



**June 2021**

## **CURRENT STATUS OF WOMEN ON THE GENDER AGENDA**

### **Background**

Evidently, the ruling made by the Constitutional and Human Rights Division of the High Court on the Constitutional (Amendment) Bill, 2020 is a setback for the gender agenda especially on positioning, access to leadership and the following 17 proposed amendments that were to strengthen the gender agenda.

- The National Assembly will now comply with the not more than two third gender rule fully. This is through the 360 constituency seats, nomination of four members representing persons with disabilities and two members representing the youth; half being women – and the special seats necessary to ensure realization of the not more than two third gender rule.
- There is introduced the Best Loser Principle to encourage women who wish to be elected on political party lists to be those that have competed and lost. However, consideration and precedence will be given to those that will have received the greatest number of votes. The filling of the special seats' positions will be determined after declaration of elected members from each constituency or ward.
- Affirmative Action Sunset clause – capped at 15 years for the National Assembly and 10 years for the County Assembly. The assumption is that parity will have been met.
- A Senate that meets gender parity – a balanced 50:50 representation of elected men and women, offering equal power specially to determine county allocations that the proposed constitutional amendment has now set at 35% with at least 5% meant for the ward development fund.
- The Governor and Deputy Governor should be of the opposite gender.
- The Council of Governors will have two nominees at the Commission for Revenue Allocation that generates the County Revenue Formula. One of the COG nominees must be a woman.

- The Political Parties are bound to provide to IEBC a list of candidates that is two third gender compliant and further provides for inclusion of persons with disability. There are sanctions for the Political Parties thus fail to comply.
- Protection and entrenchment of Article 43 – Rights of Health, Housing, Food, Water, Education and Social Security as priority budget items in public finance. The President must address implementation of Article 43 in the annual State of the Nation Address as an accountability mechanism.
- The Ward Development Fund shall be used to implement priority County Government Functions among others, the rights under Article 43. The Constituency Development Fund will be used for priority National Government Development. Currently, Agenda 4 programmes are centred around Article 43.
- Protection against Sexual and Gender Based Violence (SGBV) including during elections, teenage pregnancies and early girl marriage. Electoral violence against women is now aggravated assault with harsh penalties.
- The Citizen Responsibility section is introduced capturing citizens’ responsibilities including parental guidance. This is positive to nurture strong families and make our children responsible citizens as well.
- The Establishment of the Office of the Judiciary Ombudsman will facilitate receiving and hearing of complaints from citizens on performance of the Judiciary. Barriers women continue to face in access to justice will be addressed as part of the transparency and accountability measures.
- A Youth Commission is established. Its composition represents diversity and meets not more than two third gender rule. Its functions help integrate youth agenda in public and private sphere. Youth perspectives are also to be mainstreamed in the country’s development agenda. There shall also be facilitated generational mentorship and integration of African traditional values and cultures among the young people.
- Administrative guidelines on women economic empowerment including women access to procurement opportunities. The business incubation centres and inclusion of an economy clause in the Constitution will greatly aid women in business. Women must be part of the baking and sharing of the national cake.
- Establishment of the Health Services Commission to monitor the right to health standards is great.
- Inclusion of the policy guide on Unity and Diversity. The Kenya National Policy Guide on Unity in Diversity including gender issues and gender mainstreaming and addressing inter-sectionality issues – women with disabilities, young women and women from minority communities.

- Proposed administrative measures and legislation promoting women agenda including women empowerment.

While waiting for the appeal process, the women agenda must be kept alive. That being the case, respective actors must strive to keep this alive through educating, informing and shaping opinion about the gender agenda. Moreover, the fight for gender justice in society must be intensified by having women, men, and other likeminded partners working collectively for the sake of good governance and sustainable development.

Part of the problem has also been the way to which gender has been associated with sexuality thus missing the whole picture. Therefore, gender roles should be interchangeable and civic actors should strive to promote gender justice.

### **Scenarios**

With the ongoing constitutional dispensation, some several scenarios are evident:

- What happens if the will of the people is not expressed through a referendum? This implies that at one point or another, Kenya's sovereign power must be restored and Kenyans must have the last say on what goes on between now and the next general election.
- On the current political context, it is good to take stock of the tremendous work in the Kenyan Judiciary in terms of women's positioning in top positions from the Chief Justice, Registrar of the Judiciary, the Deputy Chief Justice, and several judges occupying top positions in the Judiciary. This needs to be replicated in other spheres by ensuring that women do not only go for women seats but for competitive seats at all levels (National, County).

### **Conclusion**

Society stands to suffer if women are excluded from positions of leadership, and Society stands to gain if women and men are partners and companions in development and governance. Additionally, the COK 2010 under Article 43, 1995 Beijing Platform of Action and Sustainable Developments Goal 5 which seeks to achieve gender equality and empower all women and girls, will be crucial reference points for the gender agenda.