

# DRAFT REPORT

## A Gender Audit Study of the 10<sup>th</sup> Parliament



The Federation of Women Lawyers  
(FIDA-Kenya)

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*Grace Mainji-Kimani*  
**Executive Director**

It is with great pleasure that we publish this report, which presents the findings of the gender audit study of the 10<sup>th</sup> Parliament in the last two and a half years. The study was commissioned and financed by the Federation of Women Lawyers in Kenya (FIDA-Kenya) a non-profit, non-partisan membership organization committed to the creation of a society that is free from all forms of discrimination against women.

This report is very useful to FIDA-Kenya and other gender based organizations/institutions, as it provides valuable information that can be used to formulate appropriate policies in a bid to achieve the Millennium Development Goal number 3 of promoting gender equality and empowering women.

The study was done in Kenya and it entailed desk and qualitative research by Infotrak Research and Consulting under the overall guidance of FIDA-Kenya and Gender Impact Analysis Tool on CEDAW and ICESCR. During the study, Infotrak Research and Consulting undertook a comprehensive review, assessment and analysis of all relevant information including the general review and analysis of published Parliamentary information in Hansard reports, Standing Orders, Committee Reports, Media Reports and other published papers in order to measure Kenya's 10<sup>th</sup> Parliament gender responsiveness. Consultations were also carried out with key informants on gender equality and development to collect information on the performance of the 10<sup>th</sup> Parliament on gender equality, development and responsiveness. This involved interaction with various Parliamentary institutions like House Committees, the Budget Office, Departments, the Office of the Speaker and Clerk of the National Assembly amongst others.

The overall objective of the study was to undertake an audit of the Kenyan Parliament with specific emphasis on gender related index and determine the general performance over the last two and a half years. The study was therefore an assessment on the effectiveness of integrating gender and human rights principles in parliamentary institutions and gauge the gender related activities over the years. Specifically, the study was meant to audit the performance of the Kenyan Parliament especially in matters relating to gender over the last two and a half years. Further, the study was meant to assess and analyze the gender related reforms by the Kenyan Parliament over the same period. The findings and recommendations for the study are recorded and discussed in this report.

**D**uring the 2000 UN Millennium Summit, 189 representatives of the member states of the United Nations identified and adopted eight Millennium Development Goals (MDGs) which are to be achieved by each member state by the year 2015. The MDGs provide a framework for the entire international community to work together towards a common end in making sure that human development reaches everyone, wherever they are. The MDGs include:

1. Eradicating extreme poverty and hunger
2. Achieving universal primary education
3. Promoting gender equality and empowering women
4. Reducing child mortality
5. Improving maternal health
6. Combating HIV/AIDs, malaria and other diseases
7. Ensuring environmental sustainability
8. Developing global partnerships for development

The MDG number 3 goal targets to eliminate gender disparity in education, wage employment and representation. As such, gender equality and women's empowerment are human rights that lie at the heart of development and the achievement of the Millennium Development Goals for every United Nations member state, Kenya included.

The achievements of all the eight (8) MDGs provide a strategy through which Kenya can address human suffering and especially the plight of women who constitute about 51 per cent of the entire population. Therefore, Kenya must put all measures in place to achieve all the MDG goals. Such efforts must, of necessity, include enacting the necessary legislation,

formulation of appropriate policies as well as allocating adequate resources to activities that address the plight of the disadvantaged gender – in this case women.

Further, the 1979 Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide a tool for holding governments accountable, crafting legislation and conducting awareness to protect, respect and advance women's human rights. CEDAW is an internationally recognized legal statement of goals and measures defining the elimination of discrimination against women through gender inequality. This forms the basis for realizing equality between women and men, through ensuring women's equal access to opportunities in the legal, political, economic, social, cultural, and familial environment. CEDAW is binding upon Kenya as a country which has since ratified it.

Kenya has also under its development blueprint branded 'Kenya Vision 2030', identified gender as one of the key sectors under the social pillar in a bid to build a just and cohesive society with social equity in a clean and secure environment. Consequently, FIDA-Kenya with support from the MDG 3 Fund, is implementing a project to enhance representation capacities for women to exercise their rights and responsibilities. This will be done through advocacy on representation of women in all public spheres, and by lobbying for the putting in place of appropriate policies that ensure affirmative action for women in public life.

To this end, FIDA-Kenya intends to undertake an audit of the 10<sup>th</sup> Parliament to determine its general performance with specific emphasis on gender related index. The audit will result in an assessment report of the Kenyan Parliament from January 2008 to date on its effectiveness in integrating gender and human rights principles in its institutions and activities.

It is in this regard that FIDA-Kenya contracted Infotrak Research and Consulting to undertake this exercise to capture the progress of key parliamentary institutions in integrating gender consideration in their core functions including monitoring and analyzing committee's work, assessing the Bills and other motions passed, as well as probing MP's activities both inside and outside Parliament. This report therefore summarizes Infotrak's findings of the study.

<b>ALCC</b>	Agriculture, Livestock and Cooperatives Committee	<b>FPTC</b>	Finance, Planning and Trade Committee
<b>ANCSC</b>	Administration and National Security Committee	<b>HBC</b>	House Business Committee
<b>CC</b>	Catering Committee	<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>CDF</b>	Constituency Development Fund	<b>IDP</b>	Internally Displaced Persons
<b>CDL</b>	Committee on Delegated Legislation	<b>JLAC</b>	Justice and Legal Affairs Committee
<b>CEDAW</b>	Convention on Elimination of All Forms of Discrimination Against Women	<b>KDHS</b>	Kenya Demographic and Health Survey
<b>CEO</b>	Committee on Equal Opportunities	<b>LNRC</b>	Land and Natural Resources Committee
<b>CI</b>	Committee on Implementation	<b>LSWC</b>	Labour and Social Welfare Committee
<b>CPP</b>	Committee on Powers and Privileges	<b>MDGS</b>	Millennium Development Goals
<b>DFRC</b>	Defence and Foreign Relations Committee	<b>MP</b>	Member of Parliament
<b>ECIC</b>	Energy, Communications and Information Committee	<b>MTP</b>	Medium Term Plan
<b>ERTC</b>	Education, Research and Technology Committee	<b>PAC</b>	Public Accounts Committee
<b>ESP</b>	Economic Stimulus Programme	<b>PHRC</b>	Procedure and House Rules Committee
<b>FIDA-Kenya</b>	Federation of Women Lawyers in Kenya	<b>PIC</b>	Public Investments Committee
		<b>SC</b>	Speakers Committee
		<b>SME</b>	Small and Medium Enterprise
		<b>SOA</b>	Sexual Offences Act
		<b>WEF</b>	Women Enterprise Fund
		<b>YEF</b>	Youth Enterprise Fund

## introduction

The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide a framework for creating gender sensitive indicators for measuring inter alia:

- Government accountability for commitments adopted under CEDAW and ICESCR.
- The extent to which women's full participation is reflected in decision making levels in the legal, political, economic, social and familial environment.
- The degree to which gender is recognized through the creation of legal instruments to protect the rights of women and girls.
- The provision of resources and services in areas identified as of highest priority in reducing the burdens on women and reducing gender gaps.

FIDA-Kenya and other like-minded organizations have been using these indicators to assess the overall performance of the government and institutions of governance with regard to gender responsiveness, equality and development. FIDA-Kenya has therefore been in the forefront in advocating for and mainstreaming of gender equality and development in the country.

# Current State of Affairs

## **(a) Kenya's Legal System**

Despite the progress that has been made in advocacy and mainstreaming of gender equality, discriminatory provisions in regard to family and personal matters like marriage, divorce and inheritance remain widespread in Kenya's current legal system which is mainly based on the common law system, Customary, Islamic, Christian and Hindu laws.

Whereas Section 70 of the previous Constitution provided for equality between men and women, section 82 (4) of the same Constitution exempted certain laws and therefore was discriminatory in areas of adoption, marriage, divorce, burial and inheritance. Further, sections 90 and 91 of the same Constitution were discriminatory and therefore bar red women from extending their nationality to their foreign husbands as they were only entitled to extend their nationality to their children.

With regard to property laws, many customary laws continue to discriminate against women on issues of land inheritance and ownership. For example, although women constitute 75% of the agricultural workforce, they only hold about 6% of all land titles.

## **(b) Gender Based Violence**

Gender Based Violence remains widespread and perpetrators continue to benefit from impunity. According to the Kenya Demographic and Health Survey (KDHS) 2008-09, 39 percent of women reported to have experienced gender based violence since they were 15, and one in four reported experiencing violence in the 12 months preceding the survey. The main perpetrators were identified as husbands, and to a lesser extent, teachers, mothers, fathers and brothers.

Currently, there is no specific legislation criminalizing domestic violence like marital rape. The Domestic Violence Bill, which outlaws marital rape, has been pending in Parliament since 1999. Whereas the Sexual Offences Act, 2006 which had initially (as a Bill) criminalized the same, it was watered down by removing the provision criminalizing marital rape in order to win the favour of the male Members of Parliament.

Despite the enactment and the implementation of the Sexual Offences Act, sexual offences and other forms of gender based violence continue to be reported. The traditional practice of ritual “cleansing” of widows, which entails forcing bereaved widows to have sex with a social outcast, usually without protection, still persists in some communities.

Further, in times of armed conflict and behind closed doors at home, women are still being systematically subjected to sexual and gender based violence as witnessed in the 2008 post election violence. Women living in the IDP camps across Kenya have been particularly vulnerable to rape and other crimes of sexual violence.

Despite being legally prohibited by Children’s Act, 2001 and Sexual Offences Act, 2006, Female Genital Mutilation (FGM) continues to be practiced, with prevalence varying considerably depending on ethnic groups. In the year 2009, it was estimated that 40% of women had undergone FGM in Kenya.

### **(c) Obstacles to equal access to education**

Despite the introduction and provision of free and compulsory primary and free tuition in secondary education, girls’ access to education remains limited, in part due to traditional attitudes as well as high dropout rates due to pregnancy, early and forced marriages (estimated at 80,000 annually). Whereas the Education Act provides for the right of pregnant girls to continue with their education until and after giving birth, pregnant girls continue to be expelled from schools.

### **(d) Under-representation in political life**

Available statistics indicate that less than 16 percent of the world’s parliamentarians are women. In Kenya, one indicator of gender inequality is the small number of women in decision making positions and other national governance structures. However, in the 10<sup>th</sup> Parliament some gains have been made as the House is comprised of 16 elected and 6 nominated women Members of Parliament making a total of 22 (10%) women MPs out of a total of 224 members compared to 18 (8%) women MPs in the 9<sup>th</sup> Parliament. This percentage is so much below the recommended threshold of 30%. This under-representation has major implications on the articulation and implementation of women’s agenda in Parliament.

Consequently, women remain largely absent at the levels of policy formulation and decision-making and are therefore under-represented in policy decision making positions. Even where present, they are usually not equal participants due to such barriers as cultural practices and masculinity. Therefore, there is an urgent need to address this gender disparity by formulation of appropriate policies. To quote the words of Frene Ginwala<sup>1</sup>, “While the debate about the enfranchisement of women and participation of women in decision-making often focuses on issues of justice, equity and human rights, the representation of women and the inclusion of their perspectives and experiences into the decision-making process will inevitably lead to solutions that are more viable and stratify a broader range of society”.

### **(e) Obstacles to equal access to health**

The current maternal mortality rate, estimated at 560 per every 100,000 births, remains high due to lack of skilled birth attendants, malaria, HIV/AIDS, low rates of contraceptive usage and unsafe abortions. Women continue to lack access to quality sexual and reproductive health services, family planning services, contraception and sexual education. Further, there is to date no parliamentary policy on maternity and women’s reproductive health.

<sup>1</sup>Former Speaker of the South African National Assembly, in her book ‘Women in Parliament – Beyond Numbers’

## The Way Forward

In view of the current state of affairs, the principle of gender equality and development needs to continue being emphasised as a basic requirement for the equal enjoyment of rights and freedoms. In this regard, the Kenyan Government, through its 5 year Medium-Term Plan (MTP) 2008-2012 for implementing the Kenya Vision 2030, identified as a priority the introduction of gender mainstreaming into all Government policies, plans and programs to ensure that the needs and interests of women and other marginalized groups are addressed.

The Government came up with a directive that ensures not more than two thirds of all public positions are held by persons of the same gender. This will go a long way in ensuring that women will be represented in all decision making positions by at least 30 percent.

As part of its mandate, FIDA-Kenya, with support from the MDG 3 Fund, is implementing a project to enhance the representation capacities for women to exercise their rights and responsibilities. This will be done through advocacy on representation of women in all public spheres and by lobbying for the putting in place of policies that ensure affirmative action for women in public life.

## Objectives of the Study

The overall objective of the study was to undertake an audit of the Kenyan Parliament with specific emphasis on gender related index and determine the general performance over the last two and a half years. The study was meant to assess the effectiveness of integrating gender and human rights principles in parliamentary institutions and gauge the gender related activities over the last two and half years.

### Specific study objectives

1. To audit the performance of the Kenyan Parliament especially in matters relating to gender over the last two and a half years,
2. To assess and analyze the gender related reforms by the Kenyan Parliament over the last two and a half years,
3. To generate empirical evidence on the level of awareness on gender and the degree of adherence to set gender responsiveness standards,
4. To provide statistics for use in strengthening parliamentary efforts in gender mainstreaming in its institutions and operations,
5. To provide information that can be used to augment the capabilities of the Kenyan Parliament to monitor its gender related activities and to advocate for its own engendering.

This study therefore sought to gather, review and analyze existing gender information relevant to the study.

# Approach, Methodology and Work Plan

## **The Approach**

The study adopted a two prong approach that entailed desk review and qualitative key- informant interviews.

Literature review entailed analysis of existing documentation to inform on:

- Legislations and regulations enacted regarding gender equity and development.
- Parliamentary efforts in gender mainstreaming.
- Instrument design for key informant interviews.

In-depth interviews were conducted with key stakeholders who include:

- Parliamentary Institutions.
- Gender experts and analysts.

## **Rationale for a qualitative approach**

Qualitative approach was adopted because:

- It allows discovery and identification of new ideas, thoughts, feelings/attitude and perceptions.
- It entails use of open ended, semi structured, unstructured deep probing of questions.
- It allows relatively short time frames, enhancing immediate response.
- It involves interpersonal communications, observation and interpretive skills that enable a clear analysis of the research problem at hand.

## **Methodology**

The following research methodologies were adopted during the study:

- Literature Review – Review of all relevant documents on gender equality and development.
- Qualitative research – Key Informant in-depth interviews.

## **Work Plan**

The study was carried out in two weeks from May 31<sup>st</sup> 2010 to June 16<sup>th</sup> 2010.

## An Overview of Kenya's 10<sup>th</sup> Parliament

The 10<sup>th</sup> Parliament of the National Assembly of the Republic of Kenya was opened on January 15, 2008, amid controversy in the wake of the post election violence witnessed in the country due to the disputed 2007 general elections presidential results. The House started on a tight note with the Orange Democratic Movement's (ODM) member Hon. Kenneth Marende being elected Speaker of the 10th Parliament, defeating PNU member Hon. Francis ole Kaparo (105 against 101 votes), in a closely contested election that ended up in the third round of balloting. The deputy speaker, Hon. Farah Maalim was also elected from the ODM side of Government, shutting windows for women contestants in the Office of the Speaker of the National Assembly. The current clerk of the National Assembly, Mr. Patrick Gichohi, is also male, hence, one can rightfully conclude that the 10<sup>th</sup> Parliament is not gender sensitive and that 'it is a club of men run by men'.

The opening ceremony witnessed a lot of rivalry and accusations between members of the opposing parties namely: The Orange Democratic Party (ODM) – which garnered majority seats in the 2007 general elections, and the Party of National Unity (PNU) which had produced the President.

Immediately after the election of the Speaker, the House was adjourned due to ensuing violence in various parts of the country. Negotiations mediated by the Koffi Annan led African Panel of Eminent Persons helped to achieve a consensus that led to the signing of the National Accord and ensuing peace. Consequently, the inauguration of the 10th Parliament's first session commenced on March 6th with its main business being the implementation of

the four agenda items settled on by the National Dialogue and Reconciliation team. To be dealt with urgently were the violence and violations of human rights, reconciliation, and the immediate political crisis. Under Agenda Item Four, long-term proposals were also made to deal with several major issues including constitutional, legal and institutional reforms; poverty and inequity including regional development imbalances and unemployment, amongst others.

As such, the first business of the House was to enact the National Accord and Reconciliation Act, 2008 which created the Grand Coalition Government, the posts of the Prime Minister and his two deputies as agreed by the National Accord and Reconciliation team. This led to the formation of the Grand Coalition Government between ODM and PNU on a power sharing basis of 50:50.

### **3.2 The Composition of 10<sup>th</sup> Parliament**

Pursuant to the previous Constitution of Kenya, the 10<sup>th</sup> Parliament is comprised of 210 elected MPs, 12 nominated MPs and two ex-official members; namely the Speaker and the attorney-general making a total of 224 MPs. The 210 elected MPs were elected by the people of Kenya to represent various constituencies while the 12 nominated MPs were nominated by various political parties; according to the political party strength in the House, to represent special interests.

Out of the current 224 MPs in the 10<sup>th</sup> Parliament, 22 (10%) MPs are women, an improvement from the previous 9<sup>th</sup> Parliament which had only 18 (8%) women MPs. Out of the 22 women MPs in the 10<sup>th</sup> Parliament, 16 are elected MPs while 6 are nominated by respective political parties.

With regard to cabinet appointments, only 6 (15%) women MPs have been appointed as full cabinet ministers out of 42 ministers. Six (12%) women MPs were also appointed as assistant ministers out of 50 assistant ministers. This is far much below the 30% threshold recommended in all public appointments.

# House Committees in the 10<sup>th</sup> Parliament

The 10th Parliament is comprised of the following committees:

(a) **House Business Committee**

(b) **Departmental Committees**

- Administration and National Security Committee,
- Agriculture, Livestock and Co-operatives Committee
- Defence and Foreign Relations Committee
- Education, Research and Technology Committee
- Energy, Communications and Information Committee
- Finance, Planning and Trade Committee
- Health Committee
- Justice and Legal Affairs Committee
- Labour and Social Welfare Committee
- Lands and Natural Resources Committee
- Local Authorities Committee
- Transport, Public Works and Housing committee

(c) **Investigatory Committees**

- Public Accounts Committee
- Public Investments Committee
- Local Authorities and Funds Accounts Committee

(d) **House Keeping and other select committees**

- Budget Committee
- Committee on Delegated Legislation
- Committee on Equal Opportunity
- Committee on Implementation
- House Broadcasting Committee
- Library Committee
- Catering Committee
- CDF Committee
- Procedure and House Rules Committee
- Speaker's Committee
- Committee on Powers and Privileges (National Assembly Powers and Privileges Act)
- Select Committee on Review of the Constitution

As indicated in the table hereinafter, none of the House Committee has reached the 30% threshold with regard to women MPs representation. Women MPs are underrepresented in most of the House Committees with some Committees having no woman MP at all. This is an issue of great concern as these Committees are crucial in determining the House business as well as having oversight to ensure a gender sensitive and responsive Parliament and Government at large. It is in no doubt that these pertinent needs of women in areas such as health, education and labour are more likely to be addressed better by women MPs at the Committee stage.

<b>COMMITTEE</b>	<b>MEN MPS</b>	<b>WOMEN MPS</b>	<b>TOTAL MPS</b>
House Business Committee	17 (77%)	5 (23%)	22
Administration and National Security Committee	10 (91%)	1 (9%)	11
Agriculture, Livestock and Co-operatives Committee	10 (91%)	1 (9%)	11
Defence and Foreign Relations Committee	11 (100%)	0 (0%)	11
Education, Research and Technology Committee	9 (82%)	2 (18%)	11
Energy, Communications and Information Committee	11 (100%)	0 (0%)	11
Finance, Planning and Trade Committee	11 (100%)	0 (0%)	11
Health Committee	11 (100%)	0 (0%)	11
Justice and Legal Affairs Committee	8 (73%)	3 (27%)	11
Labour and Social Welfare Committee	8 (89%)	1 (11%)	9
Lands and Natural Resource	10 (91%)	1 (9%)	11
Local Authorities	9 (100%)	0 (0%)	9
Transport, Public Works and Housing Committee	11 (100%)	0 (0%)	11
Public Accounts Committee	10 (91%)	1 (9%)	11
Public Investments Committee	11 (100%)	0 (0%)	11
Local Authorities and Funds Accounts Committee	11 (100%)	0 (0%)	11
Budget Committees	14 (93%)	1 (7%)	15
Committee on Delegated Legislation	8 (89%)	1 (11%)	9
Committee on Equal Opportunities	7 (78%)	2 (22%)	9
Committee on Implementation	10 (91%)	1 (9%)	11
House Broadcasting Committee	10 (100%)	0 (0%)	10
Library Committee	9 (90%)	1 (10%)	10
Catering Committee	9 (75%)	3 (25%)	12
CDF Committee	11 (100%)	0 (0%)	11
Procedure and House Rule Committees	10 (83%)	2 (17%)	12
Select Committee on Review of Constitution	21 (78%)	6 (22%)	27

# the 10th parliament and gender legislation

## Current and Pending Gender Related Bills in Parliament

In order to address gender inequality in the country, several Bills touching on gender have been tabled in Parliament. Bills pending before the 10<sup>th</sup> Parliament include: the Marriage Bill 2007, the Matrimonial Property Bill 2007, the Family Protection Bill 2007, the Equal Opportunities Bill 2007 and the Affirmative Action Bill 2000. An overview of such Bills is as follows:

### (a) Marriage Bill, 2007

In 2007, the Kenya Law Reform Commission drafted the current Marriage Bill of 2007, which was tabled before the 10<sup>th</sup> Parliament in 2009 by the then Minister for Gender, Children and Social Services, Hon. Esther Murugi.

The Bill would be the first Kenya's home grown marriage law as our existing marriage laws are in one way or another 'imported'. The Bill seeks inter alia, to consolidate all the marriage laws into one as there is proliferation of marriage laws in the country. Currently, there are the seven Acts of Parliament relating to marriage namely; The Marriage Act, The African Christian Marriage and Divorce Act, The Matrimonial Causes Act, the Subordinate Courts (Separation and Maintenance Act), The Mohammedan Marriage and Divorce Registration Act, The Mohammedan Marriage Divorce and Succession Act and the Hindu Marriage and Divorce Act. As such, if the Bill becomes law, one will only have to look into one Act with regard to the formalities of marriage, the status, rights and liabilities of each party to the marriage. Further, the Bill recognizes all forms of marriages including Islamic, Hindu, Christian, Customary and Civil marriages.

The Bill seeks to address some of the gender inequalities witnessed in Kenya's Marriage laws and as such will promote gender equality and development. Some of the critical issues addressed in the Bill include but not limited to: payment of dowry, marriages by virtue of cohabitation and polygamous marriages. Further, the Bill comprehensively addresses the rights and responsibilities of married couples including: the right to maintenance and the right to pledge the credit of one's spouse. Addressed also are ways of handling matrimonial disputes, divorce, matrimonial property, and the maintenance and custody of children.

In summary, the Bill seeks to consolidate all laws relating to marriage by amongst others equating all marriages by providing for rights and responsibilities that are similar in all marriages. The following are some of the benefits and the salient features of the Bill, if passed into Law:

- The unification of marriage laws to minimize the complexity, unpredictability and inefficiency occasioned by the multiplicity of laws on marriage.
- The liberty to contract marriages in either civil form or according to the rites of a specified faith.
- The presumption of marriage where a man and woman having capacity to marry have lived as husband and wife for two or more years.
- The Centralized registration and issuance of marriage certificates for all forms of marriages.
- The establishment of the age of marriage as 18 years for both parties and invalidation of child marriages.
- The liberty of parties to subsist to marriages contracted under customary law, the Hindu Marriage and Divorce Act, or the Mohammedan Marriage and Divorce Registration Act, which have not been registered, and to apply to the Chief Registrar or District registrar or to a registration assistant for the registration of that marriage.
- The recognition of both monogamous and polygamous marriages.

- The liberty to convert potentially polygamous marriages into a monogamous marriage.
- Declaration of the rights and duties of parties in marriage and its dissolution.
- Determination of matrimonial property rights and simplification of the procedures in matrimonial causes.
- Set up a conciliatory body to resolve conflicts before divorce proceedings are instituted.
- Streamlined grounds for divorce and adjudication of matrimonial causes to be heard before Magistrates courts, Kadhi's courts and High Court of Kenya.
- The custody and maintenance of children to be in accordance with the Children Act No. 8 of 2001.

### **(b) The Matrimonial Property Bill, 2007**

In Kenya, there is no single detailed law dealing with matrimonial property. The law on matrimonial property is scattered in a number of statutory instruments which include the Constitution; the Matrimonial Causes Act, the Married Women's Property Act and the Law of Succession Act.

Consequently, the area of matrimonial property in Kenya remains an area in which no appropriate law has been enacted by Kenya's Parliament, to address the question of division or allocation of property between the spouses at the dissolution of a marriage. However, division of matrimonial property in Kenya occurs in accordance with the Married Women's Property Act of England, 1882. The Matrimonial Property Bill seeks to address these disparities and upon coming into operation, the Married Women's Property Act of England of 1882 shall cease to extend or apply to Kenya.

This Bill attempts to address the need for a new legislation to define and harmonize property rights within marriage and upon the dissolution of marriage. The proposed Matrimonial Property Bill, tabled in the 10<sup>th</sup> Parliament will become the first substantive piece of legislation in the country that will address the current lacunae in marital property regime. It seeks to do this by first and foremost giving a legal definition of marital property and secondly by setting out the method for division of the same.

### **(c) The Family Protection Bill, 2007**

**D**omestic violence and abuse are rampant among people in all cultures, races, ethnicities, religions, sexes and classes. It manifests when a family member, partner or ex-partner attempts to physically or psychologically dominate another. While domestic violence often refers to violence between spouses or spousal abuse, it also occurs among cohabitants and non-married intimate partners. Domestic violence has many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation and threats of violence. While these forms of abuse are largely criminal behaviour under the Kenyan laws, socio-cultural and economic factors together with the complex court procedures have prevented many victims of domestic violence from getting protection by the law.

In view of the above, the Family Protection Bill which is pending in the 10<sup>th</sup> Parliament, recognizes domestic violence (in all its forms) as unacceptable behaviour and ensures that where it happens, the victims are protected by inter alia:

- Empowering the courts to make certain orders to protect the victims;
- Ensuring speedy, inexpensive and simplified procedures to access justice;
- Requiring perpetrators of such violence to undergo counseling programmes with a view to preventing the violence;
- Providing counseling programmes for the victims.

The Family Protection Bill was first tabled in Parliament in the year 2000 as the Domestic Violence Bill. However, it lapsed before it was enacted. The Bill has now been revised and updated to reflect present day requirements by making it wider and flexible to accommodate and tackle all matters related to domestic violence without limiting it to the penal law alone. The Bill seeks to make provisions for protection and relief of victims of domestic violence and to provide for related matters. The Bill has since been shelved to allow for more consultations with MPs and other stakeholders. This decision has thrown into uncertainty the Bill that proposes that any man or woman in a marriage would provide for the upkeep of the financially weaker spouse.

#### **(d) The Equal Opportunities Bill, 2007**

**T**his Bill pending in the 10<sup>th</sup> Parliament, seeks to promote equal opportunities for all persons (women included), to prohibit discrimination and provide remedies for victims of discrimination (women included) and for related purposes (Section 1). The objective of the Bill is to provide for equality of opportunity and to counteract direct and indirect discrimination on the grounds of gender, race, ethnicity, religion, disability or any other prohibited grounds (Section 3). The Bill proposes that:

- All public bodies, employers and providers of public service make an active, targeted and systematic effort to promote gender equality in all sectors of society, enterprise and organization [Section 5(1)].
- All public boards, bodies, commissions and similar bodies set up by a statute or appointed by any Minister for the purpose of public management or planning purposes shall endeavor to have an equal composition of women and men [Section (1)].
- All authorities or organizations which are to suggest members of boards and commissions shall suggest both a woman and a man and if more than one seat is to be filled an equal number of women and men shall be suggested. In case of an uneven number of members, only one more of one gender than of the other gender may be suggested [Section 6(2)].

- All boards, committees, commissions or similar management authorities within the Public State administration should have an equal composition of women and men [Section 7(1)].
- All boards, executive committees or similar collective managements of independent institutions, partnerships and private and public limited companies which do not fall under the public administration should, as far as possible, have a balanced composition of women and men [Section 7(2)].
- All ministries, state institutions and public enterprises shall on every second year before the 1st of September give a report on gender equality [Section 8(1)].

No person shall do any act which:

- Is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of persons on account of their gender, race, ethnicity, origin or religion.
- Is done with the intention of inciting gender, racial or religious hatred [Section 10 (1)].
- Offensive behaviour is prohibited (Section 10).
- Discrimination is prohibited in education (Section 12), health services (Section 13), property (Section 16), appointment in public office (Section 21) among others.

Further, the Bill provides for the establishment of a Board to be known as the Equality Board whose amongst other function will;

- Hear and determine complaints of discrimination or contravention of this Act referred to it by any person;

- Implement programs aimed at the elimination of all forms of discrimination and promote equality of opportunity between persons of different states generally.
- Receive, investigate and as far as possible conciliate allegations of discrimination.
- Develop, conduct and foster research and educational programmes and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status.
- Review equality laws and policies.

### **(e) The Affirmative Action Bill, 2000**

The Affirmative Action Bill, 2000 aims at raising the level of participation in the society by the under-privileged or marginalized groups, women included. The motion on the Bill was tabled by Hon. Beth Mugo in parliament early June 2000 but was shelved to allow for wider consultation. The Bill has since then never been debated by Parliament and remains a Draft Bill.

### **(f) The (Gender Responsive) Constitution of Kenya**

The 10<sup>th</sup> Parliament has been instrumental in the enactment of the new Constitution of Kenya as published by the AG on May 6<sup>th</sup> 2010. Even though the new constitution does not contain all the rights women have struggled for over 20 years, it remains comprehensive and progressive in regards to gender rights and fundamental freedoms.

Article 27 of the new constitution provides for equality of rights and freedoms including equal political, economic, cultural and social opportunities and outlaws discrimination on any grounds. It also entrenches the proposed Kenya National Human Rights and Equality Commission in protecting gender and human rights and freedoms.

Further, gender rights provisions in the Bill of Rights are reinforced by Article 2 (6) which requires that any treaty or convention that Kenya has ratified, become part of Kenyan law, including those on women's rights. The Bill of Rights also provides for legislation to give full effect to the principle of Affirmative Action.

The new constitution is women-friendly in terms of conferring equal property rights to women and men and providing for elimination of gender discrimination in law, customs and practices relating to land and property during and on the termination of marriage. This would facilitate the passing of the Matrimonial Property Bill, still pending before Parliament. With regard to inheritance, the new constitution provides for Parliament to enact legislation to protect the dependants of deceased persons holding interests in any land, including the interests of spouses in the actual occupation of land.

On representation generally, the new constitution is largely compliant to the principle of "no more than two thirds of one gender" in elective and appointive public positions. For example, the chairpersons and vice chairpersons of the constitutional commissions and the two independent offices shall not be of the same gender.

In the past, women have generally been occupying vice-chair positions but now, there is need to insist that at least 50 per cent of the chairpersons for all appointive positions be women. In parliamentary representation, women are assured of at least 47 out of the expected 349 seats. However, this translates to only 13.5 per cent; a far cry from the 30 per cent minimum necessary to give effect to the affirmative action principle provided for under the new law. This in effect means that women will have to compete and lobby vigorously for elective and nominative parliamentary seats to ensure the minimum 30 per cent female parliamentary representation.

Under the new constitution, women are assured of at least 16 out of the proposed 47 seats, and an additional two seats representing the disabled and the youth bringing the total women's seats to 18, thus marginally meeting the affirmative action threshold.

The new constitution, like other constitutions in the world over, is a negotiated legal and political social contract, representing a compromise of the diverse interests and aspirations of Kenyans. It cannot therefore be expected to be perfect or to respond to all individual and group interests. In this regard, the new constitution and the gender provisions in particular, are progressive and provide an adequate basis for formulating responsive legislation, for the advancement of rights generally, and promotion of gender equity and social justice in Kenya.

Therefore, the audit study generally reveals that by far, the new constitution is a gender responsive document. Some of the gains to be made by the implementation of the new Constitution of Kenya include:

- All forms of discrimination including discrimination against women are expressly outlawed.
- Women can hold and inherit land. Matrimonial property is protected during and after the termination of marriage.
- Customary Law that is inconsistent with the community is void, thus personal law that is discriminatory to women is also invalid.
- Equality in marriage.
- Women representation is guaranteed;
- Women are recognized citizens and will be able to bestow citizenship to their foreign spouses or children born outside the country.
- Equal parental responsibility of the father and the mother to provide for their children.
- Increased number of women in all decision making organs including devolved government.
- Elimination of discrimination of women in laws, customs and practices related to land and property in land.
- Any Government decision that is inconsistent with the Constitution is unlawful and unconstitutional.

## **(g) Some other positive developments**

1. The adoption of the Sexual Offences Act, 2006 in 2008. This Act harmonizes sexual violence legislation into a single law, provides a comprehensive definition of rape, introduces minimum sentences, criminalizes sexual harassment and expands sexual offenses to include: gang rape, deliberate infection with sexually transmitted diseases, trafficking for sexual exploitation and child pornography.
2. The adoption of two Regulations on the Sexual Offences Act in 2008 to guide judicial officials in the implementation of the Act: the Sexual Offences Regulations and the Sexual Offences Dangerous Offenders DNA Data Bank Regulations.
3. In 2008, the government introduced subsidies to secondary schools education to cover tuition and other related costs. As a result, the number of students in secondary education in particular female students, has increased.
4. Establishment of the House Committee on Equal Opportunity.

## The 10th Parliament and Gender-related Resources Allocations

The 2008, 2009 and 2010 budgetary allocations in Kenya have been to some extent gender responsive as they have focused on gender issues. The three budgets have seen poverty alleviation, education and health sectors being given priority in the budget with regard to the total allocations awarded to these sectors. The allocations have since increased tremendously.

In the 2008 Budget whose theme was 'Working together to build a cohesive, equitable and prosperous Kenya', the then Minister for Finance Hon. Kimunya focused more on allocating resources to reduce poverty and create employment. Funds were allocated for the resettlement of IDPs during the 2008 post election violence who are mostly women, children and the elderly.

The budget also focused on the provision of free primary and free tuition secondary education to ensure enhanced access to education, which is critical for broadening employment opportunities and reducing poverty. The free primary and free tuition secondary education is mandatory for all children who have attained the school going age to access education. This has been crucial in bridging the wide gap between male and female access to education. In the past, priority in education by most cultures in Kenya was given to the boy-child who was viewed to have more potential value to the families. The girl child's education was neglected, as her role was seen mainly as more focused on the domestic domain, which is deemed by society as requiring no formal education. The Government's commitment to provision of free and affordable primary and secondary education respectively has seen increased enrollments especially by the girl child. The learning environment has also been improved with the construction of and equipping of more schools.

With regard to the water sector, the Minister reiterated that the Government was committed to ensuring equitable access to clean drinking water and thus, 'lift water off the women backs into the pipes countrywide'. To facilitate access to clean drinking water, the 2008 budget increased the budgetary allocation to the critical Ministry of Water and Irrigation by 26%.

To mention also is the Government's commitment to improved quality and access to healthcare services including maternal health, family planning, immunization and the fight against malaria and other diseases mostly affecting women and young children. Increased budgetary allocations to the health sector has witnessed the construction more accessible health facilities like dispensaries and health centres as well as upgrading the existing ones. In the 2008 budget, the Minister for Finance allocated funds for the free treatment of all children, pregnant mothers and patients suffering from HIV/ AIDS, tuberculosis and malaria in all government health facilities. Further, the Minister granted married women the right as tax payers to declare income they have earned from sources such as interests and land which was previously being declared by their husbands.

The 2009 and 2010 budgets whose main target was the realization of the Vision 2030 had a lot of goodies for women too. The 2009 budget read by Hon. Uhuru Kenyatta whose theme was 'Overcoming Today's Challenges for a Better Kenya Tomorrow', main objective was to stimulate economic growth, create jobs; more so for the youth, reduce poverty, enhance food security and protect the poor and the marginalized. The budget witnessed increased allocations to education and health sectors through the Economic Stimulus Programme (ESP). This has led to improved quality and access to education and healthcare through the recruitment of more nurses, health workers, health facilities and teachers.

The Minister for Finance also boosted the Youth and Women Enterprise (YEF and WEF) revolving funds through allocating an additional 500 million to each kitty. The YEF and WEF have been instrumental in creating employment to thousands of jobless youth and women countrywide through provision of start-up capital for various youth and women investment projects. On a different note, the 2009 budget saw the removal of excise duty on all jewelry products to make them accessible to majority of Kenya women.

The 2010 budget read by Hon. Uhuru Kenyatta on 10<sup>th</sup> June 2010 still focused more on improved healthcare, free primary and secondary education as well as job creation for the youth. Additional funds were allocated for equipping of maternal and child healthcare facilities in every constituency and the purchase of drugs, ambulances, motorcycles and bicycles for community health workers.

With regard to job creation, the Government has been in the forefront in strengthening Small Medium Enterprises (SMEs) and equipping the youth, girls included, with the requisite practical, technical, vocational and entrepreneurship skills.

In order to boost investments, the 2010 budget established yet another revolving fund to enable the informal traders, including women trading in vegetables, to save, earn interest and access credit to start and expand their businesses. This will go a long way in creating self employment to thousands of unemployed women.

To mention also is the Constituency Development Fund (CDF), which has seen the construction and upgrading of schools, health centres, roads and provision of clean drinking water at the constituency level. This is a big boost to the welfare of women at the constituency level.

The Government has also developed various poverty eradication policies and strategies including the Kenya Vision 2030 and Medium Term Plan (2008-2013) which if achieved, will see improved welfare and full participation of both men and women.

## conclusion and recommendations

**B**ased on the study findings, this report makes the following recommendations:

- That measures need to be put in place to ensure full participation of women in all decision making positions including national and local governance structures.
- That there is need to formulate proper and appropriate policies to guide Kenya's Parliamentary systems and procedure to ensure Affirmative Action in all Parliamentary Businesses and activities.
- That concern still remains high about the continued gender inequality in decision making organs; both national and local.
- That there is still an urgent need to address discriminatory laws and traditional harmful practices, particularly in regard to the family; marital violence; obstacles to access to education; under-representation in political life; and obstacles to access to property and health services.
- That there is concern about unnecessary delays in passing and adoption of legislation that eliminates discrimination and protects women's human rights. However, in trying to keep in line with the women's rights protection instruments, Kenya has so far ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- That there is need for aggressive lobbying, advocacy and consultation by the sponsors and movers of the pending gender related bills with the relevant stakeholders. This has worked in the past with the enactment of the Sexual Offences Act, 2007.
- That there is need for an increased/vibrant women participation in politics and governance issues. This is a sure way of garnering the numbers to see the pending Bills pass through and become law.

- That the engagement of gender, research and legislative drafting experts is much needed and indispensable.
- There is also a growing need for the Kenyan Parliament to agitate for reforming or repealing all discriminatory statutory laws in conformity with CEDAW and the Maputo Protocol, including discriminatory provisions within the Constitution, Matrimonial Causes Ordinance, Domicile Act and the Law of Succession Act.
- It will be crucial to harmonize all statutory, customary, and religious laws in conformity with CEDAW and the Maputo Protocol, and ensure that where a conflict arises, the statutory provisions prevail.
- That measures need to be put in place to eliminate all discrimination within the family, including urgently passing and adopting the Family Protection Bill (2007) and the Marriage Bill.
- Appropriate laws and policies need to be formulated and strengthened to protect women from all forms of violence and support victims, including the removal of obstacles to victims' access to justice; ensuring effective prosecution and punishment of sexual offenders; implementing training for all law enforcement personnel and health workers; increasing financial resources allocated to domestic violence programs and services; implementing public awareness campaigns targeting women and men, traditional and community leaders as well as adopting a zero tolerance policy on all forms of violence against women.
- That there is need to ensure women's equal involvement in all national and local resource allocations including the National Budget, CDF, LATEF, Constituency AIDS Fund, Constituency Bursary Fund, Youth and Women Enterprise Funds.
- There is need to ensure women's equal access to property, by inter alia passing and adopting the Matrimonial Property Bill as well as putting measures in place to facilitate women's access to land.
- That the Government needs to put appropriate measures in place to ensure quality and affordable women's access to healthcare, in particular access to improved maternal health and reproductive health services.

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<b>NAME</b>	<b>CONSTITUENCY</b>	<b>POLITICAL PARTY</b>	<b>TASK ASSIGNED</b>
Hon. Sally Kosgey	Aldai	ODM	Minister for Agriculture, HBC
Hon. Beatrice Kones	Bomet	ODM	Assistant Minister for Home Affairs
Hon. Beth Mugo	Dagoretti	PNU	Minister for Public Health and Sanitation, HBC
Hon. Prof. Margaret Kamar	Eldoret East	ODM	Budget Committee, PHRC, SC
Hon. Peris Chepchumba	Eldoret South	ODM	ALCC, LNRC, CC
Hon. Martha Karua	Gichugu	PNU	HBC, PAC, CPP
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Hon. Wavinya Ndeti	Kathiani	CCU	Assistant Minister for Youth and Sports
Hon. Charity Ngilu	Kitui Central	NARC	Minister for Water and Irrigation, HBC
Hon. Linah Kilimo	Marakwet East	KENDA	Assistant Minister for Cooperatives Development
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