



## **FIDA-KENYA POSITION STATEMENT ON THE BUILDING BRIDGES INITIATIVE AND CONSTITUTION OF KENYA AMENDMENT BILL,2020**

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The Federation of Women Lawyers (FIDA-Kenya) is a non-governmental, non-partisan, non-profit making membership organization whose vision is a society that upholds and respects the rights of women. FIDA-Kenya's mission is to promote women's individual and collective power to claim their rights in all spheres of life. In line with this mandate, FIDA-Kenya wishes to submit the following observations on Building Bridges Initiative (BBI) report that has culminated in the Constitutional Amendment Bill of 2020.

We acknowledge the national context that led to the March 2018 handshake following the highly contested and charged 2017 General Elections. There was need for national bonds though ideals as well as a need for a national, all-inclusive and comprehensive conversation. FIDA-Kenya further acknowledges that the Constitution of Kenya 2010 was promulgated to resolve deep seeded underlying issues in Kenya as part of the Agenda 1V reforms, consistent power contests and endemic election related conflict. There was therefore need to ensure the gap is narrowed between genders, generations, haves and have nots as well between the differently-abled in society. FIDA-Kenya therefore welcomed the ideals of the handshake which called for a national conversation to address underlying issues which include national ethos, responsibilities and rights of citizens, shared prosperity, corruption, devolution, safety and security as well as ethnic antagonism and competition.

FIDA-Kenya especially notes the focus on women concerns such as representation, gender-based violence, strengthened health care, increased access to resources for small and micro-owned businesses majority of whom are owned by women as well as increased focus on the family. The above issues were addressed in depth in both the BBI 1 and 2 reports that were disseminated to the public. We however also note that BBI 1 report was more of a diagnostic report whereas BBI 2 is focusing on implementation through various proposed constitutional changes as well as providing an assessment of legislative, policy and administrative changes. It is this BBI 2 process that has culminated in the Constitutional Amendment Bill of 2020 and to which FIDA-Kenya wishes to state as follows:

## 1. Key issues in the Constitutional Amendment Bill 2020.

Overall the Constitutional Amendment Bill **proposed 78 changes** that in our view amount to a constitutional overhaul. As a country, have we taken comprehensive stock of what we have and what we will lose? The Constitution of Kenya 2010 is only a decade old and yet we are proposing to overhaul it completely. How have we fared on in the implementation of the same? FIDA-Kenya maintains that the Constitution of Kenya is good as is and the only failure has been the lack of political will to fully implement the same and regrettably so on the gains of women such as the two thirds rule on representation.

### a) **Representation of women:**

The Constitutional Amendment Bill 2020 introduces a '*basket of new goodies*' in our view meant at enticing women to support the document. This is through increase in the number of constituency seats at the National Assembly to 360 plus unclear provision for top ups as well as a Senate that meets 50:50 gender parity. This modification to the representation model however has done away with the 47 Affirmative Action seats at the National Assembly. FIDA-Kenya is opposed to these new amendments on representation at the National Assembly and **calls for the reinstatement of the 47 affirmative action seats**. Further, the language of nomination and top up will in our view create animosity from Kenyans and make women the face this '*mzigo*' which will result in hostility towards women representation. We also note that nomination comes with its set of shortcomings including the reality that nominated members will be at the '*mercy*' of party leaders which will not be progressive for women's leadership. Women constitute more than half of the population and therefore have earned their right to be elected rather than nominated.

FIDA-Kenya remains **opposed to any attempt to expand the number of seats** in the Kenyan parliament for whatever justification in view of the prevailing economic realities. Ordinary Kenyans are facing the harshest economic times in our history that has been compounded by the prevailing Covid-19 reality. Kenya is already overrepresented and any further creation of new seats will only push Kenyans further into poverty. FIDA-Kenya calls on women of Kenya to reject any attempt to present '*promises*' of further representation that are laced with the language of '*shall*' and instead push for the full implementation of Articles 81, 97 and 100 of the Constitution of Kenya 2010.

**b) Judiciary Ombudsman:**

FIDA-Kenya membership is exclusively women lawyers focusing on the mandate of access to justice. As the premier women rights institution in Kenya and East Africa, we understand all too well the challenges that Kenyans face in the pursuit of justice. FIDA-Kenya welcomed the creation of the Judicial Service Commission and its mandate as outlined in the Judicial Service Act No. 1 of 2011. The JSC has continued to serve Kenyans efficiently and effectively since its establishment. FIDA-Kenya therefore submits that the creation of the Office of Judiciary Ombudsman is unnecessary and will only serve to undermine the independence of the JSC as well as create two-centers of power which is a recipe for chaos. We therefore find the role of the Judiciary Ombudsman as outlined as unnecessary and call upon the same to be reconsidered.

**c) Proposed Legislative and administrative measures**

FIDA-Kenya welcomes the proposed measures on strengthening the women agenda and women empowerment including measures on violence against women and girls, increased resource allocation to counties as well as constituencies which if managed well will go a long way towards improving women's quality of life. FIDA-Kenya however maintains that there already exists legislation on majority of these provisions that speak to the protection and empowerment of women such as SOA, Marriage Act, PFGM laws but what is lacking is the committed implementation by all stakeholders. This we maintain does not require an overhaul of the Constitution.

**2. Process towards Referendum process**

Fundamentally, FIDA-Kenya maintains that the current amendments to the COK 2010 target **78 provisions** which affect at least 13 out of the 18 Chapters of the Constitution. FIDA-Kenya maintains that these are substantial issues that cannot be lumped up into a single referendum issue and especially one that is being driven by way of popular initiative by state and public officers. This is against the tenets of constitutionalism that preserved the route of popular initiative for the people. FIDA-Kenya maintains that the people of Kenya and especially the

women must be granted fair opportunity to interact and understand the issues at hand and this process of public participation cannot be led by the state or political class due to their vested interests. FIDA-Kenya notes with concern that while the collection of signatures has been concluded, public engagement has not been inclusive and participatory. This is because the both BBI 1 and 2 reports both 1 & 2 are not reflective of transformative gender equality and are devoid of the concerns of women and of persons with disability. Furthermore, community mobilization has been characterized by patriarchy and exclusionary undertones. The country has witnessed the process being steered exclusively by the political class which is a stark departure from the journey towards the Constitution of Kenya 2010 that was all inclusive.

### **3. Timing of the Referendum**

The national conversation on the BBI report and the attendant processes is happening against the Covid-19 backdrop that paralysed the world and led to the disruption of the social fabrics and associations. According to the Ministry of Health, over 88,579 confirmed positive cases have been detected between March and 7<sup>th</sup> December 2020 with cumulative fatalities standing at 1,500. Critical to note, the health crisis has negatively impacted on the economy with over 1.7 million jobs reported lost in different sectors across the country. In the midst of this health crisis, the country is also presented with another shadow pandemic of teenage pregnancies. Between 15<sup>th</sup> April 2020 March to date, FIDA- Kenya has received and attended to over 5,027 calls on from the public on access to justice and gender violence cases through its hotline **080072050**. Learning in schools and colleges is yet to resume and our children are still at home at the 4 moment. While this is happening there is an ongoing strike by health workers over their safety, health insurance, and staffing needs to fight COVID19. This comes hot in the heels of a nurses strike over the lack of PPEs in the fight against COVID19. It is because of these reasons and many more, that FIDA-Kenya submits that the timing of the BBI process is ill-advised and insensitive to the plight of many Kenyans especially the vulnerable and marginalized groups that include women and children.

In light of the foregoing, FIDA-Kenya would like to make the following recommendations:

1. That there is currently only one crisis in Kenya which is the COVID – 19 pandemic and the consequences of the same which include health workers strike, economic downturn, gender- based violence, interruption of learning and disruptions of

families. We call upon the GoK to focus and channel all efforts and resources aimed at financing the referendum towards fighting and combating the pandemic including providing sufficient PPEs and medical insurance to our frontline workers. FIDA-Kenya remains in solidarity with all our front-line workers. We are aware that the MoH has indicated that it costs at least Kshs. 21,000 to treat an asymptomatic case of Covid- 19.

2. The Constitution of Kenya 2010 remains one of the most progressive documents globally and has especially ensured that women aspirations in Kenya since independence are articulated and outlined. FIDA-Kenya remains consistent in its call for the full implementation of the COK 2010. We therefore oppose any attempt to amend the COK 2010 and especially one that is driven by the political class. We must protect and *Linda Katiba* by all means.
3. The focus of the nation and decision makers should be channelled on economic recovery and society healing following the pandemic. There are only 21 months to the General Elections in 2022 and any referendum exercise before then will only serve as a distraction and polarize an already ailing society.

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**Chairperson**

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