably hints at the genesis of our central pre-occupation with power and politics. In comparison, looking at the order of items in the Constitution of the Republic of South Africa viz. Fundamental provisions, the Bill of Rights and co-operative government in that order, the emphasis on the rights of the individual cannot be gainsaid.

One would then argue that the Constitution of Kenya institutionalises the domination of power and politics over the rights of the individual. This is worrying. The call for a new Constitutional order thus, requires that human rights must gain the necessary emphasis as reflected in the Universal Declaration of Human Rights.

Our Agenda

- Define the aggregated values upheld by women and men of Kenya in the preamble/introductory chapter of the Constitution
- Enshrine equal access of resources and equality before the law to men and women, boys and girls without discrimination on the basis of gender, race, religion, way of life, etc.
- Guarantee security and equal protection by the law to both men and women
- Recognise the diverse groups that constitute Kenya in all aspects of life
- Guarantee women's rights under the Bill of Rights

2.0 Women's Participation in the Legislature and Local Authorities

In the current Constitution, there is no statutory clause that bars women or other marginalised groups from participating in decision-making structures, but cultural and historical barriers limit them. Women currently constitute 52% of the Kenyan population. Historical discriminatory and negative socio-cultural practices have largely contributed to the exclusion of a large segment of the population from participating fully in the development process. This can only be rectified if fair laws that advocate for equal representation and distribution of national resources are legislated.

The National Assembly is where all the laws are made. These laws are assumed to be for the just governance of all Kenyans, that is, women, men, boys and girls. Past representation of women in this highest law-making structure has been dismal. The current representation stands at nine women out of a parliament of 224. Assumed representation of women by the elected male legislators has led to their further marginalisation in all aspects of development. It has also resulted in parliament sometimes blocking laws that are geared towards the advancement of women – the Affirmative Action Bill is a case in point. Parliament's motto: "For the just government of men and the welfare of society" is a reflection that justice is only applicable to men (even though the argument has been that "men" is an all inclusive term).

Local authorities also reflect the male domination culture in their decision-making structures. As a result, women's priorities at national and local government levels have been pushed to the periphery. The Constitution review process provides an opportunity for these anomalies to be rectified to ensure equal access and control of resources by all - women, men, boys and girls.

Our Agenda

- Ensure access to resources for persons with disability, women, youth and pastoralists among others.
- Entrench the principle of affirmative action in the Constitution by repealing Section 33 of the Constitution to replace it with the following new section:

Affirmative action is a temporary remedial measure intended to redress marginalisation and discrimination of the less privileged groups and individuals in society. In a true democratic society, all individuals regardless of their age, gender and status should have access to participate in national development processes. In this light there is need for deliberate positive policy intervention to redress the existing barriers for a healthy democratic nation.

Nominated Members: Section 33

(1) Subject to this section there shall be appointment by the President following a general election:

- (a) Twelve nominated members of the National Assembly to represent special interest groups
- (b) *Such number of women and persons from other marginalised groups*

appointed on the basis of Affirmative Action as shall be necessary to meet the requirements of this section.

- (2) The persons to be appointed under subsection (1) shall be persons who, if they have been nominated for a parliamentary election, qualify to be elected as members of the National Assembly.
- (3) The persons to be appointed under sub-section (1) (a) shall be nominated by the parliamentary parties according to the proportion of every parliamentary party in the National Assembly, taking into account the principal of gender equality.
- (4) The persons to be appointed under subsection (1) (b) shall constitute one third of the members of the National Assembly when the Assembly first meets after the dissolution of parliament and shall be in the following proportions provided for under this sections and may retain, increase or abolish such representation of any matter incidental thereto to the extent that it considers desirable in the light of the review.
- (11) In this section, "marginalised groups" means any group of persons which is directly or indirectly unjustly or unfairly marginalised on the basis of race, gender disability, ethnic or social origin, colour, culture creed belief, language, way of life or some such other ground.

Section 33 of the Constitution, which it is proposed should be to repealed.

Nominated members Section (33)

- (1) Subject to this section, there shall be twelve nominated members of the National Assembly appointed by the President following a general election to represent special interests.

- (2) The persons to be appointed shall be persons who, if they had been nominated for a parliamentary election, would be qualified to be elected as members of the National Assembly.
- (3) The persons to be appointed shall be nominated by parliamentary parties according to the proportion of every parliamentary party in the National Assembly taking into account the principle of gender equality.
- (4) The proportions under subsection (3) shall be determined by the Electoral Commission after every general election and shall be signified by the chairman of the Commission to the leaders of the concerned parliamentary parties, the President and the Speaker.
- (5) The names of the nominees of parliamentary parties shall be forwarded to the President through the Electoral commission which shall ensure observance of the principle of gender equality in the nominations.
 - (a) *One half of the number of persons required to constitute women as one third of the number members of the National Assembly (excluding the ex officio members) whichever is less shall be women.*
 - (b) *The remaining number, after deducting the number of persons referred to under paragraph (a) shall be persons from marginalised groups from marginalised groups of whom half shall be women.*
- (5) The proportions under sub-section (3) shall be determined by the Electoral Commission after every general election and shall be signified by the chairman of the Commission to the leaders of the concerned parliamentary parties, the President and the speaker.

- (6) *The persons to be appointed under subsection 1(b) shall be elected in the manner prescribed by or under an Act of Parliament.*
- (7) *No person shall be appointed to hold office as a nominated member of the National Assembly under subsection 1(b) for more than two parliamentary terms.*
- (8) *The names of the nominees of parliamentary parties under section (3) and the persons elected under section (6) shall be forwarded to the President through the electoral Commission which shall ensure observance of all the legal requirements.*
- (9) *The criteria and principles for the appointment of nominated members of the National Assembly under this section shall mutatis mutandis apply to the nomination of councillors under the Local Government Act.*
- (10) *Upon the expiration of a period of ten years from the date of the commencement of this section and every five years thereafter, Parliament shall review the representation.*

Governance and Decision Making

The Constitution of Kenya assumes that all citizens, irrespective of their gender, have a right to take part in the governance of the country. At the same time, the Constitution reflects a value system that disempowers women, shrinking their space for participation in the social, economic and political spheres. The imbalances in power relations arising from women's marginalisation in these spheres prevent them from exploiting their potential fully - therefore, denying the country an important resource.

Mwalimu Julius Nyerere once confessed that every time he formed a cabinet, he never thought of women. It was as if their exclusion was natural. He later in life realised that he had been socialised into behaving this way. He, however, blamed women for internalising gender-biased social values which reduced them to being objects. Mwalimu was saying that women must take up the burden for their liberation from patriarchal oppression by participating in the governance of their country. But this is better said than done as women are currently excluded from key organs of governance from where they could have proved their competence.

Their absence from structures of governance leads to a situation where women's views, perspectives and experiences are missing. This is regrettable because women have demonstrated leadership and decision-making skills at the community and household levels. They have also made their mark in formal and informal organisations. Their leadership capacities should, therefore, not be in question.

Women are, for example, limited in their access to the disciplined forces, political parties and other cadres of public organisations. This has a lot to do with the procedures for appointment in public office and other critical institutions. The law wrongly assumes that women and men are on the same social level and enjoy equal access to the structures of governance. First and foremost, there is unequal division of labour and responsibilities within households because of the corresponding unequal power relations between men and women. The process of socialisation determines the value put on productive and reproductive roles, where the latter has low value. Women, unfortunately are more involved in time consuming reproductive roles.

The Constitution should, therefore, be deliberately restructured to compel public institutions to apply the principle of affirmative action during their employment and appointment procedures to accommodate women in positions of responsibility. This way, they will be able to take part in decision-making which will further their interests for the social good. Women's equal participation in decision-making is a demand for justice and democracy.

Our Agenda

- The Constitution should provide for proportional representation to have at least a third of the total number being women in the composition of all Constitutional offices, organs and structures.

- Women should also comprise a third of the total composition in the following organs of governance and decision making:
 - (i) the Cabinet
 - (ii) the Judiciary
 - (iii) the Civil Service
 - (iv) the Discipline forces
- The Constitution should include institutional mechanisms for the advancement of women such as the Gender Commission.
- The principal of gender balance should be adhered to in the composition of all offices and governance structures and should be legalised and made mandatory.
- The Constitution should provide for a referendum for all citizens (women and men), to exercise their full rights of expressing their opinion.
- The Gender Commission should be established as a Constitutional office.
- The international conventions that Kenya is signatory to and has ratified such as the United Nations Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women (CEDAW), should be domesticated without further delay.

4.0: The State

The sovereignty of the nation is embodied in the state. The state therefore symbolises Kenyans' right to govern themselves without external interference. The major organs of the state comprise the Executive, Parliament and the Judiciary. A lot of power is, however, vested in the Executive. The President who is the Chief Executive can among others:

- ✓ nominate the Vice President and key persons in the three arms of government
- ✓ assent to Bills before they become laws
- ✓ conduct governmental functions without any limitations
- ✓ appoint and dismiss Ministers, Assistant Ministers and other public employees at pleasure.

This shows clearly that the Executive authority is vested in one person. There are no checks and balances. This tends to make the person holding this position authoritarian. Owing to the unlimited exercise of power and authority, the Chief Executive holds too many responsibilities and positions to be effective. For example, the President is the chancellor of all public universities, chairman of very many boards, party chairman and head of government, among others.

Thirty-eight years after independence, Kenya has never had a woman Chief of General Staff, Commissioner of Prisons or Police Commissioner. This exclusion of women from key positions trickles

down to the lower levels of the disciplined forces. Recruitment, operations and promotions are, therefore, male dominated and controlled.

Our Agenda

- There should be separation of powers of the various organs of state so that each is autonomous
- Devolution of power in all government structures to allow autonomous local authorities and the participation of local communities. Women will have easy access to leadership positions if this happens
- The enshrinement of participatory democracy to give a chance to both women and men to participate freely and fairly in decision-making and debating on national issues.
- Equal participation of women and men will ensure that women's experiences, knowledge and perspectives are mainstreamed.
- Eliminate all forms of discrimination on the basis of gender in recruitment, appointment and training in the disciplined forces and all other institutions of governance, bearing in mind the different needs of women and men.
- Ensure at least 1/3 representation of women in all government organs

5.0 Family Protection and Children's Rights

No part of the current Constitution recognises or uses the term *child*. In section VI of the Constitution which governs the fundamental rights and freedoms and issues of citizenship respectively, the *child* is only implied. Neither is the process of childhood acknowledged. Automatically therefore, the Constitution denies the child, whether female or male, the right to identity. We see the results of this in that there are no distinct laws which exist on defining, protecting and upholding children's rights.

Children suffer most under the citizenship laws. Section 90 denies citizenship to children born of Kenyan females abroad. But the same recognises as being Kenyan children born of Kenyan males under similar circumstances. Bundling children's rights with the general citizens' rights denies children their individuality and important place first, as children and as future senior citizens.

The Constitution fails to provide protection to children against abuse, neglect and abandonment. Examples abound of children being abused by one or both of their parents, relatives and close family friends.

But perhaps the most common form of child abuse is the forced marriage of the girl-child to older men, as is the case among the Maasai community. Parents are also known to turn children into labourers with impunity. Although it is not easy to realise this immediately, it is evident that girls perform more chores than

boys, especially at home. They act as "small mothers". As a result they have far less time for study. There is urgent need for Constitutional provisions to criminalise all forms of abuse against children.

Our Agenda

- The Constitution should have a clear definition of "child" as any person below the age of 18 years.
- Banish discrimination on the basis of age, sex, language, colour, religion, opinion and apply to children rights.
- Guarantee civil rights and liberties to the female and male children.
- Provide appropriate family environment and alternative care to all children.
- Provide education, leisure, recreation and cultural activities for the development of the child and pay special attention to girls, children with disabilities and those from marginalised communities.
- Provide protection measures to children under special circumstances, who include refugee children, in armed conflict, children in conflict with the law, children marginalised on economic, social, or political reasons.
- Constitutionalise the right to access to information on children and human rights to all women, men, boys and girls.
- Recognise and domesticate conventions on children rights that Kenya is signatory to, in the Constitution.

6.0 Property and Land Rights

"What is yours is ours, but what is mine, is not yours"

In the Kenyan context women, like any other acquirement, have always been traditionally considered as men's property and have remained under the care of a male guardian, either the father, the brother or husband at all times.

Consequently, women did not have the right to own resources such as land or children. Their only property consisted of household items. In modern times, land which is a scarce but highly valued source of wealth is owned by men. Women have security of tenure only as wives. In most communities men are sole inheritors of family or community land. Such traditions have been a major hindrance, not only to women's economic advancement but also to the overall national development. Lack of productive resources greatly contributes to the feminisation of poverty. The spiralling effects are experienced mostly by women.

To achieve sustainable development, it is critical that women access productive resources as well as become partakers of the family wealth through inheritance, both as wives, daughters or sisters. This can only be guaranteed by the Constitution.

Our Agenda

- Institutionalise a land commission in the Constitution, that has 50/50 representation of women and men and a mandatory 1/3 membership of both sexes.

- Recognise the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in the Constitution and ensure domestication of the same
- Every Kenyan, both men and women to have equal access to land and other resources .
- Recognise and protect inheritance rights of widows/widowers, girls with disabilities and orphans.
- A limit should be set and spelt out on how much land individuals should own and taxes to be imposed on land that remains idle after a stipulated time period.
- The Constitution should clearly provide for the protection of protect forests and all natural resources.

7.0 Elections

Elections are a reflection of democratic practice. This is the time people determine who they want as their leaders and discard those they do not want. In Kenya, Presidential, Parliamentary and Civic elections are carried out at the same time as stipulated by the electoral laws.

Parliament is the highest decision-making organ of the land. This is where laws that govern peoples' social, political and economic status are made. If the current number of nine women is anything to go by, then parliament falls short of representing "people" effectively. The same scenario is manifest in the Local authorities. This gender imbalance is as a result of not having clear regulations in the electoral laws defining the composition of parliament, Local authorities and other statutory bodies by numbers.

The electoral system in use is also patriarchal in structure and therefore, women-unfriendly. For women to be effectively involved in elections and electoral processes, it is important that structures become gender responsive. This, process can be speeded if the Constitution stipulates it.

The Electoral Commission of Kenya (ECK), which is an office recognised by the Constitution, is male dominated - in its composition and operations. This imbalance should be addressed as a matter of urgency to ensure that women also sit in this very important institution.

Our Agenda

- A review of the electoral system should be done to allow a system that is more accommodating to women and the marginalised groups.
- Nominations for parliamentary and local authorities should reflect 50:50 representation in the number of women and men.
- Striving towards this achievement in gender balance, the Constitution should specify that at least a third representation of women and other marginalised groups, be made mandatory for all elective posts.
- In writing the Constitution, an analysis should be made on how the different electoral laws affect women and men.
- The Constitution needs to take measures where appropriate to ensure that the electoral process puts in place mechanism that ensure that political parties integrate women in both elective and non-elective positions in the same proportion and at the same levels as men.
- There is need for the creation of suitable and favourable electoral systems that reach to the people and is women friendly.
- Provision for independent candidates (candidates running for elections without sponsorship by any party).
- Laws against elections violence should be reinforced and clear implementation strategies against offenders adopted.
- Civic education should be stepped up.
- Institutionalise a code of conduct that governs the elections in order to eliminate violence.

- Institutionalise regulation and management of political parties and ensure that they receive state funding. Gender responsiveness should be one, among other indicators for ensuring parties qualify to receive these funds.
- Government should regulate election expenditure.
- Entrench political parties in the Constitution with mandatory provision of minimum 1/3 representation of either gender for the party to be recognised as legal

8.0 Local Governance

The Association of Local Government of Kenya (ALGAK) has been involved in a process of proposing changes to the local government system. In this regard, ALGAK has come up with a proposal on *The Local Government we Want*, which proposes structures of governance that will ensure quality delivery of services to both men and women.

The Local Government Act Cap 265 is the principle law that regulates the Local Government in Kenya. The purpose of local governments is to ensure that services are brought closer to the people. Due to their proximity to the grassroots, the local governments are better suited to provide basic needs and services at the local level than the central government. They should be facilitated to do this by the central government.

In terms of representation, women are least visible in the Local Authority's governing structures. This is in part, due to the insensitive manner in which nomination and consequent elections are conducted. Further, the current Constitution does not enshrine the local government system as part of the structure and organisation of governance. This situation should be corrected urgently.

Our Agenda

- The process of review should ensure that local governments find their place in the Constitution.
- There is need to vest power in the local governments so that

they become autonomous entities which can provide efficient and quality services and ensure that power and control of local resources are closer to the people.

- Mechanisms for accountability need to be put in place to ensure democratic and transparent local governments.
- There is need to create structures that enable a democratic participation of all communities, especially people from marginalised categories in decision making at all levels of local government.
- The principle of at least 1/3 representation of one gender should be entrenched in the Constitution to ensure gender equity in local government.
- There should be direct elections of the mayor by universal suffrage.

9.0 Succession

Women need a stable socio-political environment to engage in maximum development efforts. Peace, national unity and integrity of the nation is, therefore, imperative. Establishing a succession criteria acceptable to all citizens is one way of ensuring that society is not disintegrated. The current succession laws provide for a smooth succession in which the Vice President takes over leadership if the presidency falls vacant. This is followed by an election within 90 days.

The Constitution is silent on the issue of gender. This has led to a political tradition in which men are automatically elected to the two seats, marginalising women in the process. This translates into a political culture of unfair appointments and succession. Women have, therefore, been alienated from succeeding and the succession process. There is need to change both the appointment and succession cultures to ensure that both men and women have equal opportunities.

Our Agenda

- Every presidential aspirant should have a running mate (VP) who is of opposite gender (the president and the VP of the state should be of opposite gender).
- Like presidential elections, there should be direct elections for vice presidents for all parties.
- The president and the vice should be above parliamentary politics.

- The office of the VP should be given more powers. As it is, the VP has very little powers, especially in cases where they have no ministry to run.
- A clear process of handing over power must be entrenched in the Constitution to avoid anxiety, speculation and misuse of power by the incumbent.

10. Citizenship

The Constitution says that:

" A person born outside Kenya after 11 December 1963 shall become a citizen of Kenya at the date of his birth, if his father is a citizen of Kenya". (Section 90)

As it is, the Constitution clearly denies women citizens the right to pass their citizenship to their children or spouses in the event that their spouse are foreigners. This right is enjoyed exclusively by males and is, therefore, discriminatory.. The implications of this are serious. For instance:

- (i) A Kenyan woman who marries a foreigner, has children outside Kenya with him, then he dies before becoming a Kenyan citizen, may find her children rendered stateless.
- (ii) A Kenyan woman who marries a foreigner is not assured of his residence within Kenya on the basis of marriage. The case of Shaka Zulu Assegai is a strong testimony of this.
- (iii) A single mother cannot have her children endorsed on her passport without their father's knowledge unless she can provide proof that she is divorced, widowed or estranged.

Such provisions in the Constitution constitutes a violation of the rights of women. There is then need for citizenship to reflect international norms. In accordance to Article 9 of CEDAW, the state is compelled to grant women equal rights with men to enquire, change or retain their nationality. This is aimed at protecting women

to ensure that neither marriage, nationality of the wife, render her stateless or force the nationality of her husband upon her. Quite clearly immigration and nationalisation laws and policies remain discriminatory and other directly interfere with self-identify and freedom of movement.

Our Agenda

- Women and men should have equal rights to confer citizenship to their spouse or child(ren).
- The International Convention of the Elimination of all forms of Discrimination Against Women (CEDAW), should be domesticated and implemented.
- National laws, customary laws and other legal impediments should be reviewed continuously to ensue women are not discriminated against.
- The Affiliation Act should be passed.

11. Public finances

On the face of it, would appear that our financial resources are allocated and utilised equitably and fairly. The national budget expenditures are set out in terms of financial aggregates, totals and sub-totals of expenditures. As usual, there are normally no particular mention of women and men.

However, this appearance of gender neutrality is more accurately described as gender blindness. The way in which the national budget is formulated ignores the different social roles, responsibilities and capacities of men and women. In practice, the presence of gender differences and inequalities means that gender irresponsive budgets are developed. This, of course has different impact on men, women, boys and girls. They also respond differently on the budget. It is, therefore true to state that the way budgets are structured and their outcomes are unequal.

The current resource allocation framework fails to recognise that:

- ✓ Women's contribution to the economy is underestimated due to missing and biased statistics. Their work and contribution to society through their reproductive duties must be acknowledged and translated into budgetable by the Constitution.
- ✓ Women's labour largely labelled "domestic" or "social reproduction" contribute significantly to the paid economy but it is not recognised.

Even though in many cases resource allocation may not directly have the intention of favouring boys, the actual outcomes normally does, as statistics have shown in education sector.

Our Agenda

- Equal distribution of public funds for both men and women must be ensured.
- Provide gender-desegregated data for resource allocation, use and returns at all times.
- Ensure the retention of up to 80% of revenue from women in these regions.
- Allow local authorities to have more say in revenue, tax and resource collection and allocation and at least 60% revenue collection is used through local authorities.
- Decentralise tax system to different regions so as to increase benefits by local communities.
- Ensure parliamentary control of public finances, collection and use of taxes, fiscal and monetary policy and budgeting.
- The office of the Auditor general must be able to prosecute those who misuse public finance, not just give reports.
- Enshrine the principle of affirmative action for allocation of resources for women and other marginalised groups in the Constitution

Conclusion

In conclusion, as the Constitution review process continues, there is need for women to have strong lobbying and advocacy strategies to keep the agenda of women afloat. In retrospect, the merger of the Ufungamano and Parliamentary Committees has given women about 29% representation in the Commission of Kenya Review Commission. This is a notable development especially in governance and representation at decision-making levels. This achievement can also be attributed to the persistence of women in lobbying for equitable representation and may need to be replicated.

Abbreviations

ABANTU	ABANTU for Development
AMKA	AMKA -Space for Women's Creativity
CEDAW	Convention on Elimination of All forms of Discrimination Against Women
CCGD	Collaborative Centre for Gender and Development
ECK	Electoral Commission of Kenya
FES	Friedrich Ebert Stiftung
FIDA	International Federation of Women Lawyers -Kenya
FREDA	Friends of Esther and Deborah
GWAKE	Grassroots Women's Association of Kenya
KPBWC	Kenya Professional Business Women's Club
KAACR	Kenya Advancement on Children Rights
KOLA,	Kenya Oral Literature Association
MP	Member of Parliament
NCWK	National Council of Women of Kenya
VP	Vice-President
WOWESOK	Widows and Orphans Women's Association of Kenya