

# THE BROADER CONTEXT

## *Mainstreaming Gender in Public Institutions of Governance and Democracy\**

By  
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### ABSTRACT

*The theme of the workshop was democratic values, processes and institutions and my paper addresses gender mainstreaming, equal and effective participation of women and men in democratic processes, and the methods of ensuring genuine and effective partnership between them. The paper specifically addresses the following question: How can Government, Opposition and Parliament ensure that all their activities are characterised by gender sensitivity, full and equal participation of both women and men in the democratic process and (ensure) a genuine and effective partnership between them? Gender mainstreaming, equality, parity, equity and sensitivity are social justice concerns and for democracy and human rights to thrive it is essential that these concerns be effectively addressed. There cannot be democracy and genuine partnership between women and men if there is no equality and mutual respect founded on the above principles.*

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## DEFINITIONS<sup>1</sup>

**Gender mainstreaming** is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, social and economic spheres. It is a process of assessing the implications for women and men of any planned action, including legislation, policies or programmes in all areas and at all levels, so that women and men benefit equally and gender equality is achieved.

**Gender equality and equity:** Gender equality means the equal valuing by society of women and men by removing discriminatory barriers and making resources equally available to women and to men to enable them to realise their full potential. Equality does not mean sameness, it means *equality before the law* and *equality of opportunity* (rewards, access to resources that enable opportunities) so that women's equal rights to the benefits of a country's resources are secured by the country's constitution, statutes, policies and institutions. Gender equality also means *equality of results/outcomes* (recognising the differences between the needs, interests and requirements of women and those of men so as to ensure equity), which is the real achievement, reflecting positive change and not merely words on paper. Therefore, initiatives for the realisation of women's rights to equality must cater for the disparities and disadvantages from which women continue to suffer.

**Gender parity and fair representation:** Gender parity is the recognition of full equality between women and men in all areas of life: national, political, economic, social, developmental, and so on. Fair representation is about ensuring that women have an equal voice in determining the way they are governed and that their representation in elected and appointed positions is based on equality of opportunity and so on. It is about both quantity and quality in that it ensures that women are fairly represented in key decision- and policy-making positions at all levels of government.

**Social justice** is a commitment to policies, principles and activities/measures that bring about just and fair social arrangements. These measures and arrangements enable all people and communities to live up to their full human potential and to participate actively in and benefit from the social, economic, cultural and political life of the country.

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1 All the definitions adopted for this paper in relation to the following principles are from the campaign on 'safeguarding the gains for women in the draft constitution' (Kenya), Training Manual, by the International Federation of Women Lawyers (FIDA-Kenya), Institute for Education in Democracy (IED), Kenya Human Rights Commission (KHRC) and the League of Kenya Women Voters (LKWV), Nairobi, Kenya, 2003.

**Affirmative action** is a temporary social justice measure to remedy past and present discrimination, eliminate the effects of barriers of opportunity and create mechanisms to bring about equality, equity, parity and justice. Affirmative action makes equality between women and men a political and social reality.

This paper, although highlighting the general principles of gender equality, parity and mainstreaming, draws mainly on Kenyan experiences of engendering the democratisation process.

## GENDER MAINSTREAMING ACTIVITIES OF THE GOVERNMENT, THE OPPOSITION AND PARLIAMENT TO ENSURE EFFECTIVE PARTICIPATION OF WOMEN AND MEN AND GENUINE PARTNERSHIP BETWEEN THEM

### *Background and context*

As a result of the 2002 general elections, conducted on 27 December, the National Rainbow Coalition (NARC) came to power in Kenya. The Constitution of Kenya requires that a candidate for presidential, parliamentary or civic elections be proposed by a political party and, to this end, NARC was registered as a political party and sponsored the members of Parliament (MPs) who now form the government.

NARC is a loose coalition of more than fourteen parties which had been in opposition since the re-introduction of multi-party elections in Kenya in 1991 and came together with the aim of defeating the then ruling party, the Kenya African National Union (KANU). This unity of purpose was based on the experiences of 1992 and 1997, where the opposition failed to seize power (although garnering a majority of votes in aggregate) because it was not united. The main parties in the coalition are the Liberal Democratic Party (LDP) on one side and, on the other, all the other parties under the umbrella of the National Alliance of Kenya (NAK) led by the Democratic Party (DP), the Forum for Restoration of Democracy – Kenya (FORD-Kenya), and the National Party of Kenya (NPK). It is instructive that the words democracy or democratic are included in the names of most of these parties. Because NARC's main object was to seize power it appears that the parties involved did not seriously work out a formula for governing once they had done so. The situation is further complicated by the fact that Kenya has a presidential not a parliamentary system. The president enjoys tremendous executive powers and a government of equal partnership between coalition parties is difficult to enforce. Although NARC produced a Memorandum of Understanding (MOU) and created a coalition committee known as 'the Summit', the spirit and the letter of the memorandum have allegedly not been respected. Indeed, the Summit has never met to deal with the challenges that emerged as soon as the President appointed members of his Cabinet. Since that date there has been discord and serious

differences have arisen between the main parties in the coalition over the MOU. The result has been a split into two camps, the LDP and NAK. The disputes over the MOU are some of the reasons why NARC has been unable to keep its election promises, especially its undertaking to complete and implement the Constitution, on whose draft the MOU was based.<sup>2</sup>

During the 2002 general elections KANU, which had enjoyed political monopoly as the ruling party in Kenya for thirty-nine years, lost to NARC. This loss was a destabilising and shocking factor, from which KANU is still recovering. As a result, in the twelve months after NARC took power and KANU became the official opposition party or the government in waiting, KANU did not authoritatively or effectively provide proper checks and balances on the government. The NARC government is made up of leaders who have been in opposition for most of their political careers or who might have served in the KANU government but were not directly in charge and therefore did not have experience, while the opposition has never played that role as it has always been in government. As a result, there is need for a strong opposition to keep the government in check and also to keep it constantly accountable to the electorate, yet there is also a need to strengthen the capacity of the opposition to provide effective checks and balances. Although NARC still enjoys good will from Kenyans there is an urgent need to hold it accountable to its citizens and to safeguard the democratic gains of 2002.

The democratisation process of the 1990s resulted in an enhanced democratic ethic, culture and space, which have created an environment for good governance with many Kenyans involved in the governance of their country. There is always the risk of retrogression where some people in government may be tempted to inhibit the consolidation of these democratic gains. During the last general elections it was clear that the Electoral Commission of Kenya (ECK) carried out its task in a professional, credible manner. Yet we cannot state that democracy has been achieved in Kenya because other stakeholders in the electoral process have not attained a similar degree of professionalism. Indeed, political parties remain the biggest hurdle on the road to democracy. Kenyan political parties are not professionally managed nor do they have the institutional capacity to manage their internal democratic processes. One can hardly identify any political party in Kenya with a specific ideology or philosophy. None can claim to be an institution with an up-to-date register of members (voters) or even a strategic plan of programmes; most are forums or vehicles for seizing political power or positions in Parliament and other elective institutions.

It is against this background that the issue of gender mainstreaming, equality and parity must be addressed.

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2 Under the current Constitution the President enjoys immense executive powers and has the final say on all public appointments even though in some cases he may do so after consultation. The draft Constitution seeks to ensure the devolution of executive power, something some people allege the NAK faction of NARC, from which the current President comes, do not wish to see happen.

## ENGENDERING THE PROCESSES OF APPOINTMENT AND ELECTION

It is difficult to answer the question '*how* can government, opposition and Parliament ensure gender mainstreaming and equality in all their activities and a *genuine effective partnership* between women and men?' without first seeking to understand *why* it is necessary and what kind of imbalances need to be addressed? The '*what*' and the '*why*' help us to identify effective methods of addressing the problems.

The justification for gender mainstreaming, equality and access to equal opportunities for women and men stems from the historical and traditional imbalances that have existed in the representation of women in appointed or elected positions. The focus is mainly on such positions because it is here that government intervention can be enforced effectively.

Although the population of women is equal to, if not slightly higher than, that of men, there are fewer women in elected and appointed positions. This is not because women are less educated than men or because women do not vote or seek elected positions, it is the result of a variety of factors and reasons.

### *Kenya's electoral system*

The electoral system practised in Kenya is known as first-past-the-post (majoritarian) on a constituency basis where the candidate with the highest number of votes, irrespective of voter turnout or the number of candidates, wins the election. In addition Kenya's laws do not provide for independent candidates, requiring prospective candidates to be sponsored by political parties. The practice has been that, since political parties do not receive public funding and their elections and other processes are not supervised or monitored by the ECK, there is no legal obligation to ensure gender mainstreaming or fair representation of women. For example, while the Constitution was amended in 1997 to require that in the case of nominated MPs parliamentary parties must take into account the principle of gender equality, of the twelve nominated MPs in 1997 only four were women. In 2002, as a result of intense lobbying and advocacy by many women's and other human rights organisations working towards ensuring gender equality in Kenya, the situation improved significantly, in fact reversing itself so there were eight women and four men.

The table below shows the distribution of parliamentary seats for women since 1969, the first time a woman was elected and one nominated.

As the table shows, the number of elected and nominated women MPs has more than doubled since the 1997 general elections. This is significant progress and an indication that more constituencies are accepting women leaders. This trend must not be reversed and the Gender Commission when it is established must safeguard and enhance these gains. A fairer electoral system would also contribute to the enhancement of these gains.

Year	Elected		Nominated	
	Women	Men	Women	Men
1969	1	154	1	11
1974	5	152	2	10
1979	3	155	1	11
1983	1	157	2	10
1988	2	186	1	11
1992	6	182	–	12
1997	4	206	4	8
2002	10	204	8	4

Presidential and other public appointments, including those of ministers, permanent secretaries, ambassadors and positions in public institutions of governance like the judiciary and parliamentary committees, appointments to constitutional commissions, government corporations and even semi-government corporations and institutions are not based on the principle of fair representation and do not significantly enhance gender mainstreaming. The number of women appointed to decision-making positions since NARC took over power is significant compared to that during the last government's tenure. However, this number is almost inconsequential compared with the promises NARC made to the women of Kenya in return for the part they played in ensuring it won the elections. Indeed, the President of Kenya assured Kenyan women that when he was elected he would ensure that *at least one-third of all* the appointments would go to women. The principle of affirmative action that was also promised to women has not been effected to address past imbalances. Although the draft Constitution provides for affirmative action and gender mainstreaming, there is no deadline for implementing these provisions once the draft Constitution is implemented.

The cost of vying for an elected position in Kenya is prohibitive for women, who have no access to the kind of resources necessary to mount an effective and successful election campaign. Elected positions continue to be the preserve of the rich in Kenya.

MPs have voted for themselves such lucrative salaries and benefits that vying for elected positions has become a very serious business. Many candidates take out cooperative and other loans or sell property to raise funds for their campaigns. Judging by the campaigns during the 2002 general elections, the campaigning process in Kenya has also become very sophisticated with websites, media – electronic, print and posters – songs, rallies and transport by helicopters and small planes the preferred mode of campaigning. This encourages corruption and, further, the pressure to win elections to secure the repayments of loans also encourages

voter bribery and corruption as a means of ensuring that the investment pays dividends in the form of election victory.

Political parties are not publicly funded nor are there limits to how much candidates may spend on elections. Resource mobilisation and fundraising for political parties remain problematic. Therefore, since financing an election is such an expensive affair, any person who is rich, irrespective of gender or leadership qualities, is a naturally successful candidate. Parties are not driven by ideology and are identified with their key financiers and the leaders who 'own' them. Naturally, few women can afford to 'sponsor' political parties or own them. Indeed, it is alleged that public and ministerial appointments after NARC's election victory, besides being based on the erstwhile NARC MOU were driven by material and financial contributions to presidential and party campaigns.

The leadership structure of political parties is devoid of women, mostly by design and because of history. Attitudes and role stereotyping do not seem to have helped the situation. Women occupy minor positions such as 'gender officer' or 'entertainment' in the leadership hierarchy of parties and it is rare to find a serious political party whose chair, secretary general, organising secretary or director of elections is a woman. Conversely, it is difficult for a political party to nominate women for serious elected positions.

The fact that parties do not encourage and actively ensure that women candidates are nominated for positions during party or general elections means that fewer women contest the general elections. The political playing field is still not level and favours men, who already enjoy numerous advantages over women. Men have access to networks and patronage, which are still out of reach for women. Men still control political structures, which are based on a patron-client relationship and traditionally favour them and their preferred candidates, who are always men – it is an exclusive network which continues to be impenetrable by women.

Women's involvement in seeking political power is still viewed with reservation; it is not considered glamorous or ladylike to plunge into the murky waters of politics. Furthermore, many political parties do not view women as 'strong winning candidates'. As a result, political parties will only nominate women candidates in constituencies where they are absolutely certain that they stand a very strong chance of winning, for instance constituencies which have traditionally been represented by women. For example, in 2002, a woman candidate who sought nomination from NARC to contest a parliamentary seat in Westlands constituency in Nairobi was prevailed upon to withdraw in favour of a male candidate although she was a strong and likely winner. In return she was promised that she would be nominated to Parliament<sup>3</sup>. In the event, she was indeed nominated and, in violation of the law, was appointed an assistant minister before she was even sworn in as a

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3 Many people claim that NARC declined to nominate her because of various coalition considerations but the fact that there had been a promise that she would be nominated seems to suggest that gender factors came into play.

nominated MP. Since she was a strong candidate NARC should have sponsored her for election and nominated the male candidate.

Women in Kenya continue to suffer both *de jure* and *de facto* discrimination. *De jure* refers to the legal framework such as the law on citizenship, which has the effect of allowing Kenyan men to confer citizenship on their alien/foreign women and the children of their unions. Citizenship is an important element of elections because it is the basis of qualification as a candidate and a voter. Also, Kenyan men who are married to foreign women stand a better chance of being appointed to governmental and inter-governmental positions<sup>4</sup> than Kenyan women married to foreigners because the man never loses his nationality while the woman is expected to. This is not only a disincentive to pursuing their own interests and preferences but also a stigma, which prohibits women from ascending to decision-making positions. *De facto* discrimination derives from the larger social, economic, political and cultural factors based on attitudes and stereotypes like physiological differences. As a result of this discrimination, women are denied equal access to the power structure that controls society and determines development issues and other policy-making processes.

How then do we ensure gender equality, balance, and gender mainstreaming in the activities of government, the opposition and Parliament and a genuine partnership between men and women?

### *Legal Framework*

One option is to create a legal framework to establish and institutionalise principles of gender mainstreaming and affirmative action.

The incorporation of these principles in the Constitution and in statutes creates legal structures, responsibility and a means of ensuring enforcement by the courts.

Another way is to establish institutions to facilitate women's access to and use of public resources as a means of dealing with past imbalances. The draft Constitution of Kenya creates opportunities for affirmative action which, when adopted, will help the government to do that.

The draft Constitution in its chapter on national values, goals and aspirations provides that *at least one-third* of all appointed and elective positions should be occupied by women. Affirmative action provisions throughout the draft not only deal with past imbalances relating to women but also aim to ensure justice and fairness for other disadvantaged groups, communities, minorities, the youth, people with disabilities, and other interest groups. The draft Constitution also provides for improved access to public resources by women and other disadvantaged groups and creates institutions and structures to enhance gender mainstreaming, for example, a gender commission.

<sup>4</sup> Inter-governmental positions include, for example, positions in the United Nations, African Union or regional parliaments where the appointing agency to those positions is the government of Kenya.

In Kenya, where convention is deeply rooted and various practices, beliefs and circumstances do not favour women, it is not enough to have laws that seek to address past imbalances and to enhance equality. There is a need for national machinery to oversee and take charge of the transition from gender inequality to gender equality and mainstreaming and to ensure that the trend is not reversed. This machinery, the Gender Commission, will support women's causes, oversee awareness and civic education and monitor the implementation of gender sensitive and mainstreaming policies and recommendations.

There is a need for a legal framework to support independent candidates. This will enable women to present themselves to the ECK without requiring endorsement by political parties, thus avoiding the situation in which, pursuant to the realities of *realpolitik*, the alleged art of the possible, political parties endorse a man in preference to a woman, offering aspirant women politicians no opportunity to convince voters of their leadership qualities and strategies.

Once the new Constitution comes into force it will deal with the question of how the government can ensure gender equality, balance, and a genuine partnership between men and women. Enabling legislation and institutions will arise out of the new Constitution to address issues of social justice.

### *Adoption of mixed member proportional representation*

As mentioned above, the electoral system in Kenya does not facilitate fair representation. The draft Constitution proposes a mixed member proportional representation (MMPR) system, which, while retaining the current system, creates proportional representation as a mechanism to ensure fair representation of women and people from marginalised communities. Proportional representation (PR) ensures the principle of one-person- one-vote where every vote cast counts towards representation. Although proportional representation is being resisted by delegates to the constitutional review conference, it is stated that the reason for the resistance is more a lack of understanding of how PR works than opposition to fairness and social justice. Many delegates are suspicious of political parties and believe that the parties will abuse PR by 'appointing' their friends and rewarding loyalty instead of addressing concerns about unfair representation. Other options, like the creation of special district seats and special interests seats, are being proposed.

It is the duty of the government to ensure, by means of awareness and civic education campaigns during the constitution review process required by the law, that all Kenyans, and especially delegates, understand the objectives of PR and appreciate its importance as a mechanism for ensuring fair representation.

### *Aggressive awareness and civic education campaigns*

The Constitution of Kenya Review Act (s 24) provides that 'the Constitution of Kenya Review Commission shall, during the entire period of its work, facilitate

and promote civic education in order to stimulate public discussions and awareness of constitutional issues'. In addition, the Electoral Commission of Kenya is obliged by s 42A(d) of the Constitution to promote voter education throughout the country. This obligation is based on the realisation by the government of the importance of civic/voter education. However, the Constitution of Kenya Review Commission (CKRC) does not, during the review process, provide for civic education, while the ECK is not involved in awareness creation with regard to the draft Constitution.

The CKRC conducted a civic education campaign before it elicited views from Kenyans but has since ceased to provide such education. Only civil society and its funding partners are providing civic and voter education to Kenyans and delegates to ensure that there is quality of debate and an understanding of the issues for discussion during the review process. Indeed, civic education to safeguard the democratic and other gains for Kenyans in the draft Constitution is provided by civil society organisations mentioned elsewhere in this paper.

Awareness and civic education campaigns are also tools for ensuring the eradication of electoral violence and malpractices which present serious barriers to women's effective participation in the electoral process both as candidates and as voters. The civic awareness campaigns must be accompanied by specific campaigns against violence, electoral corruption and bribery and other malpractice. The government and the ECK have a crucial role to play – efforts such as those seen in 2002, supplemented by civil society organisations and funding partners, are commendable and should continue even more aggressively. The government should provide security for women candidates especially during door-to-door night campaigning unless campaigning at such hours is banned and the bans are enforced.

It is the duty and responsibility of the government to provide civic/voter education to ensure gender equality in the activities of government and a genuine partnership between men and women.

### *Public funding of political parties and a ceiling for campaign expenditure*

To ensure gender equality it is necessary for legislative steps to be taken to limit campaign expenditure and to ensure fair representation of women. It is also important that the government provide public funding for political parties to ensure that they become institutions of democracy. The criteria for funding must include measures to ensure that women are fairly represented in key party and publically elected and appointed positions.

It is also necessary to ensure that parties are based on some credible ideology. Proposals for funding and campaign expenditure and monitoring of party democratic processes and management by the ECK are contained in the draft Constitution and the government must ensure that the draft Constitution is adopted and implemented at the earliest opportunity. Political parties must also ensure that they support women candidates and make party resources accessible to

women. Leadership qualities, not wealth, should be the basis for qualification for candidature. This should also be enforced by the government to ensure, among other things, the success of the fight against corruption.

*Supervision of political party elections and monitoring of their internal democratic processes by the ECK*

It is the responsibility of the government to ensure that political parties are managed democratically and that their internal processes conform to democratic principles. The current Constitution provides for such oversight. The government must ensure the effective implementation and enforcement of the law. Political parties should also provide civic education for their members to address stereotyping and deal with traditional attitudes that are harmful to women. Gender insensitive statements and utterances by politicians and public officials should be punished. Gender mainstreaming and equality in political parties should be recognised and, where possible, rewarded. Political parties need to develop and institutionalise rules, regulations and procedures to ensure the promotion and respect of democratic processes including elections, management of party affairs, and so on. The ECK and the government must set up certain benchmarks and indicators for monitoring and judging party performance. Political parties must hold regular elections and make annual returns and must adhere strictly to a code of conduct for political parties and, should they fail to do so, certain sanctions must be imposed and enforced.

*Involvement of women and nominated MPs in parliamentary committees and constituency activities*

Parliament has a crucial role to play in ensuring gender equality. It can do this in two key ways: by ensuring the passage of gender sensitive and fair legislation and by ensuring that women play a crucial role in the activities of Parliament, including its committees. This will enhance access to equal opportunities for achieving positions of authority and decision-making in Parliament. For example, in December 2003 Parliament passed a law enabling only elected MPs to decide on the composition of constituency committees and on the expenditure and projects for constituency development funds. Nominated MPs, the majority of whom are women, have absolutely no role to play in decisions about constituency funds. This further disenfranchises women. Nominated MPs also complain that they are not given any roles in parliamentary committees and do not participate effectively in parliamentary activities.

Parliament has a responsibility to ensure gender mainstreaming and equality in its activities. It is also possible to initiate special programmes and activities to ensure the effective involvement of women in sporting activities, inter and intra parliamentary associations, and so on.

### *Review of parliamentary rules and standing orders to make them gender sensitive and realistic*

The parliamentary rules and standing orders are outdated, gender insensitive and unrealistic. A recent controversy provides a good example. Women Members of Parliament had to call a press conference to publicise their rebellion against a parliamentary order that does not allow them to go into chamber with their handbags. This may seem petty but it enables us to make the point. The rules and orders envisaged a male-dominated National Assembly, but circumstances have changed, necessitating a review that will include measures to ensure equal protection of human rights and equal access to the resources and conveniences of Parliament by women MPs.

### *Civil society and the media*

Civil society, especially women's, democracy and human rights organisations, is the force behind the democratic and gender equality gains made in Kenya thus far. These achievements have been made possible through the implementation of projects, capacity building and strengthening, research and dissemination and awareness and civic education campaigns. Non-governmental organisations and their funding partners continue to spearhead the campaign to ensure gender mainstreaming, equality, equity, parity and sensitivity. To achieve their objectives, civil society organisations use the media – electronic, print, posters and the Internet – to reach their targeted audience. Much of the media used are paid for. The government needs to do more than just provide an enabling environment.

Mainstream media houses have also played a role in enabling access to information for women but they can do much more to ensure that their reporting and their language is gender sensitive. They can also boost the campaign for gender equality and mainstreaming by deliberate programming that does not perpetuate stereotypes but promotes positive gender images. The media houses can work with civil society organisations to create awareness and provide civic education to promote gender equality. They can also support women candidates and help break barriers in the process of election campaigns. As a community service the media need to develop and air programmes aimed at addressing social justice issues including gender inequality without demanding payment for such programmes.

## CONCLUSION

Political goodwill and an enabling environment are necessary to ensure a successful campaign for gender equality and the government, the opposition, and Parliament have an important role to play at different levels to facilitate and promote such an environment. A number of barriers still exist, the largest of which are stereotypes, attitudes and a lack of awareness. It is therefore imperative that the government,

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the opposition and Parliament spearhead an aggressive awareness and civic education campaign while making resources available and accessible to women. Affirmative action measures are also crucial to ensure that past imbalances are redressed. In this regard, systems and mechanisms must be put in place. Although significant progress has been made, it is hardly commensurate with the efforts and resources invested in the campaign to ensure gender equality and mainstreaming. Government, the opposition and Parliament have a role to play beyond paying lip service and writing manifestos of intentions.