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**THE STATUS OF COMPLIANCE WITH THE INTERNATIONAL GENDER RELATED
LEGAL INSTRUMENTS IN AFRICA: A CASE STUDY OF KENYA**

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Declaration

I, Wafula K. Ayub hereby declare that this research project is my original work and has not been presented for a Degree in any other University.

Signed.....

Date.....

This Project has been submitted for examination with my approval as University supervisor;

Signed.....

Date.....

Prof. Maria Nzomo

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Abstract

This thesis explores how legal and policy framework have succeeded and failed to address gender inequalities while taking note of the fact that Kenya is a signatory to multiple international gender related legal instruments . This study's main objective is to analyze key factors that contribute to the persistence of gender inequalities in Africa with particular focus on education and politics in Kenya. The study's objectives have been achieved; firstly it has examined the AU institutional and legal framework on gender in education and politics in Kenya with a view to giving an accurate description of how AU mechanism operates in terms of addressing gender inequality menace in Africa but specifically in Kenya. It is on this basis that the conclusions based on data findings were derived and from the objectives, the study's hypotheses were confirmed.

The study has reached several conclusions relevant to the topic under investigation; firstly the nature of commitment on the part of the political leadership of the country is very key to achieve gender equality. there is need for women needs to be captured in the development of political policy, education must be made easily accessible to women to make them be empowered fully and women must be considered for key decision-making positions so that they can push the equality agenda with ease.

In analyzing data findings, the study has used feminist theory because gender issues and more so gender equality fall squarely in feminist theory and specifically the liberal feminist strand where the belief is that men and women deserve equality in all opportunities, treatment, respect and social rights, therefore equality in education and politics is very core to feminism and specifically liberal feminist thinkers. At policy level, the relevant institutions should implement existing gender laws that seek to bring about gender equality in Kenyan society, this study's findings should enrich and complement existing policy documents for those who are directly involved in policy adoption, uptake or formulation, this will help inform what measures or strategies can be used to address gender inequalities both in education and politics. Academically, more research should be done in the area of gender and discrimination and findings made public to the implementing organs or institutions to make it easy for people to have knowledge on gender issues.

Abbreviations and acronyms

AAWORD-Association of African Women in Research and Development

ACHPR-Africa charter on humans and people's rights

BPFA-Beijing Platform for Action

CEDAW-Convention on Elimination of all forms of Discrimination Against Women

CESCR-Covenant on Economic, Social and Cultural Rights

COBE-Complementary Basic Education

COK-Constitution of Kenya

CPA-Comprehensive Peace Agreement

DRC-Democratic Republic of Congo

EAC-East Africa Community

EFA-Education For All

FGM-Female Genital Mutilation

FIDA-Federation of Women Lawyers-Kenya

GAD-Gender And Development

GEM-Girls Education Movement

GII-Gender Inequality Index

HDR-Human Development Report

ICCPR-International Covenant on Civil and Political Rights

IDIS-Institute of Diplomacy and International Studies

ILO-International Labour Organization

IWF-Independent Women Forum

KEWOPA-Kenya Women Parliamentary Association

KESSP-Kenya Education Sector Support Program

KHRC-Kenya Human Rights Commission

LSK-Law Society of Kenya

MDGs-Millennium Development Goals

MYWO-Maendeleo Ya Wanawake Organization

NARC-National Rainbow Coalition

NFE-Non-Formal Education

NFLS-Nairobi Forward Looking Strategy

NGEC-National Gender and Equality Commission

NWCK-National Council of Women in Kenya

OECD-Organization for European Economic Cooperation

PR-Proportional Representation

SPSS-Statistical Package for Social Sciences

UDHR-Universal Declaration of Human Rights

UNDP-United Nation Development Programme

UNESCO-United Nation Education, Scientific and Cultural Organization

UNEP-United Nations Environmental Program

UNFPA-United Nation Population Fund

UNICEF-United Nation Children's Fund

WSPK-Women Shadow Parliament

UNIFEM-United Nations Development Fund for Women

UNOCHA-United Nation Office of Coordination of Humanitarian Assistance

SPSS-Statistical Package for Social Sciences

VAW-Violence Against Women

WHO-World Health Organization

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 Background to the study

Historically, women as a social group have been subordinated in most societies. An analysis of this situation has focused social theory on a group of problems often referred to as “woman’s oppression in general, the family, equal rights for women, women’s differential participation in social labor and in other aspect of social life, relations between sexes, personal non-work relations of all sorts”. This study examines some aspects of women question in Kenya with special emphasis on women and political participation/representation and inequalities in education.

Over the last decade, women world over have debated, struggled and sought ways to get recognition for the role they play in society and to end their subordinate status. In the Third World ,this process has hinged on the growing realization by development planners and practitioners that for development to be complete and effective, women’s concerns and perspectives must be incorporated in development planning and the benefits of development be equally shared between sexes. Kenya is part of this trend.

Since the 1970s the government of Kenya has placed greater emphasis on women’s activities generally, an attempt to ensure gender equality. Alongside this trend, there has been a tremendous growth of non-governmental organizations and women’s groups concerned with the advancement of women.

This new appreciation of women’s roles has been boosted greatly by developments at the international level which culminated in the declaration of the U.N. Decade for women from 1975 to 1985.This progress has highlighted the fact that there remain areas in which much more needs to be done to institutionalize the advancement of women. One such area is

women in political participation/leadership and girl child education especially gender inequality in education..

Efforts to integrate a gender perspective into our domestic laws as required by international law has been elusive and contentious in most African countries and more so in Kenya. The debate in its entire scope advocate for gender equality that will then necessitate level playing field for both men and women. Women and female gender have been marginalized for a very long time and this has made them lag behind in many ways and in all manners. Kenya is one of the highly unequal societies but with active women's movements, although their emphasis has been different.¹In Kenya, there have been multiple efforts by different groups of people to help have a gender equal society.

The local effort has been supported immensely by the regional and international legal instruments given the fact that Kenya like many other African countries is a signatory to a number of conventions/treaties, declarations and protocol that make it an obligation as a signatory state to comply. Likewise the Beijing declaration and platform for action, adopted unanimously at the united Nations fourth world conference on women in 1995, encourages governments to promote an active and visible policy of gender mainstreaming in all policies and programs so that, before decisions are taken, an analysis is made of the effects on women and men respectively.²

On whether there is political will to implement and live up to both the international, regional and local expectations is subject for debate though it seems to be other hindrances and obstacles that have made it difficult for Kenya to effectively implement the different international gender related legal instruments.

¹ Anto Verger, *Global education policy and international development* (London: Bloomsburg publishing, 2012) pp 9.

² Beijing declaration and Platform for action, *fourth world conference on women 15th September 1995*, A conf. 177/20 (1995) and A/CONF 177/201

Gender issue is one of the subjects that have aroused a lot of contentions across the African continent and in other parts of the world in modern times. As result, the United Nations in its wisdom and leadership saw it wise to come up with a legal framework to address gender questions hence went ahead in its charter especially in the preamble to recognize and acknowledge the entire humanity not as men or women but as human beings. Kenya therefore being a member of the world society governed by the United Nations has appended to a number of various international gender related legal instruments as a way of promoting directly in enhancing and reducing the gap between men and women in different aspects of life that will eventually help to achieve equality.

Africa in the post-cold war period has been plagued with different problems ranging from poverty, corruption, bad governance, gender inequality, marginalization, nepotism and underdevelopment. A notable feature of most regime and conflicts in Africa and more so in Kenya is the gross injustices and human rights violations that are associated and are targeted mostly at women. This can be attributed to the fact that there still exists fault lines in domestic laws that are supposed to be in total resonance with international law to fully guarantee women their inalienable rights just like men. In essence, women still face discrimination and marginalization in Kenya despite the clear dictates and direction captured in all available international gender related legal instruments.

1.1 Scope and Limitations

This study concerns itself with the way Kenya has conducted itself in terms of according women their rightful position and status in the society. Kenya was chosen as a case study owing to its level of convenience to the researcher. The choice of Kenya as my case study is informed by the fact that women issues have increasingly been illuminated in the constitution sending signals that something is being done to improve the way women have been treated for a very long time in Kenya where they have been marginalized and treated as

second class citizens even in matters affecting their individual life and this has gone ahead to deny women their fundamental freedoms and basic human rights.

This study is therefore aimed at looking at how the government and other relevant institutions have done so far to make women visible in the areas of political participation and girl education. In Kenyan context still, women and their organizations have to lobby for constitutional gender equality. Once such equality is achieved, women would have to demand functioning 'affirmative action'. Women could not point out that due to centuries of discrimination, they clearly lag behind men. In allocation of business licences, loans, educational opportunities, land, business plots, managerial jobs, etc. women would have to be specially and consciously considered³. Through field data obtained from different institutions, three types of legal constraints are identified—constraints emanating from legal sanction, ineffectual law and legal lacunae which undermine women's visibility and their participation in development spheres.

1.2 Statement of the Research Problem

Women have been discriminated against both in education and politics for a long time, part of the reason due to institutions and processes which promote male bias; this has become acceptable by women in oppressive culture. This has been manifested in the areas of education and politics. Education disparities have in some cases been linked to class inequalities making education a disadvantage for women

After signing and in some cases ratifying international and even regional legal tools, the subsequent implementation process is completely different in most signatory states and Kenya is no exception. Whereas according to the laws of treaties through various principles like *pacta sunt servanda* where state parties are legally expected to live up to the obligations of

³ Kivutha Kibwana, *Law and the Status of Women in Kenya*, Faculty of Law, University Of Nairobi and Claripress 1996.

the treaty, some states including Kenya has not done enough to successfully implement these treaties and conventions.

Despite national and the legal and policy frameworks, there is persistent marginality of women in key areas of influence especially top and strategic decision making posts⁴. This study seeks to make enquiry into the specific areas of education and politics to find out how inequalities are being manifested and make recommendations and proposals of what needs to be done to address inequalities in those specific areas of study.

1.3 Objectives of the study

The main objective of this study is to analyze the key factors that contribute to the persistence of gender inequalities in Africa with a particular focus on the question of education and politics in Kenya. In this broad objective there are several specific ones examined along with the main one.

- To examine the AU institutional and legal framework on gender in education and politics in Africa and Kenya in particular.
- To establish the status of gender inequalities in education and politics in Kenya and the role of legal tools in countering those inequalities.
- To assess the implementation of legal tools and how they impact education and politics in Kenya.
- Analyzing challenges facing/confronting women access in education and politics in Kenya
- Summary, conclusions and recommendations.

⁴ Kivutha Kibwana, Law And Status Of Women In Kenya, Faculty of Law, University of Nairobi and Claripress, 1996

1.4 Justification of the Study

As it is evident from literature explaining the gap that there is in terms of failures surrounding implementation and recognition of women as equal human beings. The explanations in this study lay bare bottleneck around implementation of various gender related legal tools and open the understanding behind the debate around women and girls. Academically, this study seeks to make enquiry into misconceptions and politics that have derailed and tended to interfere with women status and position in the society. There is also less literature that seeks to interrogate implementation of various legal tools domestic, regional and international in order to find out if women are being treated right and according to the relevant legal tools. Therefore the matter of implementation of these various legal instruments in Africa is not yet fully exploited yet it appears to be top on the international agenda. This study therefore seeks to fill the gap. Also, the study's findings can be useful for those who are directly involved in policy adoption, uptake or formulation where this study can then inform what measures or strategies they ought to come up with to address gender inequalities in the specific areas of education and political participation/representation .

Preoccupation with women's issues by researchers, policy makers and implementers in Kenya can be justified-if justification is necessary-on several grounds. Firstly, a society loses development opportunities by ignoring women's vital role in society...although women constitute half or more of national populations. Secondly, even if women's self-improvement has not led to quantifiable increases in productivity, discrimination against women is intolerable, as it violates the fundamental rights and freedoms of peoples. Thirdly, gender issues (are) important to development of research because women's self images affect their own development⁵.

⁵ Achola Pala Okeyo, African Women Develop Strength from Adversity(doc)1989:3-5

Clearly then, since women constitute the majority population, the country deprives itself of a large population of human resources if women are routinely ignored, misutilized-in a word peripheralized. In both Eastern and Western Europe, attempts have been made to reintegrate previously subjugated segments of the population, including women, into the mainstream of development. Similarly in Third world countries, recognition and empowerment of such populations has recently begun to be seen as a critical measure in perpetuating existing economic and social structures. For if world history hitherto constituted an attempt by ruling groups to continually exclude significant portions of the population from the development and human arenas, it appears present and future history is/will be about incrementally reintegrating such disadvantaged groups into the economy and general human development.

Since present legal norms in many communities and countries-including Kenya-were developed within patriarchy, it becomes worthwhile to study how such laws relate to gender discrimination against women. Further, in societies such as Kenya's, which are still emerging from the traditional form, the 'invisibilization' and potential of women in the development process deserve special study so that we can determine if International legal regime can be a viable catalyst in reversing women's unfair treatment.

Implementation of International gender related legal instruments is the only way to grant equality and justice to women in Kenya. However, this has not been fully attained and women often experience gender biases due to prevailing cultural or traditional norms. This study has therefore been prompted by the fact that women issues and women experiences have been given secondary attention. In addition, most key decision-making positions have not integrated women to a level where they can influence decisions directly affecting them. A

gender perspective of looking at issues therefore presents a unique opportunity to secure gender justice.

This study therefore seeks to secure gender justice. It seeks to contribute to the limited justice system on gender related issues and give recommendations on how legal and policy framework can help to have a gender responsive society. Women have been working hard to ensure that Beijing affirms the kind of world we want to live in, a world where development processes will empower women in particular, a world in which the promotion and protection of all human rights and fundamental freedoms will be considered an international priority⁶

1.5 Literature Review

The momentum and pressure to challenge and change the structures and nature of relationships that perpetuate women's subordination can be traced to women's well developed networks and organizations that not only prioritize local, national and international agendas for gender equality but also include their involvement and articulating coherent common positions on gender equality issue, their participation in educating their governments and public on issue of concern to women; and their direct provision of services and support to women and children. At the same time the global call to advance gender equality and women's empowerment has brought focus, strong recognition and collaborative actions in addressing gender concerns⁷.

At the dawn of the 21st century, women's rights advocates around the world have achieved a significant victory in asserting that women's rights are human rights and that women are entitled to the protections provided by the international system to ensure the exercise of rights. The 1993 Vienna Declaration and program of Action recognized that the

⁶ Margaret A. Schuler, *From Basic Needs to Basic Rights: Women's claim to Human Rights*, Women, Law & Development International Washington D.C., in the foreword.

⁷ *ibid*

human rights of women and of the girl child are an inalienable, integral and indivisible part of the universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional regional and international levels, and the eradication of all the international community.⁸ Like all victories, however, acknowledgment of women's human rights by the international community represents as much a commencement as it does a culmination of a process.

The history of human rights since the framing of the universal Declaration more than fifty years ago has been one of the dynamic struggle to understand and make real the meaning of the rights enshrined therein. What evolved in the "traditional" human rights paradigm did so within an andocentric, patriarchal world dominated by the East West polarization and the cold war. During this period, worldwide economic, social and cultural pressures produced unparalleled technological achievements, economic growth and democracy for some and poverty, environmental degradation and political repression for others. In response to the most clamorous of social changes during this period, great strides were made in recognizing and affirming the concept that human beings have rights to the minimum requirements of a life of dignity.⁹ Supported by a strong international consensus about the international Bill of Human Rights, the list of recognizable human rights has evolved and expanded over the past fifty years to cover a growing field of vital concerns and threats to human dignity.

The source of one recent and significant challenge to the traditional human rights framework is the international women's rights movement. The dynamic nature of human rights permitted women to enter the arena, challenge the current discourse and offer fresh perspectives on both theoretical and practical elements of the debate. Women recognized that the evolving human rights consensus of the late twentieth century was heading in a direction

⁸ para.18, The 1993 Vienna Declaration and Program of Action.

⁹ Margaret A. Schuler, *From Basic needs to Basic Rights: Women's claim to Human Rights*, Women, Law & Development Washington D.C(1995)pp.1-2

that affirmed the primacy-practically and conceptually-of men's needs over women's, of civil and political rights over social, economic and cultural rights, and the public sphere over the private.

In working at the local level to empower women to change discriminatory legislation, to educate women about their rights and redress grievances, activists and advocates in many parts of the world began to understand the patriarchal character of law and how even the concept of rights was skewed against women. They discovered in daily life the adverse consequences of the public sphere vs. private sphere ideology which left women little recourse in law. As networks of women's rights advocates began to coalesce-primarily in the global south, in Latin America, Asia and Africa-their struggles, experiences and strategies stimulated a feminist critique of rights, mobilized attention around the more egregious violations of women's rights and opened up a broader debate about human rights.

Over the past fifteen years, this emerging women's rights movement has insisted on reinterpreting human rights traditionally thought not to apply to women (interpreting the right to bodily integrity, for example, to include protection from domestic violence).In so doing, it has expanded to some degree the sphere of state responsibility and very gradually and recently increased the power of international mechanisms to monitor government actions and omissions related to women's human rights. Thus ,women's participation in the system and worldwide mobilization under the motto of claiming transformative effect on the human rights agenda by pushing the boundaries and altering ever so slightly the frontiers of the debate .

On the other hand, women and women's interests are not yet totally integrated within the human rights arena. Women still lack acceptance as full players in the system and as subjects of fully recognized and enforced human rights. Clearly, some progress in both

directions has been achieved, exemplified by the assertions in favor of women's rights in the Vienna Declaration and the naming of the special Rapporteur on violence against women among others, but there is still a long road ahead. For this reason, the victories of the Vienna and later the Cairo Conference are significant not only because they mark the beginning of a new and challenging process necessary to complete the task begun a decade ago.

Progress on violence against women occurred because women vigorously engaged the system by requiring it to respond to women's reality, experience and needs. Engaging the system meant getting its attention, forcing it to listen, requiring it to act on its own principles and insisting on a response. The effort paid off on violence against women in a similar manner against women, but all threats to women's human dignity call for engaging the system in a similar manner until every woman enjoys the full range of human rights-including rights of women as women. The international conventions are important in this struggle not because they embody timeless policy or legal prescriptions but because their essential message is that policies and laws should not disadvantage women. If policies and laws leave women poorer, sicker, less able than men to move about freely, they should be changed.

International agreements make it clear that these issues of fairness are not just the dreams of some feminists but have been agreed to, at some level, by the international community. The adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was certainly a move in the right direction. It is imperfect, however. It can even be argued that its preamble is not clear in its objectives. But it remains a valid example and standard of substantive equality for women. Basically, CEDAW integrates the principle of the interdependence of women's rights as human rights. It gives logic to the numerous affirmations of this principle taken by the UN General Assembly. CEDAW affirms that women count and that their legal claims have valid

foundations. It proposes principled approach to equality that suggests a new reading of women's social and economic rights in the actual context.

CEDAW is a proper legal standard for such an interpretation. First, it recognizes that the sources of exclusion are public (the state is gendered) and private (society is gendered). Second, because CEDAW, like most of the human rights normative instruments, relies heavily on state commitment, it forces an analysis of the adverse effects that the privatization of the social sphere have on women. CEDAW requires more from the state than the attitude of a good government. It requires the government to be responsible for the achievement of women's equality¹⁰. Globally; women's rights are least recognized, promoted and enforced in Africa. African non-governmental organizations (NGOs), governments and other relevant actors are therefore duty bound to urgently focus on the continental rehabilitation of women's rights¹¹.

It is the strengthening overtime of the membership by the countries of the south where Kenya also belong in the arena of the United Nations that helped raise issues of women's right and brought diverse women into the UN system; raising their role and status. The United Nations has provided a forum that enables women to recognize and share the commonality of their experience; positioning them to articulate a global women's rights movement and shared platforms for action that informs local work.

Kenya inherited the colonial legacy of male dominance, which used male hierarchies for direct or indirect forms of colonial rule while female hierarchies were atrophied or actually suppressed. Colonialism did not improve the condition of African women as it is

¹⁰ *ibid*

¹¹ Kivutha Kibwana, *Law AND THE STATUS OF Women IN KENYA*, FACULTY OF LAW UNIVERSITY OF NAIROBI and CLARIPRESS, 1996, PP 70.

often claimed but was patriarchal and therefore gender biased¹². It boosted the hegemony of men while extreme domestication was imposed on women. The official attitude towards African women was unfavorable and quite often abusive. African households were equally influenced. At independence Kenya assumed that activities of women's organizations would support the state in nation building and their autonomy was attacked. Thus the subsequent policies and national plans catered for all people irrespective of gender. In 1964 the National Community Development Policy emphasized self-help and women's participation was undetermined. Sessional Paper No.10 of 1965 did not mention women in its contents.

The First Development Plan also made no specific mention of women. However, the 1972 ILO report on "Employment, Incomes and Equality" made the Kenya government clarify its position on the women question and stated that it "is not aware of overt discrimination against women in the country"¹³. Before 1975 Kenya's development policies were gender insensitive. After the declaration of the women's Decade, the government responded to the Mexico World Plan of Action for the establishment of national machinery, by creating the women's Bureau to accelerate the achievement of equal opportunity for women through the cabinet Memorandum 78(b) of 1975.

In 1985, Kenya hosted the end of UN Decade for Women Conference in Nairobi and hence several important international conventions were ratified by Kenya confirming the rights of women, their participation and due place in socioeconomic and political arena, and the need for guaranteeing their safety and protection. Among these were the 1985 Nairobi Forward Looking Strategies for women, the Beijing Platform for Action of September 1995, and the convention on the Elimination of All Forms of Discrimination against Women

¹²Nuna Thundu, Annamarie K. Kiaga, Suzan W. Mwangi Omondi (ed), *Assessing Gender policies in the East African Region: Case studies from Ethiopia, Kenya, Sudan, Tanzania and Uganda*, Development policy management forum (2008) pp.82

¹³ ibid

(CEDAW) signed in 1984, the Millennium Development Goals and the African Charter on Human and People's Rights.

There is no contradiction that the arena of the gender equality where there has been need for equality to be achieved has attracted sufficient attention hence many scholars have written about it for a reason or another. Although international agreements provided blue prints for actions on very wide range of issues that are gender related, for countries such as Kenya, it is important to recognize that locally there has been activism and planned interventions that precede these key international obligations. Kenya has had a vibrant civil society as evidenced by the existence of progressive civil society organizations, women's organizations and individuals showing the way towards influencing and nurturing an environment that will support and sustain gender equality work and social justice on the continent.¹⁴

Among the first important women's organizations in Kenya was the Maendeleo ya Wanawake Organization, the largest women's organization in Kenya, which by independence was already playing an important role, especially with regard to economic empowerment for women, given their ability to reach out across rural Kenya. At the end of women's decade in 1985, Maendeleo ya Wanawake had 300,000 members country wide. The Kenya women's movement got a strong new impetus in 1998 with the creation of Kenya women's political caucus, a coalition of women's organizations coming together with the aim to further mobilize women to articulate their concern and carry out advocate in support of the equity bill. Also as a coordinating network, the Kenya women's political caucus had played an

¹⁴ *ibid*

instrumental role in ensuring that women would be represented as commissioners and delegates in the 2001 constitutional review.¹⁵

Kenya women individually and in numerous organizations and associations, continue to speak to gender concern across all sectors and this has been an effort to communicate to relevant authorities and institutions in this country to give to them what is both legally and morally theirs without being unfairly treated.

The government of Kenya, in its efforts to redress the inequalities faced by women in Kenya produced sessional paper No. 2 of 2006 on Gender Equality and Development. The work sets out comprehensive guidelines towards the achievement of gender equality. The president then directed that at least 30 per cent of appointments in public service should be taken up by women. The government also expressed strong commitment to aligning its policies with the agenda of MDGs, which provide for gender equality as specific development goal for the country. However, without concomitant public resources, it is difficult to see how these goals will be achieved. There is need for budgetary resources to be allocated towards women's equality and women to be empowered and involved in and to participate at all levels of decision-making. This requires gender responsive budgeting and checking on who actually benefits from such projects so that the needs and interests of the different genders are addressed in the public expenditures on projects that the government makes¹⁶.

One of the most highly debated issues in Kenya today revolve around Article 81 (b) Chapter 7 of the current Kenyan constitution that states. "Not more than two-thirds of members of elective public bodies shall be of the same gender". Whereas people unfamiliar

¹⁵ Tabitha Kiriti, *Institutions and gender inequality: a case study of CDF in Kenya*, organization for social science research 2011, pp 5,20

¹⁶ Ibid

with the Kenyan context will find this provision reasonable and indeed basic, two interrelated issues have underscored various levels of contestations. The first relates to the fact that historically women in Kenya have continued to be marginalized and excluded in various decision making institutions in the country; because of this, the sheer imagination that women could raise minimum of one-third in any institution simply because of constitutional legality is unbelievable. Related to this is the obvious assumption that it is not possible under current circumstances for women to attain 1/3 slot in public bodies including the national assembly, senate and counties.¹⁷

In view of this, there is urgent need by the policy makers to put in place stop-gap measures/ initiatives to avoid likely constitutional faults and loopholes. The constitutional crisis may arise because men as usual are expected to get more than 2/3 majority whereas women are unlikely to attain even the minimum 1/3 threshold. The debate obviously raises the question of why certain segments of the society are excluded from realizing certain segments of the society are excluded from realizing their full potential and whether there are any measures that can be instituted to redress the imbalance. The debate also draws attention to challenges encountered not only in Kenya but indeed on entire Africa continent in an effort to entrench constitutional provisions that seek to enhance gender equity. It is needless to mention that these issues are clearly entrenched in the historical milieu that defines the nature of gender relations in Kenya.¹⁸

Gender concerns in Kenya have formed part of the underlying force behind the various constitutional reforms in the country since independence. Over the past three decades, gender concerns have been gaining prominence with attention being drawn to the plight of the

¹⁷ Mansah Prah, *Insights into gender Equity, Equality and power relations in sub-Saharan Africa*, (Kampala: Fountain publishers, 2013) pp 23.

¹⁸ *ibid*

poor and disfranchised women and the unfinished gender agenda¹⁹. The link between gender and constitution is underscored by the realization that gender inequalities in society should be readdressed through a legal framework. Gender disparities that exist in Kenya are due to deep rooted patriarchal socio-cultural, economic and political structures and ideologies. Under these conditions; Kenyan women have been excluded from participation in key governance capacities and have been deprived of their basic human rights and access to and ownership of strategic resources especially land.²⁰

The constitution as a supreme law can be used to eliminate various forms of social injustice that lead to the marginalization of certain groups of people. It provides the general guideline under which all other laws are to be based. The supremacy of the constitution as a basic set of agreed upon rules which govern relationships within Kenya as a Nation requires that it, spells out rights and obligations agreed upon by all Kenyans for the common good of all²¹.

Perhaps one critical question of this moment that flows from sorry state of gender inequalities inherent in the Kenyan society and the role and place of the country in regard to its compliance to its international commitments to gender equity. Kenya's current constitution is not radically different from that of most other African countries in terms of their treatment of gender issues. More important however is perhaps for us to observe the impact of the country's commitments to international conventions and other legal instruments/ tools on gender and also the role of campaigns by local and regional organizations in the effort to redress the constitutional gender inequities prevalent in our different institutions both public and private.

¹⁹ World Bank Report 2001

²⁰ Mansah Prah, ed, *Insights into gender equity, equality and power relations in sub-Saharan Africa* (Kampala: Fountain publishers, 2003) pp 3.

²¹ Robert M., *Peaceful Resistance: Advancing Human Rights and Democracy*, (Duke: Ashgate Publishing Company 2006) pp 98

Kenya has ratified and also acceded to several international conventions and declarations which have a direct bearing on issues of women and gender. Some of these declarations predate the independence period and were borne out of the realization that gender and women issues were not adequately catered for and that their rights were often violated. Indeed the idea of gender rights appreciated the fact that there were rights which are guaranteed for all but were not being enjoyed equally by both men and women. Moreover, such unequal enjoyment of rights was being perpetuated and sanctioned by the constitutional arrangements in most countries Kenya included. The critical and fundamental question therefore is whether there are any commitments a country such as Kenya have to the international satisfaction yet it (Kenya) is at the same time a culprit in violating such ratification by not putting in place relevant infrastructure.

One of the most important declarations in terms of gender advocacy is the universal declaration of Human Rights which is the basic international statement of the inalienable and inviolable rights of all members of the human family. This Universal Declaration of Human Rights [1948] state clearly that everyone is entitled to all the rights and freedoms set forth in this declaration without discrimination of any kind, such as race, color, sex, language, religion, political opinion, national or social origins, properly, birth or other status. Kenya has been involved in the mobilization of women for development initiatives right from colonial times but such should not be translated to mean commitment to improving the conditions of all women.

The central contention is that government policy in post colonial times has not seriously challenged the basic structure of gender relations, although the rhetoric of the leaders emphasize the need to change the position of women meaning that gender inequality still persists. Before 1975 Kenya's development policies were gender insensitive. After the declaration of Women's Decade, the government responded to the Mexico World Plan for

Action for the establishment of national machinery, by creating the Women's Bureau to accelerate the achievement of equal opportunity for women through the cabinet Memorandum 78(b) of 1975. From early 2003, it was located in the then new ministry of Gender, Sports, Culture and social services²². It was then proposed that it transform into a fully-fledged department for effectiveness as an instrument for gender mainstreaming and for working with the international conventions.

In 1985, Kenya hosted the end of UN Decade for Women Conference in Nairobi and hence several important conventions were ratified by Kenya confirming the rights of women, their participation and due place in socioeconomic and political arena, and the need for guaranteeing their safety and protection. Among these were the 1985 Nairobi Forward Looking Strategies for women, the Beijing Platform for Action of September 1995²³, and the convention on the Elimination of All Forms of Discrimination against Women (CEDAW) signed in 1984,²⁴ the Millennium Development Goals, and the African Charter on Human and People's Rights²⁵. In Kenya, international law does not affect the laws of the country unless specific legislation passed by the parliament exists to this effect, hence the obligations of the convention can only be implemented through legislative, judicial and administrative

²² Kenya women's Bureau (2000)

²³ The Beijing Conference (1995) stressed the empowerment of women and adopted a platform for Action for the mainstreaming gender in the design, implementation and monitoring of all policies and programmes, including development programs. It committed countries to design their own specific programs and activities in consultation with women's groups and other NGOs to implement it. The Beijing Platform for Action, based on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), called upon all governments to adopt "gender-sensitive multi-sectoral programs and strategies to end social subordination of women and girls and to ensure their social and economic empowerment."

²⁴ March 1997 survey by the Women's Environment and Development Organization (WEDO) found out that only 10 African countries had drawn up action plans as an indication of insufficient political will and sustained commitment to meeting the needs and interests of women by local authorities and governments. While many countries ratified UN agreements (including CEDAW) guaranteeing women equal rights and protection from discrimination, these have not informed policy-making or translated into better living and working conditions for women. Without meaningful commitment in the form of policy changes and the provision of resources to deal with root causes of women's conditions, a breakthrough development and renewal cannot be hoped for.

²⁵ The GoK set up the Task Force on Gender and Development after the ratification of CEDAW to review laws, practices, customs and policies which perpetuate gender inequalities; make recommendations to amend or abolish such policies and practices and consider gender equality bill relating to women in the light of CEDAW recommendations.

measures which require time to be incorporated into domestic law and policy²⁶.Such international laws advocate for the observation of women rights and their well-being. An example of such law is the Vienna Declaration and Program of Action whose Article 18 states clearly. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political,civil,economic,social and cultural life, at the national, regional and international levels ,and the eradication of all forms of discrimination on grounds of sex and priority objectives of the international community.

Gender Based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. The World Conference on Human Rights urges governments, institutions, intergovernmental and Non-Governmental Organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

At the regional level there is the African Chapter on Human and People's 'rights' which articulate a number of basic rights and fundamental freedoms and makes them applicable to African states. Article 18 (3) provides that state shall ensure the elimination of every discrimination against women and also the protection of the rights of women and children as stipulated in international declarations and conventions²⁷.

At the national level, on the other hand many states have instituted bills of civil and human rights in their constitutions enabling citizens to fight laws and decrees which although

²⁶ GoK, consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women. Third and Fourth Periodic Reports of States Parties ,2000

²⁷ Jane S. Jaquette and Gale Summerfield, *Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization*,(Duke: Duke university press,2007)pp 139.

lawfully passed, offend civil and political rights which have been declared fundamental and require them to be guaranteed forever.

Through the National Gender and Development Policy, the government of Kenya recognizes that development policies do not affect men and women uniformly and is determined to address any existing imbalances through policy formulation and implementation. Nonetheless, it should be recognized that women do not constitute a homogenous group. Some categories are often deprived of their basic rights(rural, and refugee women, for example)and others are particularly susceptible to human rights violations(for example, imprisoned women and prostitutes)but still others are often more advantaged than most men.

Following the Jomtien Declaration on Education for All (EFA) of 1990, to which Kenya is a signatory, various national conferences were organized. They include the 1992 National Conference on EFA held in Kisumu, which recommended strategies that would ensure the attainment of basic education by the year 2000; the 1992 National Conference on the Girl Child, held in Nyeri, and the 1994 National Symposium on Education of Girls held in Machakos.

One outcome of the Machakos symposium was the setting up of a Gender and Education Task Force and the Girl Child Project implemented jointly by the Kenya Institute of Education(KIE) and the MoEST.The second phase of the project recommended parents,chiefs,and community leaders in selected disadvantaged districts as potential key actors in community advocacy for girls' education. The Gender Unit at the Ministry of Education was to act as an overseer on gender issues within various sections of the Ministry with members drawn from various departments and parastatals of the Ministry. Officers were required to monitor gender responsiveness within their sections and inform the Gender Unit.

Another important outcome of the Machakos symposium was the formulation of guidelines for re-admission into the mainstream of formal education of adolescent mothers who had dropped out of school due to pregnancy.

A Ministry of Education circular to that effect was issued to provincial, district and municipal education officers in 1996 for further dissemination. However, the school re-entry policy remains unclear, ungratified and, hence, lacks clear and effective directions /mechanisms for implementation. This vagueness in the re-entry policy can fairly be interpreted in the context of explicit resistance from a cross-section of national leaders, who argued that schools were not meant for mothers, and that the re-entry policy would condone and encourage sexual promiscuity among adolescents. They also argued that young mothers would be a bad influence on other girls.

The most important and comprehensive declaration is perhaps the convention on the elimination of all forms of discrimination against women (CEDAW). Adopted in 1979, it provides an exhaustive international legal framework on the rights of women. This convention provided within Article 3 that “States shall take in all fields, in particular in political, social, economic and cultural fields, all appropriate measures, including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men”²⁸. Added to this useful international declaration are the Beijing platform of action, the convention on the rights of the child and the African charter on the rights of the child. All these have important clauses focusing on the gender discrimination and the rights of women and children.

²⁸ Kameri-Mbote, *Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization* (, 2003) pp 140.

The critical concern is why these international provisions have not been translated into meaningful gains at the local level. One level of addressing this question relates to the failure by the country's political institutions to domesticate these declaration and conventions. The second level relates to the disjointed nature of the campaign especially by the feminist to institutionalize these gains.

In the terms of feminist efforts to institutionalize the international declarations, there have been mixed results although African feminist contributed by putting gender issue on the global agenda through participation in global meetings and conferences. "a lack of serious attention to cultural practices that continue to subjugate and exploit women especially in the modern African society"²⁹. Within the Kenya context specifically the women's movement has failed to uplift the status of women substantially for various reasons.

First the movement largely consisted of self-help women's groups that only seek to improve and uplift the status of women by involving them in the income generating activities or in social and religious groups. Thus the movement for long was not sufficiently politicized and therefore, failing to lobby for changes in policies, plans and laws which discriminate against women³⁰. The second reason the women movement in Kenya has not achieved much in spearheading gender equality is the various organizations that aimed to address women's issues got characterized by forms of disunity and personal differences. Some women have used the forum to further their personal have used the forum to further their personal ambitions at the expense of universal women's interests.

Constitutional reforms and gender issues in Kenya since 1991 has remained part and parcel of the reform agenda with attention being drawn to the plight of poor and

²⁹ Onsongo, *the structure and agency of womens education*,(Albany:New York Press,2008) pp 31-48.

³⁰ Njiro,*A decade of democracy in Africa*,(Leiden:Bill publishers,2001) pp1-16.

disenfranchised women and the unfinished gender agenda³¹. The long journey to Kenya's people centered constitutional reform could be traced to the year 1991 where there was a repeal of section 2A of the old constitution. The repeal of section 2A resulted in the restoration of multipartism and ushered in a new era of contestation for democratic space. Providing us with a departure from the old order, it is debatable whether the new constitution is living up to its vast expectations in terms of addressing gender related issues and equally with gender inequalities by availing necessary resources equal opportunities and other infrastructures for both men and women.

The new constitution of Kenya is a product of long struggles born out of the realization and understanding that the old constitution discriminated and disenfranchised large segments of the people. Women for instance did not enjoy equal citizenship and there were drawbacks that prevented them from full enjoyment of the right to equality. Moreover, such discriminated and exploited women lacked sound legal mechanisms to fall back to for protection given that their marginalized status was institutionalized and supported by patriarchal norms and that lead to subordination of women cut across African cultural domains everywhere.

The Kenyan constitution provides a useful framework highlighting the importance of designing and implementing legal framework that would promote, enhance and sustain the advancement of women and guarantees their full participation, their dignity and respect for human rights. As already cautioned, being signatory to such conventions need to be domesticated and translated into positive gains to the entire women fraternity. In terms of political promises that require unwavering commitment on the part of governments.

³¹ World Bank 2001

The basic idea and spirit of the new constitution on was to protect the fundamental rights and freedoms of individuals. This is why concept such as equality non-discrimination, unity and tolerance for diversity patriotism and inclusiveness, justice and peace form the basic principles that guided the writing of the preamble and Bill of Rights³² . That the principle of equality between men and women forms a neutral pillar of constitution is important in entrenching the enjoyment of basic rights by women.

One of the greatest challenges that the entrenchment of international declarations and conventions face is that governments have failed to domesticate these commitments locally. The one major break through with the new Kenyan constitution is that chapter 1 and 3 include international law as one of the classes of law applicable in Kenya giving a lifeline to issues of gender because they are human rights issues. What this means therefore is that international conventions such as the Convention on Elimination of All Forms of Discrimination Against Women(CEDAW) and other International Declarations on women's rights have attained the force of law in Kenya.

Although the section on the Bill of Rights provide for equality of all, it also specifically provide for women's rights. Women have the right to equal treatment with men, including the right to equal opportunities in political, economic and social activities. The chapter further explicitly states that any law, culture, custom or tradition that undermines the dignity, welfare, interest and status of women has been the traditions and cultures that have bred discriminatory practices. The old constitution recognized such cultures and allowed them to undermine women's rights and access to property and privileges.

In terms of political participation and especially women's involvement in decision making the new constitution addresses it clearly but it is left for women because it is very

³² Constitution of Kenya 2010

ambitious on surface in terms of addressing issue of equality. According to the Kenya Human Rights commission 2010, Kenya has a strong record of ratifying major international and regional human rights instruments. It is a party to six of seven core UN human rights treaties with exceptions being the International convention on protection of the Rights of all migrant workers and members of their families. On these different treaties/ conventions, declarations and protocols according to KNHRC, Kenya has made two reservations limiting the effective application of these treaties. On signing the international covenant on economic, social and cultural rights, Kenya placed a reservation against Article 10 (2) which requires that states make provision for paid maternity leave. The reservation states that “the present circumstances pertaining Kenya do not render necessary or expedient the imposition of those principles by legislation”. In 2009, the UN treaty body monitor re-iterated the need for Kenya to withdraw the reservation to this text.

Kenya has not signed the optional protocols to either the covenant on economical, social and cultural rights (CESCR) or the conventions on the elimination of all forms of discrimination against women (CEDAW) which recognizes the competence of committees governing these conventions to hear individual complaints or institute investigations into breaches. It has signed but not ratified the convention against enforced disappearance and optional protocol 11 of the convention on the rights of protection from child trafficking, pornography and prostitution and other treaties related to discrimination. For more than a decade now, gender issues have been intensively discussed in many conferences and other fora. By now, the issues are largely identified and in many countries laws have been enacted in response. Yet in practice, the issues have tended to persist. These issues need to be

addressed at a level higher or deeper than identifying and lamenting them as simply as injustices dealt to women by men.³³

1.6 Theoretical Framework

This study will rely on the feminist theory to examine and integrate gender issues in light of how women are negatively getting affected in their pursuit to seek justice in the areas of education and politics and this is visible through inequalities in the mentioned areas and this has gone a long way to deny them access to their basic and human rights in many ways due to how their country has responded to their needs and interests as outlined in different legal documents both local and international. This study will establish that gender issues squarely fall in feminist theory through in a specific feminist theory strand/level. Feminist theory has been defined differently by different people/authors.

The global ideas of feminism refer to the belief that men and women deserve equality in all opportunities treatment, respect and social rights.³⁴In general feminist are people who try to acknowledge social inequality based on gender and stop it from continuing.³⁵They point out that through history men received more opportunities than women. This fundamental belief is common to different forms of feminism. They differ in specific issues that they consider most important and in their methods of achieving change. Feminism developed in the west but feminist views and activities are found throughout the world.

Feminism takes a women-centered approach to the study of human society and behavior. It analyses how and why women have been oppressed throughout the history.³⁶It examines social discrimination, gender roles and gender “appropriateness” or “Correctness”

³³ Mary Adhiambo Mbeo, Oki Ooko-Ombaka ed, *Women and Law in Kenya: Perspectives and emerging issues (1989)*, published by public Law Institute, Nairobi, pp 20.

³⁴ *Gender gaps in our constitution* (, Heinrich: Heinrich Boll Foundation, 2011).

³⁵ Jane Freedman, *Feminism*, (Buckingham: Open University Press, 2001) pp 1-7.

³⁶ Ibid

It also analyses and criticizes patriarchy, male domination and male supremacy. Feminism is opposed to sexism (discrimination on grounds of gender) and support equality in every social sphere, including politics, labor economics, sports and education. It is a political force directed at changing existing social and power relations between men and women. It aims to deconstruct these relations because they traditionally structure all social institutions. From feminist perspective, the social world is gendered; feeling, desires, behaviors social roles, occupations and institutions are defined as masculine or feminine according to perceived gender identities for men and women.

Different feminists have different political, social and cultural agendas. However, there is a general consensus that a major component among the various strands of feminism is an emphasis on equal rights for women and equality between the sexes. In addition, most feminists agree that girls and women have been treated worse than boys and men in society that women and men should be paid equally for the same work and that women's unpaid work as homemakers or caregivers should be more highly valued by society.

The following are various feminist strands and what they stand for:

1.1.1 Radical Feminism

A movement that believes sexism is so deeply rooted in society that the only cure is to eliminate that concept of gender completely. They see man's domination or women as the result of patriarchy, which is independent of all other social structures- that is, it is not a product of capitalism.³⁷ Radical feminists suggests changes such as finding technology that will allow babies to be grown outside of a woman's body to promote more equality between men and women. This will allow women to avoid missing work for maternity leave, which they argue is one reason women are not promoted as quickly as men.

³⁷ Jane Freeman, *Feminism*, (Buckingham: Open University press, 2001)pp 1-7.

They would also argue that the entire traditional family system is sexist. Men are expected to work outside the home while women are expected to care for the children and clean the house. Radical feminists note that this traditional dichotomy maintains men as economically in power over women and therefore the traditional family structure should be rejected.

1.1.2 Marxist/ Socialist Feminist

It is a movement that calls for an end to capitalism through a socialist reformation of an economy. The issue of economic independence figures prominently in Marx and his collaborator Friedrich Engels' theory on the subordination of women. Like other socialists they conceptualized this as the "woman question", the problem was important but clearly secondary to the central issue of social class³⁸

Basically, socialist feminism argues that capitalism strategies and supports the sexist status quo because men are the ones who currently have power and money with other men which means that women are continually given fewer opportunities and resources. This keeps women under control of men. The movement therefore links gender inequality and women's oppression to the capitalist system of production and the division of labor consistent with this system.

1.1.3 Cultural Feminism

It is a movement that points out how modern society is hurt by encouraging masculine behavior, but that society would benefit more by encouraging feminine behavior instead. This stand of feminism has clear implications for human rights. As with other areas of law, human rights law tends to look at individuals as individuals to decontextualize situations and to be confrontational; it accordingly has- so the cultural feminist argument goes nothing or little to offer to women who are naturally/culturally" inclined to think their problems through

³⁸ Nancy Cook, *Gender relations in Global perspectives*, (Canadian scholars press, Toronto, 2007)

contexts, for example by assessing the implications of any possible solution for the people for whom they care (including but not only, their children). Human rights law should either be rejected or at least be transformed, in order to accommodate the female way of thinking and acting³⁹

By encouraging masculine behavior, we are also encouraging the negative aspects of competition and aggression, such as the suppression of feelings, crimes like assault and murder and even social issues such as domestic violence. Cultural feminists argue that our society would be better off if we encouraged traditional feminine behaviors instead.

1.1.4 Liberal Feminism

It is a movement that believes all individuals should be free to explore equal opportunities and rights. Most modern feminists consider themselves liberal feminist. Liberal feminist just want men and women to have equality in all situations. For both Hobbes and Locke, the equality of human beings is the basis of both their consent to the agreement that forms civil society and of the rights that civil society protects. As Hobbes observes in the *Leviathan*, the differences between one human being and another are not so considerable that any can claim a benefit that another cannot also claim. As to physical strength, an area in which men were traditionally ranked superior to women, Hobbes points out that the weakest can kill the strongest, whether by deception or by confederacy with others. Most important, he argues, even if nature made human beings unequal, a law of nature demands that they acknowledge their equality since only on equal terms will they form a commonwealth of peace.⁴⁰

This means that liberal feminist would want to see equal pay for men and women and more representation of women and more representation of women in politics and business,

³⁹ Daniel Moeckli, *international Human Rights Law*, (New York: Oxford University press, 2013).

⁴⁰ Andrew Valls, *Ethics in International Affairs, Theories and Cases*, (Maryland: Rowman and Little Field Publishers, Inc, 1996).

just like other forms of feminism. However, liberal feminist are also willing to point out places and times when men are victims of sexism and they want to end those problems as well. Liberal feminists simply want people to be rewarded for their individual talents and efforts in a completely equal and fair manner. They campaign for equal rights for women within the framework of liberal state, arguing that the theoretical basis on which the state is built is sound but that right and privileges it confers must be extended to women to give them equal citizenship with men.

Having analyzed different strands/typologies of feminism theory, it is now apparent that this study falls squarely in liberal feminist theory hence the study and the project will be guided strongly by liberal feminist theory that will provide this study with a theoretical framework given the fact that international gender related issues have to be anchored in some theory for it to be discussed and explained fully with an international touch and understanding.

In attempting to carry out an investigation on how it has been a problem for Kenya to comply with international gender related legal instrument the study will seek to anchor the entire discussion in liberal feminist approach. This will help to give same cause of committing to such international instruments/ tools at least to make women visible as anticipated by the different international regimes and institutions.

Liberal feminist theory form the basis of the analysis of this study and the interpretation of the data is based on this theory.

1.7 Hypotheses

I argue that as one of the ways of averting gender inequalities in Kenya, implementing various key international gender related legal instruments will go a long way to pave a new dawn of both economic and social development for Kenya. I therefore hypothesize that:

1. Women and girls will most likely be empowered successfully if they are given access to education as one of their basic right.
2. Gender parity and equality in politics can only be attained if women are given conducive infrastructure to participate by individual political parties as per the political parties Act 2011.
3. The success or failure of implementation of any legal instrument depends on a number of factors but political leadership and willingness of the state is key.

1.8 Research Methodology

This section describes the research design and methodology. It describes the methods of data collection from different categories. It explains the data analysis and how the answers to the research questions were attained. Apart from that, the section also describes the target population, sampling, design and procedures, types of data, research tools for data collection and data analysis techniques and interpretation. The study was mainly informed by primary and secondary data sources. The primary data was essentially collected through interviews and focused group discussions. In conducting the interviews, the study was informed by one-on-one or group question and answer sessions with informed people. The respondents here constituted representatives from FIDA, LSK, NGEC, MYWO and KEWOPA, data collection revolved around three main factors: the identification of respondents, the institutions they represent and the view they hold on gender issues in this country with special emphasis on education and political participation/representation.

To have a well balanced view, other than groups mentioned above, the interviews and focus group discussions also targeted individuals who have been directly affected by the issue under research/study and have started experiencing the implementation of gender specific laws in the constitution. This group's opinion on what makes implementation success and at

the same time a pipe dream provides invaluable insights that greatly inform this study. Information was obtained through interviews with open-ended questions, carried out with relevant individuals and/or in focus group discussions. Open-ended questions were preferred as the primary mode of data collection because this study aimed at encouraging /challenging the respondents to give their own experiences and interpretations of what they have gone through in terms of gender equality in Kenya

1.1.1 Research Design

A research design is a structure of the research or the “glue” that hold all the elements in a research project together⁴¹. The study adopted a description survey design and the naturalistic survey design. Descriptive design studies are used when examining social issues that exist in communities. This design was deemed appropriate for this study since gender discrimination and inequality is a social problem which has permeated the society and most women are at a potential risk.

Descriptive survey design was selected because it allows the researcher to describe characteristics of particular individual, or a group⁴². In this case, this study has described the strategies and mechanisms used by the Kenyan government to deal with gender inequalities/discrimination such as legal framework and institutional adjustments as addressed by the constitution and other international gender related legal instruments. It is also used when the researcher intends to collect both qualitative and quantitative data as was the case with this study. Naturalistic survey implies the process of gaining insight into the general picture of a situation of a situation, by observing study variables in their natural set up. In this study Kenya’s strategies and mechanism used address gender discrimination and inequality were observed, studied and explained through interviews of different government institutions in their natural environment, which is their work station.

⁴¹ Kombo and Tromp, *international journal of humanities and social sciences*, 13 July 2012

⁴² C.R Kothari’s, (New Delhi: New Age International Publishes, 2004).

1.1.2 Target Population

This study targeted members of different institutions that are majorly concerned with gender related issues. These institutions ranged from FIDA, NGEC, LSK, and Maendeleo ya Wanawake organization.

1.1.3 Types of data and research instruments

The research used both primary and secondary data. Secondary data on its own was insufficient since some aspects of the research had not been published. This necessitated the collection of primary data. The firsthand information obtained was used to corroborate and authenticate the secondary data. Although some interviewees were identified through purposive sampling and others through random sampling. Methodologically, purposive sampling is considered weak; nevertheless it was useful in obtaining information from key informants like practitioners and expert in issues of gender equality. Secondary data was obtained from the analysis of both published and unpublished materials. Apart from books, journals, newspapers and other publications, reference were made to other documents that were rich of information concerning the study.

1.1.4 Description of data collection procedures

The mixed method approach adopted involved employed the following instruments: interviews and content analysis, in addition to these, focused groups discussions were also used. Interview guides with open ended questions were employed to obtain in-depth information from key informants like program managers, Chief Executive Officers, senior officers and research experts in the area under study. The interviews came in handy in instances that were informal but this is not to deny that no formal interviews were conducted. The researcher got permission from the University of Nairobi to carry out the research.

Primary data obtained from the interview guide included the transcripts of interviews and from document analysis that largely helped the researcher problem and to acquaint the

researcher with the study area in terms of issues involved and theoretical discourses. In this case, document analysis guide was created. The guide helped in gathering information in nature of decision of states and their interests, agreed positions or proposals, pronouncements on an issue and policy decisions. This information was obtained through the analysis of documents, speeches, communiqués, and official statements, records of governments, official decisions, and agreements.

Interviews allow the researcher to gain a detailed understanding of the topic under study and are useful for studying sensitive topics⁴³. This instrument was found suitable for study due to its sensitive nature. The interview guide for FIDA, NGEC, LSK, KEWOPA and Maendeleo ya Wanawake contained questions on all the research objectives. This instrument helped the researcher to gather more information through probing and following information trails.

1.1.5 Validity and reliability of the Research Instruments

Validity and reliability are important more so in qualitative research. Critics of inductivism argue that it is not possible to generalize from a case study unless where one observes multiple cases. It is only under those circumstances that one can really draw reliable generalizations about an event. Validity refers to the extent which a research instrument measures what it is designed to measure, the researcher worked with experts in research. The experts examined contents of the instruments. Peer review was used to enhance face and content validity. Suggestions made were used to improve the instruments. Source instruments and method triangulation helped to increase validity. The research instruments were also first piloted. Reliability on the other hand refers to the extent to which a research instrument yields measures that are consistent each time it is administered to the same individuals. It can also be defined by giving its different synonyms: dependability, predictability, stability,

⁴³ Soni Oni, *challenges and prospects in Africa education systems*, (New York: Trafford publishers, 2013).

consistency and accuracy⁴⁴. To test the extent to which the research instruments would yield consistent results after repeated trials, split half technique was used. The researcher sampled the items from the domains that measure the variable and then administered the total test to the appropriate group.

1.1.6 Description of Data Analysis procedures

The basis of data analysis was the research questions. After categorizing the research instruments into homogeneous groups, the researcher sorted and sifted through qualitative data and materials in order to identify patterns and themes. These patterns and themes were categorized according to the research questions and narrative written based on the themes and contents of direct speeches, reports, press releases, communiqués, minutes of meetings and other documents of gender equality nature in Kenya. The analysis of data was qualitative. It involved the use of both content and narrative analyses. The two modes had the advantage of being flexible with written and oral communications. Employing them enabled the researcher to have a broader thematic understanding of the gender equality debate/process in Kenya. In this regard the researcher was able to address the questions of what has so far been done by which institutions of the government and to what extent are the efforts shown consistent with the constitution of Kenya.

However, unlike content, the narrative analysis captured not only what was said but also the meaning behind it. In addition narrative analysis reflected the emotional and non-verbal behavior. Although, useful this method had one drawback stemming from its reliance on the interpretation of the parties involved and the researcher. This danger towards bias was overcome through comparison with other data. Content analysis was largely done through two approaches. Within case analysis and cross case analysis approach helped the research to

⁴⁴ Fred N. Kerlinger, *Foundation of Behavioral Research* 3edn (Fort Worth: Holt Rinehard & Wilson, 1986)

find new variables in aspects of the case study⁴⁵. Cross case approaches helped in capturing different aspects by comparing different perspectives drawing from other cases and conclusions from other cases of other scholars⁴⁶. From this understanding the case study provides a heuristic advantage from which new variables and hypotheses can be constructed⁴⁷. Within case analysis and the cross-case analysis strengthened the analysis of data by providing the researcher with the opportunity to simultaneously examine both internal dynamics of the single case and at the same time do a comparison with other small cases.

This approach resulted in generic knowledge that became useful for generalizing. In adopting the world view model of narrative approach the researcher sought to understand the interpretation context that encompassed a multidisciplinary perspective. The world view model brought out the orientation of a person. In this regard explanations obtained not only captured the event both from an individual's but also public perception.

1.1.7 Data Collection Procedures

The mixed method approach adopted involved employed the following instruments: interviews and content analysis. In addition to these focused group discussions were also used. Interviews were conducted whereby interview guides with open ended questions were employed to obtain in-depth information from key informants like Chief Executive Officers, Chairpersons and other senior officers in different institutions among others. The interview came in handy in instances that were informal but this is not to deny that no formal interviews were conducted.

The researcher got permission from the University of Nairobi to carry out the research. The researcher notified different individuals who are experts with deeper insight in

⁴⁵ Alexander L. George and Andrew Bennett, *Case studies and Theory Development in Social Sciences* op.cit pp 17-18

⁴⁶ Ibid

⁴⁷ Ibid

gender campaign debate among others in the population to be researched on. This was meant to solicit support from opinion leaders in order to ease the data collection process. The researcher made appointments with representatives of sampled institutions namely FIDA, NGEK, LSK, KEWOPA and Maendeleo Ya Wanawake on when to carry out interviews with their representative from individual institutions basing on their convenience.

Questionnaire were administered to aforementioned institutions to get their response on matters of gender inequality in education and political participation/representation by women in Kenya

1.1.8 Data analysis Techniques

Data collected was edited for accuracy, uniformity, and consistency and then arranged to enable coding and analysis. Data was analyzed using descriptive and inferential statistics assisted by the statistical package for social sciences (SPSS). Quantitative data was analyzed using descriptive statistics and presented in tables, while some were changes into frequency tables. Responses from open ended questions and interviews were transcribed and organized into themes and reported in narratives. In analyzing responses from FIDA and other related institutions shed more light on their role and of the government in ensuring a Kenya free of gender discrimination and challenges encountered by institutions whose mandate is to ensure gender equality. Hypothetical names were used to conceal the real identity of respondents to analyze data.

1.1.1.1 Scope and limitation of the Research

This study was faced with limitations due to time constraints, expenses in terms of both logistical and financial resources especially travelling to different destinations to gather relevant data and as such, the quality of research was to some degree compromised, unwillingness by some people and certain specific institutions to share classified information

integral to this study was also a limitation. These multiple challenges however did not prevent the study from reaping its goals and coming to a successful conclusion.

1.9 Chapter Outline

The introductory chapter constitutes the background; the statement of the research problem, the hypothesis, the objectives, the justification, the literature review, the theoretical framework, this chapter goes a long way to establish the status of gender inequalities in education and politics in Africa. Chapter Two examines the AU institutional and legal framework on gender in education and politics in Africa and Kenya in particular and the role of legal tools in countering those inequalities. Chapter Three assess the implementation of legal tools and how they impact education and politics in Kenya. Chapter Four analyze challenges facing/confronting women in education and politics in Kenya. Chapter Five gives the summary, conclusions and recommendations based on the study findings.

1.10 Conclusion

This chapter gave the background of the study on the status of compliance with international gender related legal instruments in Africa and specific reference to Kenya. It is clear that there is numerous literature and legal basis upon which there need for gender equality call has to be embraced by all especially the signatories to various instruments of law. This chapter gave the whole study the foundation and basis on which the study was conducted.

CHAPTER TWO

THE AU INSTITUTIONAL AND LEGAL FRAMEWORK ON GENDER IN EDUCATION AND POLITICS IN AFRICA AND KENYA IN PARTICULAR

2.0 Introduction.

The AU's approach to the advancement of women's rights and gender equality has been informed by UN frameworks and instruments. The commitment to the achievement of gender equality can be traced to the 1948 UN Charter and the Universal Declaration on Human Rights which states that rights and freedoms will not be limited by a person's gender and establishes that 'all human beings are born free and equal in dignity and rights'. In 1946 the UN created the Division for the Advancement of Women (DAW) to champion women's empowerment and gender equality in an effort to ensure that half of the world's population enjoys equal rights and is able to live in dignity as equal citizens everywhere. Prominent among UN frameworks and instruments, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also described as the 'international bill of rights for women', provides the basis for realizing equality between women and men.

In addition, the UN conferences held in Mexico City (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995) and its Platform for Action, which aims to remove all obstacles in all spheres of public and private life based on a full and equal share in economic, social, cultural and political decision-making, as well as conferences in the 1990s on population and development, human rights, social development and human settlements, financing for development, trade and poverty reduction strategies, and the MDG primary global framework for international development intended to reduce poverty and to empower women (Goal 3) by 2015, all manifest the UN's commitment to foster gender equality. Initially this was using the Women in Development approach (WID) of the 1980s. It was replaced by the Gender and Development approach (GAD) in the 1990s.

2.1 Main regional (AU) institutional and legal framework

The AU is composed of 53 member states and seven regional economic communities (RECs) representing Africa's sub-regions, as well as key programmes and instruments such as NEPAD and the APRM, all of which reflect the commitment of Africa's leaders to gender equality. At the national level, the AU is involved in legislative reviews and amendment processes. At regional levels, the AU has encouraged its member states to adopt, ratify, implement and domesticate treaties, conventions and decisions; has established a consensus on gender equality issues among member states; and plays an important role in supporting research on gender issues and 10 International IDEA collecting regional data and statistics. At a sub-regional level, the AU has provided guidance to the RECs in complementing and harmonizing global and regional frameworks by integrating and translating various resolutions and commitments into their policies and plans of action. The RECs have already started implementing some coordination and harmonization mechanisms, which will certainly help eliminate discrepancies; and the establishment of priority areas of focus will assist in producing results.

But bolder action is still needed. The RECs are expected to monitor the implementation of integration-related policies and programmes, to mobilize the necessary resources to support such policies and programmes, and to report on progress. For example, the RECs all possess dedicated gender units, which include declarations and tools for gender audits and mainstreaming. The Southern African Development Community (SADC) established a Gender Unit in 1996, adopted a Gender Policy Framework in 1997 and established gender focal points at the sectorial level. An SADC Plan of Action for gender and development was created to audit the programmes and to mainstream gender; while the Economic Community of West African States (ECOWAS) has instituted a gender policy to guide its member states in gender mainstreaming. The establishment of NEPAD, adopted in

Zambia in 2001, is another important initiative with considerable focus on gender issues. Its objective is to enhance Africa's growth and development and its participation in the global economy. Under the NEPAD/Spanish Fund for African Women's Empowerment, 38 projects were finalized from the first phase of the Fund.

Under the second phase, 31 projects were approved for a total of EUR 8.2 million. The project proposals covered three priority sectors: economic empowerment, civil society strengthening and institutional strengthening. The APRM, a self-monitoring instrument voluntarily accepted by member states of the AU, aimed at fostering the adoption of policies, standards and practices and strengthening accountability with respect to commitments to good governance as well as gender equality and women's empowerment.

As of July 2012, 31 countries had joined the Mechanism: Algeria, Angola, Benin, Burkina Faso, Cameroon, Congo, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Togo, Uganda, the United Republic of Tanzania and Zambia; and 15 countries had been peer-reviewed: Algeria, Benin, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa and Uganda.

2.2 Pillars of AU gender mainstreaming

The gender architecture in the AU is conceived in line with AU aspirations and in consultation with stakeholders, member states, ministerial gender meetings, and the civil society forum, and is constituted by six pillars, as follows:

2.3 The constitutional framework: The constitutive Act of the AU

The Organization of African Unity (OAU) was created in 1963 to celebrate African independence from colonial rule and to foster regional integration among African countries.

Subsequently, the OAU established the Women's Division within its Community Affairs Department with the objective of mainstreaming gender in all actions. However, the division lacked the backing of a legal framework, financial and human resources, and gender mainstreaming did not take place. In 1995, the OAU committed itself to the African Platform for Action on Women, signed in Addis Ababa. Member states made efforts to formulate policies and programmes to translate the Dakar and Beijing platforms into action.

The OAU was transformed into the AU when the Constitutive Act of the AU was adopted on 11 July 2000 at Lomé, Togo (African Union, 2000). The Constitutive Act of the AU sets out the framework under which the AU is to conduct itself. All African heads of state except Morocco's, are members of the new regional organization, the AU. Article 3 of the Constitutive Act of the AU defines the organization's objectives, which include 'the promotion of democratic principles and institutions, popular participation and good governance'. Article 4 defines its principles as being to 'promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments' and the 'promotion of gender equality'.

Creating the necessary mechanisms for the promotion of gender equality is therefore an important aim of the AU. The AU's Constitutive Act marks a major departure from the OAU Charter in a number of respects. It signaled a move from non-interference to non-indifference. It explicitly recognized the importance of human rights with the adoption of the African Charter on Human and Peoples' Rights (ACHPR). It seeks the promotion of social, economic and cultural development, an approach based on human-centered development, and a commitment to gender equality.

The ACHPR was adopted in July 2003 in Mozambique and came into effect in 2005 after being ratified by the requisite 15 AU member states. It was criticized, however, for the omission of women's rights from its provisions, despite the fact that women brought issues

on gender inequalities to the African agenda through their participation in liberation struggles, and also for the emphasis given to cultural values, which appeared to create a dualism of norms regarding women's rights. The adoption of the Women's Rights Protocol sought to address these omissions. The target of the Protocol is to achieve full enforcement and ratification by 2015 and domestication by 2020. Of the 53 AU member countries, 49 have signed the protocol.

The ratification by Congo and Guinea on the 6 August and the 17 September 2012 respectively, brings the total number of ratifications to 34. States which have ratified the Protocol are Angola, Benin, Burkina Faso, Cape Verde, Comoros, Côte d'Ivoire, Djibouti, Democratic Republic of the Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Tanzania, Togo, Uganda, Zambia, Zimbabwe, Congo and Guinea. Countries who have not signed the Protocol are Botswana, Egypt, Eritrea and Tunisia. These governments feel that their national laws and other international instruments to which they are signatory are more or equally progressive, and that there is no need or rush to ratify the Protocol. Additionally, reservations to the Protocol seem to lie mostly with Article 14 that makes provision for sexual and reproductive health rights, as well as with Article 21 on land inheritance. A major obstacle, however, seems to be misinformation about what exactly the Protocol allows, thus emphasizing the need for sensitization.

The African Charter established the African Commission on Human and Peoples' Rights inaugurated on November 1987 and located the Commission's Secretariat in The Gambia. It is officially charged with three major functions: the protection of human and peoples' rights; the promotion of human and peoples' rights; and interpretation of the African Charter on Human and Peoples' Rights. In April 1999, the African Commission adopted

Resolution ACHPR/res.38 (XXV) 99 on the appointment of a Special Rapporteur on the Rights of Women in Africa in recognition of the need to place particular emphasis on the problems and rights specific to women in Africa.

The mandate was renewed four times and provides as follows: to serve as a focal point for the promotion and protection of the rights of women in Africa; to assist African governments in the development and implementation of their policies for promotion and protection of the rights of women in Africa; to undertake promotional and fact-finding missions in African countries that are members of the AU in order to disseminate the human rights instruments of the AU and to investigate the situation of women's rights in the countries visited (since 2000 about ten missions have been held); to follow up on the implementation of the African Charter and its Protocol by state parties, by preparing reports; to draft resolutions on the situation of women in various African countries and propose them to the members of the Commission for adoption; to carry out a comparative study on the situation of the rights of women in various African countries; to define guidelines for state reporting; and to collaborate with relevant actors responsible for the promotion and protection of the rights of women internationally, regionally and nationally.

2.4 The reporting framework: The solemn Declaration on Gender Equality in Africa

Adopted by AU heads of state and government at their July 2004 Summit, the SDGEA is divided into six thematic areas of action: Health, Peace and Security, Governance, Human Rights, Education and Women's Empowerment. The heads of state and government reaffirmed their commitment to the principle of gender equality as enshrined in Article 4 of the Constitutive Act of the AU, as well as other existing commitments set out at regional, continental and international levels, and committed themselves to report annually on their progress in gender mainstreaming. According to the data of the workshop held in Addis Ababa, Ethiopia on 27–28 October 2011, countries that have submitted reports are Algeria,

Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Ghana, Lesotho, Liberia, Libya, Mali, Mauritius, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Senegal, Seychelles, South Africa, Swaziland, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

The following countries have so far not submitted any report on the implementation of the SDGEA since reporting started in January 2007: Angola, Botswana, Cape Verde, Central African Republic, Comoros, Democratic Republic of the Congo, Eritrea, Guinea-Bissau, Guinea, Kenya, Madagascar, Malawi, Mauritania, Mozambique, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, South Sudan and Tanzania. In addition, the Chairperson of the AU Commission is expected to submit an annual report on progress in implementation of the declaration at national and regional levels.

During the AU Assembly of Heads of State and Government that took place in Equatorial Guinea in June 2011, the Assembly decided that each Specialized Technical Committee (STC) will replace the Sectorial Ministerial Conferences from January 2013 and should meet once every two years. In the case of the STC on Gender and Women's Empowerment, meetings are held every year and the Committee monitors and evaluates mainly the African Women's Decade, the reporting of the SDGEA, and the Elimination of Female Genital Mutilation Convention, among others.

2.5 The policy framework: the AU policy and Action Plan

These were approved in 2009 and adopted in 2010. The Gender Policy provides the basis for the elimination of barriers to gender equality and fosters the reorientation of existing institutions by making use of gender disaggregated data and performance indicators. It also establishes measures to hold managers accountable for policy implementation. The Assembly of Heads of State and Government is the supreme organ of the AU and one of its functions is

to determine the sanctions to be imposed on any member state for non-compliance with the decision of the Union. The policy commitments target eight areas. One of the commitments is the creation of an enabling and stable environment to ensure that all political declarations and decisions are geared towards the elimination of persisting barriers that militate against gender equality and women's empowerment. Gender parity and representation is to be enforced in all AU structures (already achieved in the Commission with the appointment of five women and five men), and operational policies and practices are to be in alignment with UN and AU gender policies.

Other commitments are the development of policies that support gender mainstreaming and capacity building in gender mainstreaming (the sixth AU Course on Gender Responsive Economic Policy-Making in Africa, AU and UN African Institute for Economic Development and Planning (IDEP) took place in February 2012 in the field of gender mainstreaming, and the AU third Training of Trainers on the Gender Training Manual took place in May 2012 in Ghana); avoiding duplication of efforts, resources and interventions; and promoting best practices in the continent by facilitating the alignment, harmonization and effective implementation of RECs and member states' gender policies (a target was set up for 2011 'where appropriate' but has not yet been achieved).

The Commission initially developed a five-year Gender Mainstreaming Strategic Plan (GMSP) for social and political clusters, aimed at providing a framework for the AUC, RECs, AU organs and member states in gender mainstreaming and women's empowerment. Once the Gender Policy was approved, the GMSP was revised and aligned with the Action Plan for the Women's Decade. It guides the implementation of commitments by AU organs, member states and RECs and is reviewed periodically through the establishment of gender-responsive political and governance policies, the adoption of affirmative action programmes, quota shares and representation to increase women's participation in decision-making. It also

aims to build gender-sensitive democratic and accountable governance, put in place accountability mechanisms to promote gender-equality commitments, and build capacity for women to become effective political actors.

The Commission has begun operationalizing the Gender Management System (GMS) as part of the new AU Specialized Technical Committee structure. Under this structure, ministers of gender and women's affairs will play an important role in determining policies in the continent. Until today, only a few AU member states have established the GMS (contained in Part IV of the AU Gender Policy as an objective to be achieved by 2020). The mobilization and allocation of financial and non-financial resources to implement this policy and the Action Plan is critical.

The declaration of the Women's Decade (2010–2020) provides a road map for the realization of the objectives for the Decade and is intended to strengthen the Directorate through the funding of initiatives planned for the Decade and the Women and Gender Development Directorate (WGDD), as well as establishing a coherent dialogue on gender. The theme of the Decade is 'Grass-roots Approach to Gender Equality and Women's Empowerment', emphasizing a bottom-up approach to development. At national level, committees take responsibility for the development of annual work plans and budgets for the committees at all levels and the preparation of annual reports on the activities on the implementation of the Decade. At regional levels, the RECs oversee the setting up of working committees for the African Women's Decade, support advocacy campaigns and prepare annual reports on the activities on the implementation of the Decade.

2.6 Financing mechanism: the fund for African Women

The Fund for African Women was created as a single mechanism to ensure policy implementation as well as the effective mainstreaming of gender in policies, institutions and programmes at regional, national and local levels. It became operational in 2011. The AU

organs, RECs and member states in this regard are committed to allocate a budget for the implementation of policy (member states are requested to devote 1 per cent of assessed contribution to the Fund; some members states have contributed more) and, since the funds mobilized through this means are insufficient, to strengthen partnerships with international financial agencies and institutions to increase technical expertise, and facilitate the exchange of best practices and financial support for the implementation of AU gender policy.

During its first year of operation in 2011, the Fund supported 53 grassroots projects across 27 AU member states. (Australia has also supported the fund.) Although all these instruments have enabled the member states and the RECs to advance their own legal, administrative and institutional frameworks to make progress on women's rights and gender equality, many lack political backing and resources, inhibiting the use of these tools and the implementation of strategies. It should also be noted that most instruments adopted by the AU since 2003 make provision for gender equality and women's participation. The current mechanisms for enforcement and implementation include reporting, fact-finding missions, and advice on and recommendations for implementation mechanisms.

One of the AU's roles is to ensure effective follow-up and monitoring, and the AU Commission should step up its advocacy, follow-up and monitoring role, and conduct proper assessments and evaluations of the impact of gender instruments. To effectively enforce these instruments, various bodies were established, such as the African Commission on the Charter on Human and People's Rights, and the African Court.

2.2.1 Gender issues and education in Kenya according to WID and GAD

Until the First United Nations Conference on Women (1975), the role of gender as a key variable in national development issues did not seem important in many developing countries, including Kenya. It is during this first UN Decade for Women that national governments agreed to recognize women clearly as the 'missing link' in national development

and economic success within the human capital. During this period, questions emerged regarding gender equity and equality of education akin to those raised by 18th Century English feminists such as May Wollstonecraft in her works *Thoughts on the Education of Women* (1787) and *A Vindication of the Rights of Women* (1789) in which she argued for a transformation of educational and socialization processes that were responsible for stunting women's intellect by teaching them to be subordinate to men. Such questions continued to attract attention even from male critics, including philosophers. For example, in England, John Stewart Mill in his *Subjection of Women* (1869) pursued the theme of women's education, arguing that unless the interest of men in sustaining gender boundaries within which women remained relegated to the domestic arena was challenged, women would continue to be discriminated against in education and in public life, contrary to the utilitarian ethics of the greatest good for the greatest number of people, regardless of their sex.

More than a century later, countries like Kenya found themselves rising to the international awakening of the United Nations General Assembly declaration of 1975 as the International Women's Year followed by the declaration of 1975-1985 as the First UN Decade for Women. Governments started to redefine women as significant actors in national development and their role as crucial in development planning. Clearly, there was no way of giving this new definition an operational frame- work without locating formal education at the centre of women's empowerment and their full integration into national development endeavors.

A major government response in this regard was the Women in Development (WID) strategy. Despite the good intentions of 'integrating' women in the processes of development, WID was bound to fail, mainly because its efforts were directed to women only, exclusive of men: the crucial gender dimension was lacking. Research reveals that in order to address gender inequalities effectively and with reasonable results, women's concerns and their roles in

both the public and private spheres need to be located in relation to those of men. Further, the educational benefits and the accruing socio- economic and political advantages (or disadvantages) of women need to be analyzed and interpreted *vis-à-vis* those of the men.

As an integrative strategy, the WID approach addressed only the practical needs of women, totally ignoring their strategic needs that would enable them to challenge the patriarchal structures that served to discriminate against women and lock them out of the development agenda. WID was the easy way out for governments that worked to ensure that women ‘fitted’ within male frameworks that were, in the first place, designed to ‘lock out’ women. Thus, WID became a strategy in futility. It failed miserably in challenging the subordination of women.

Instead it ensured that Kenyan women, like many others in the developing world, spent much more of their time perfecting their traditional roles within and outside the domestic arena. An improvement of the WID was the Gender and Development (GAD) strategy that helped not only to integrate women in development, but also aimed at empowering women and men to challenge unequal power relations that ensue from unequal processes of cultural socialization, including education.

In terms of research, however, WID generated considerable data and publications on a wide range of issues affecting women. Even then, many of these failed to explain the historical context that influenced post-colonial governments as they struggled with gender issues, particularly in education. Also, education historians failed to address gender issues in their research and publications, thus denying government, educationalists, and gender activists the crucial knowledge base upon which to address the persistent gender inequalities. Nonetheless, African scholars, mainly women, continued to advocate for girls’ and women’s education, as well as policies that supported improved education access, retention, performance, and transition of girls to higher levels.

2.2.2 Gender equality in education in the 21st Century: Some policy strategies

As Kenya navigates through the 21st Century, national education plans reveal the absence of comprehensive gender policies with specific monitoring and evaluation guidelines. For example, few educational policies provide guidance on how to link and address poverty, sexual maturation, early marriages, adolescent pregnancy and gender violence in education in a manner that can be interpreted and implemented easily at the practical level (Bunyi, undated). Further, the Kenya government hardly provides effective guidance on how to ensure that schools are not only learner-friendly, but also that they are gender-responsive and that they ensure that girls are made to feel safe at school. According to Bunyi, unless the policies are explicit on girls' educational needs, the gender gap would continue to be skewed in favor of boys. She argues that the continued negative effects of poverty, unfavorable socio-cultural practices, gender-insensitive physical environments in schools, lack of a pedagogy that empowers girls, long distances to schools, and the HIV/AIDS pandemic combine to disadvantage girls' education.

To address the educational challenges of the 21st Century we need to locate gender within broader policy concerns and in the context of the global focus on EFA, the Millennium MDGs, and other international conventions and treaties that advocate equal education for every person. Government's slow action on the relevant recommendations in such documents often results in the infringement of the rights of the people, especially women and girls. This has far-reaching implications for the socio-economic and political development of a nation. Educational analyses identify two main types of instruments that embrace international commitment to gender inequality in education. These are international treaties and political commitment. Individual countries are expected to ratify the treaties and give them legal backing that is enhanced through action by the political leadership. The following are some of the key international treaties that embrace gender equality in education.

The International Convention on Civil and Political Rights (ICCPR), which was adopted in 1966 and came into force 10 years later in 1976, albeit with a limited coverage of gender and education issues. Some 144 countries ratified it; The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was developed specifically with gender in mind and adopted in 1976. It covers all types of education at all levels and came into force in 1981. Some 173 countries, including Kenya, ratified this convention; The Convention on the Rights of the Child (CRC) that was adopted in 1989 and came into force a year later. Kenya is among the 190 countries that ratified it. This convention is unique because of its strong emphasis on clear measures for promoting free primary education, human rights education, sex education, reproductive health and gender-responsive curricula (UNESCO, 2003: 26).

2.2.3 International political commitment

In terms of political promises that require unwavering commitment on the part of governments, the following are key:

The Vienna Declaration and Programme of Action (1993) stresses the state's obligation to promote gender equality in education; The International Conference on Population and Development (1994) demonstrated increased awareness of gender issues not only in education but also in the areas of population control and reproductive health; The Beijing Declaration and Platform of Action (1995) reaffirmed the Vienna Declaration that rights of women and girls are inalienable, indivisible and an integral part of human rights. The agenda of this platform of action seeks not only to promote, but also to protect the full enjoyment of all human rights and the fundamental freedoms of all women; The World Summit for Social Development (1995) ushered in a new consensus on the need to put people at the centre of development through community capacity development in ways that enhance equality and equity between

women and men and the attainment of universal and equitable access to education and enhanced primary health care⁴⁸

2.2.4 Locating gender equality in education policies

Since political declarations tend to serve political ends and are difficult to monitor and evaluate, the idea of having clear targets and dates by which to measure success is a crucial strategy in any development agenda, not least, education. The World Conference on Education for All in Jomtien, Thailand (1990), set the pace in what may be described fairly as the right direction by declaring 2000 as the target date for achieving Universal Primary Education (UPE). However, considering that UPE had not been achieved by that date, the ensuing Dakar Framework of Action (2000) and the MDGs yielded further specific gender equality and equity goals to be achieved by specified dates.

In the Dakar Framework of Action, goals two, four and six (UNESCO, 2003: 27) are explicit in their gender concerns, which are: Ensuring that by 2015 all children, particularly girls; children in difficult circumstances and those belonging to ethnic minorities, have access to, and complete free and compulsory primary education; Achieving a 50-per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults; Eliminating gender disparities in primary and secondary education by 2015, focusing on quality and achievement⁴⁹

In a clearly complementary way, two of the MDGs set out clear targets for education and gender. The MDGs also indicate some moderate mid-term targets to be met by 2005 such as: To achieve UPE by ensuring that by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and; To promote gender equality and

⁴⁸ UNESCO,2003:26

⁴⁹ UNESCO,2003:27

empower women by eliminating gender disparity in primary and secondary education, preferably by 2005, and to all levels of education by 2015⁵⁰

The role of policy in addressing gender gaps in education seems to stop at formulation and declarations mainly because the practical aspects of implementation fail to define clearly strategic plans that address specific issues of access, quality, retention and performance. Further, proper monitoring and evaluation mechanisms for gender equality are not available. It is in view of this that towards the 21st Century, international frameworks for action were developed to help translate, in practical ways, the declarations and the expressed political commitments on gender equality in education. It is in this context that the EFA targets and MDGs have articulated clear targets in terms of expected achievements by given dates within the first two decades of the century. Although the achievement of UPE and gender equality and parity could take time to be achieved, having 2015 as the target date serves as a regulatory tool that transcends previous declarations designed around the model of the human rights treaties. Thus, the agenda for gender equality is expanded rather than re-confirmed, as was historically the case.

2.2.5 Women in Kenya Politics

At independence, the government's sessional paper, African Socialism, clearly indicated that political participation by men and women should be equal terms, including standing for elective office as a guaranteed in Kenya's constitution. However, it was soon obvious that just as women's contributions had been ignored during the colonial era, independence would remarkably change their lot. The government failed to involve them on equal basis with men in country's economic, political and social institutions.

⁵⁰ Ibid

Kenya inherited the colonial legacy of male dominance, which used male hierarchies for direct or indirect forms of colonial rule while female hierarchies were atrophied or actually suppressed. Colonialism did not improve the condition of African women as it is often claimed but was patriarchal and therefore gender biased. It boosted the hegemony of men while extreme domestication was imposed on women. The official attitude towards African women was unfavorable and quite often abusive.

In early years independence up to 1971 indicate no major landmarks of women's involvement in politics, under the colonial administration women had held one or two of the specially elected seats, but when the opposition introduced a motion to preserve this practice in July 1963, it was defeated in the National Assembly. Out of the 12 special seats filled by appointments in 1965, none was allocated to a woman. In fact, the first woman was elected in 1969, nearly ten years after independence.

The 1970s up to the early 80s saw more women serving in parliament with five elected women and two nominated but the total number of women politicians was insignificant since they were mere 3.18 percent as compared to the men at 96.82 percent. Up to 1993 there had only been two female members of parliament as compared to 198 male members meaning that 32 years from independence Kenya had only total of ten women women elected into parliament. The number was quite insignificant given the fact that women constituted 51 percent of the total Kenyan population.

Before 1975 Kenya's development policies were gender insensitive. After the declaration of the Women's Decade, the government responded to the Mexico World Plan of Action for the establishment of national machinery, by creating the Women's Bureau to accelerate the achievement of equal opportunity for women through the Cabinet

Memorandum 78(b) of 1975. From early 2003, it was located in the Ministry of Gender, Sports, Culture and Social Services.

Through the National Gender and Equality Commission, the Government of Kenya recognizes that development policies do not affect men and women uniformly and is determined to address any existing imbalances through policy formulation and implementation. The economic, social and political problems facing women and especially rural women are becoming increasingly obvious and better documented now.

The gap between policy, legislation and practice; between good intentions, rhetoric and reality is felt by many women, this basically forms the core of the whole study as this study analyses some of the major achievements or lack of it in various specific sectors/areas of education and political participation in Kenya. However, this study notes that women experience a wide range of discriminatory practices, limiting both their educational, political and economic rights and relegating them to second-class citizenship.

Although the constitution extends equal protection of rights and freedoms to men and women, it was only amended in 1997 to include a specific prohibition of discrimination on grounds of gender. The government has not passed domestic enabling legislation to implement international conventions on women's rights.

The largest number of female legislators before the constitution of 2010 was six during the 1992 – 1997 assembly. Out of the six, only one was offered a cabinet post and another was appointed an assistant minister. The number of women in parliament in the 1992 – 1997 assembly encouraged large numbers of women to register to contest parliamentary and local council's posts in the 1997 polls. Several women are on their rights, both as contestants and voters.

The repeal of section 2A of the Kenyan Constitution considerably strengthened the women's movement because the freedom that characterized democratic rule enabled women to challenge the social values and structures which undermine their role in society. The majority of women were forced to re-examine themselves and assess their role in emerging and evolving milieu with ongoing power relations.

By 1993 the deep lying discontent among women regarding their inadequate representation in politics was becoming evident. The discontent manifested in the women's movement which was divided into namely, a core of militant actively crusading for equal rights and speaking publicly on issues affecting women. They lead organizations aimed to protecting women's status and though few in number, were the harbinger of future change. The second group, which was the majority had little or no interest in activism concerned with implementation of their political, legal and social rights and asserted themselves in more practical ways. Both types of action combined to produce progress.

As a result, several organizations namely, the National Committee on the Status of Women (NCSW), Women's Voter League, Mother in Action, Federation of National Women's Lawyer, (FIDA) Kenya Chapter and National Committee for Advancement of Women, KANU '92, among others, mushroomed to address these issues. Others women's organization previously in existence like the National Council of Women in Kenya (NWCK), National Council of Churches In Kenya (NCCCK) Women's desk, Kenya Business and Professional Women's Club and the Association of African Women in Research and Development (AAWORD) revitalized their agitation. The AAWORD was also mobilized to speak out on the cause of women.

The objectives of these organizations were relatively similar: To Mobilize and create solidarity with all women to enable them to discuss common issues of concern; build Kenya

women's solidarity and common purpose in the democratization process; provide both moral and financial support to women candidates in the next and future elections; advocate, create awareness and spearhead activities aimed at eliminating all forms of violence against women; and agitate for the improvement of the status of women in all spheres, political, social and economic. They held meetings workshops and seminars in various place to tackle the above issues

Their activities culminated in the National Women's Convention on the 22nd February 1992, a landmark in the history of women's struggle. The convention formulated a plan of action to establish candidate support funds and training program for women from all levels in civic elections; hold conventions at all levels and finally to establish dialogue between women's group and political parties to sensitize them on women's needs.

It is perhaps this unity of purpose this unity of purpose that culminated in the historic electoral record of six women winning parliamentary seats in the 1992 General Elections. Similarly, this collective women voice for the first time persuaded the Kenyan society that any form of violence against women was gross violation of basics human rights. Similarly, it was perhaps the formation in 1998, of one coordinating network for NGO's, Women Political Caucus to serve as a uniting factor that contributed to the temporary strengthening of the organizational and delivery capacity of women's movement.

The 2002 General Election caught women flat-footed with negative impact on the number that got elected. Mrs. Monica Amolo, Executive Director, Women's Shadow Parliament (WSPK) says women who vied for parliamentary seats in 2002 went through difficult and traumatic experiences.

She states: Women believed in fair play and naively sought to contest party nominations by playing by the rules. They saw the male candidates show up with certificated

for nominations as party candidates even where the results of elective process incomplete and undermined women because Out of 133 women who vied for parliamentary seats 2002 only 44 were nominated and only nine won elections. The low success rate is seen as a problem requiring a solution.

Since 1969, when Kenya had its first woman parliamentarian, the Ninth Parliament registered a substantive big number of representations by women in Kenyan history that had not been achieved before; with 18 women out of the 222 members in parliament – holding 8 percent of the parliamentary seats, up from 3.6 percent in September 2002. Six women were appointed to the government team, three minister and three assistant ministers. Women were appointed as health minister, water resources minister and minister of state in the office of the vice president. But it should be noted that this was not through affirmative action as there is no policy regarding the number of position preserved by gender for women.

Despite the rise in numbers, it still fell drastically short of the United Nations target of achieving 30 percent representations of women in politics by 2015. Highlights of the African Regional Congress of Women in Politics – 1995 concluded that such statistics, in Kenya as well as in Africa, are indicative of the “limited decision making roles given to women in this region as well as need to support girls’ education and women’s more active participation in politics. “it is therefore of paramount importance the political scene for gender imbalances, identify the problems that hinder women’s active participation in politics, and offer recommendations to help alleviate the dismembering of women from the National Assembly and their marginalization from decision making roles once in parliament. It is only the engagement of women in the fight against these problems that will enable them to ascend to power to articulate their grievances since there is no shortcut.

Women have been not yet met two strategic objectives: those of ensuring their equal to and full participation in power structures and decision making and leadership. Going by the statistics of the 2002 – 2003 parliamentary years, women parliamentarians have found it hard to fulfill the above objectives. Out of the 17 percent of MPs who brought motions to the house, 18 percent were males as compared to 5.6 percent women. In terms of contributions to motions in parliament, out of the 90.8 percent MPs who contributed, 94.4 percent males. This shows that the levels of women's contribution surpassed that of their male counterparts. In terms of points of order's raised by MPs, female MPs were almost the same level with their male counterparts with 61.7 percent and 69.7 percent respectively. Despite their critically limited number in parliament, women parliamentarians have matched their male counterparts in activities in the house.

This success could be attributed to women lobby groups frantic efforts. In early November 2002, a loose coalition of women NGOs, including many of those affiliated to Women's Political Caucus, as well as individual activists and professional, forms a forum. (Initially labeled Women for NARC, later the NARC Women Congress) to employ every available means to ensure that NARC won 2002 elections. This group produced and disseminated presidential campaign and monitored the election polls.

They required a guarantee from male dominated NARC that, if the party won the election, it would incorporate women as equal partners in the post-election power sharing and would complete and engender the new constitution and governance process generally. Ultimately, there were no guarantees, save for those contained in NARC's election agenda document. The post-election power sharing arrangement envisaged did not happen and the only gain for women was the nomination of five women out of seven NARC nominees.

Given the gains after the 2002 elections the new decision making structures were a mixed bag of gains and losses for women. For example, comparatively, women's presence in the cabinet improved from zero up to 1974 and thereafter, to one assistant minister for Ministry of Culture and Social Service, except for the periods 1994 – 1997 when Kenya had one full woman cabinet minister. For the first time in 40 years, women secured 6 ministerial positions.

In sum, although the gender sector has been an active and sometimes effective lobbyist in engendering democratic change in Kenya since the beginning of the political transition in 1992, women lost a strategic political moment in 2002 and did not become major political players, with the capacity to negotiate effectively at the pre- and post-election negotiating table for key political positions and strategic policy decisions regarding Kenya's future. Hence, during the party nomination and in the post-election power sharing arrangements, women felt betrayed and politically marginalized by men once again.

It is their lack of a common women's political voice for most of 2002 that reduced their chances of better performance at the 2002 polls and subsequent political development. This demonstrated the persistent inadequate learning from past setback and a lack of consolidation of gain built on past achievements. This could be attributed to the fact that women's movement reconstitutes itself each year before a general election leading to the conclusion that many Kenyan women (and men) activists and politician who suddenly appear during such times are no more than political opportunists.

The active participation of women in parliament has proved that they are politically empowered and are able to participate on an equal basis with their male counterparts in political process. They are also able to use their empowered status to solve problems they face as a community. Reports on women MPs performance in parliament have had a positive

impact. The adoption of the Beijing platform for Action in November 1996 moved by Charity Ngilu (the then Minister for Health) made her first Kenyan woman to successfully move a woman friendly motion. This committed the government to the translation, interpretation, simplification and clarification of the resolution in the platform of Action to grassroots women through the seminars, workshops and others to explain it as well as allocate adequate funds to enhance women's welfare. Other motion 1997, the Equality Act Motion 1999 and Sexual Offences Bill 2005. If the ability is the same, why do few females make it to august house?

At the dissolution of the 8th Parliament on 25th October 2002, several pertinent bills relevant to gender-responsive law and policy making were before the house – the National Policy on Gender had also finally reached the sessional paper stage. The creation of Ministry of Gender, Sports, Culture and Social Services, elevation of the Women's Bureau machinery and policies and create National Gender and Development Commission were all promising signs. Some of these have been passed but the questions remain. When will Kenya finally implement its pending gender responsive policies and laws?

Whereas in Moi government, the civil was headed by a woman and an additional six women were PSs, currently the civil service is male headed with only three women PSs. Furthermore, the principle of 1/3 women's representation in all decision making bodies, remains a far cry, demonstrated by the fact that by March 2003, the representation of women in key government posts was as follows: Cabinet:3 (out of 24) ministerial directors and equivalent positions: 3 (out of 17).Despite the approval of affirmative action in 2006, the results are yet to be seen.

Table 3.6 represents the performance of women in the 2002 elections compiled by The African Women and Children Feature Service (AWC) in Gender Monitoring Report (2003)

Table 3.6 Statistics on Women in National and Local Governments.

Governance structure province	Elected by gender Parliamentarians		Elected by gender councilors	
	Men	Women	Men	Women
Nairobi	7	1	54	1
Coast	20	1	173	11
N. Eastern	11	0	112	1
Eastern	34	2	307	20
Central	27	2	211	8
Rift Valley	47	2	645	21
Western	23	1	188	16
Nyanza	32	0	353	19
Total	201	9	2043	97

Table 3:7 Women's participation in politics and decision making

June 2003-June 2005

Rank	June 2003				June 2005			
	Women	Men	Total	%	Women	Men	Total	%
National assembly	18	204	222	8.1	18	204	222	8.1
Ambassadors/high commissions	7	27	34	20.6	11	29	40	27.5
Permanent secretaries	3	21	24	12.5	6	25	31	19.4
Provincial commissioners	0	8	8		0	8	8	
District commissioners	3	68	71	4.2	2	69	71	2.8
Deputy secretary	19	75	94	20.2	21	77	98	21.4
Councilors	377	2460	2827	13.3	377	2460	2837	13.3
Lawyers	1645	3179	4824	34.3	1708	3277	4985	34.3
District officers	68	355	423	16.1	88	358	447	19.7

Source: Department of Gender; Electoral Commission, DPM Compliment

Statistics Unit.

Therefore, urges the women not to be content with the women; wing, but to strive to get positions that matter in party organs.

Table 3.8 Women and Men in the Decision Making Positions in the Judiciary.

Rank	June 2003							
	Women	Men	Total	%	Women	Men	Total	%
Chief justice	-	1	1	-	-	1	1	-
Judges of appeal	1	12	13	7.7	-	14	14	-
High court judges					12	47	59	20.3
Commissioners in terms of size	1	2	3	33.4	1	2	3	33.4
Chief magistrates	6	8	14	42.9	6	9	15	40
Senior principal magistrate	9	13	22	40.9	11	15	26	42.3
Senior resident magistrate	32	55	87	36.8	38	63	101	37.6
Resident magistrates	53	71	124	42.7	64	82	146	43.8
Districts magistrates	85	121	206	41.3	92	126	218	42.2
Chief kadhi/kadhis	-	17	17	-	-	17	17	-
Total	177	300	477	36.4	224	359	583	38.4

Source: Department of Gender: Electoral Commission, DPM Compliment

Statistic Unit.

Despite the provision for a third of women representation in political parties, there are no effective measures to be taken in case of breaches. The KANU constitution as at 1998 did not address women directly, a pointer to the little space availed to women .Like KANU, Ford

Asili and Ford Kenya also gave marginal space to women. But FORD Kenya recognized the pivotal role played by women in society and outlawed sexism by making a strong case against discrimination in all its manifestations. Democratic party worked towards promotion of the participation of women. NDP also had similar commitment. But all parties apart from NDP were gender neutral on the issue of nomination.

To increase representation of women in parliament, the plan must start at party politics through ensuring that women register as voters and are represented in the top leadership positions of political parties. Perhaps women must provide an effective shadow parliament for the sitting MPs and their cabinet. Their organizations, like WSPK, could provide an alternative voice to debate pending bills at concentrated on potential women candidate and provide capacity building, building, training and other support in the electoral process. Women's organizations must lobby for accountability.

2.7 Conclusion

This chapter brought to bear that there still exist inequalities both in education and politics in Kenya just like it is in the whole continent. In Kenya, gender equality and struggle has been in the media for as long as multiparty and democracy has been mentioned. Women and girls still remain on the periphery of development agenda part of the reason being lack of sufficient political will and patriarchy, therefore not much has been achieved in terms of serving justice to women, however, there is still reason to hope for improvement in the status of women because of ongoing constitutional reforms and amendments on the constitution.

CHAPTER THREE

STATUS OF GENDER INEQUALITIES IN EDUCATION AND POLITICS IN KENYA AND THE ROLE OF LEGAL TOOLS IN COUNTERING THOSE INEQUALITIES AFRICA

3.0 Introduction

This chapter examines the gains and gaps in women's and girl's education and political representation in Africa and more so in Sub-Saharan Africa and specifically in East Africa. The analysis shows that the education priorities contained in the Nairobi and Beijing final documents are in tandem with other international provisions which together with accompanying domestication in national planning ,has resulted in consistent and systematic progress in formal education participation for women/girls. A pervasive absence, exacerbated by lack of recognition in the millennium development goals, the contemporary goal setters, is the rural woman who needs to be embraced for collective progress in gender equity in education to be registered. Gender inequality is one of the most contentious issues that Kenya just like other African have significantly affected women in Kenya.

Four world conferences on women's issues have been organized under the auspices of the United Nations. The 3rd International World Women's Conference held in Nairobi in 1985 forms the pivot of this study. This meeting recommended practical and effective steps for global action to promote equality, development and peace for women. It was a landmark meeting for women the first of its kind in Africa, and it led to the adoption of the Nairobi Forward Looking Strategies (NFLS) for the advancement of women for the period up to the 2000. These strategies addressed the following broad areas:

The promotion of women to positions of power at every level and in every sector to achieve parity with men; the establishment of national mechanisms to advance gender matters; The recognition of women's unpaid work and the need to need to encourage sharing

of the burden of childcare and nurturing between parents; Equal opportunities for women in all sectors as education and employment.

Women and girls bear the largest and most direct costs of these inequalities-but the costs cut broadly across society, ultimately harming everyone. For these reasons, gender inequality is a core development issue-a development objective in its own right. It strengthens countries' abilities to grow, reduce poverty, and to govern effectively. Promoting gender equality is thus an important part of a development strategy that seeks to enable all people-women and men alike-to escape poverty and improve their standard of living.

Gender has become an issue for development intervention as inequalities continue to exist between women and men despite significant improvement in the absolute status of women and gender equality in most African countries ⁵¹. Women's culturally disadvantaged position, visible across a number of development dimensions, has limited their capacity to develop their full potential. They have less social, economic and legal rights than men and lack access to development resources, benefits and decision-making powers at all levels of society⁵². Furthermore, gender inequalities have a detrimental effect on development. Studies have shown that discrimination on the basis of gender means slower economic growth, greater poverty, weaker governance and lower quality of life ⁵³. Conversely, the enhancement of women's capacities in education leads to reductions in infant and child mortality, improved nutritional status and a marked impact of poverty reduction. Policies are therefore required to address the development needs of both women and men and to transform the structures and processes that continue to sustain inequality⁵⁴.

Systemic discrimination is caused by policies and practices that are built into the ways that institutions operate, and that have the effect of excluding women and minorities. For

⁵¹ ADB,2001:1

⁵² ADB,2001:1

⁵³ World Bank,1998:UNDP,1995

⁵⁴ ADB,2001:1

example, in societies where there is a strong belief that whatever happens within the household is the concern of household members only-rather than the police force and the judiciary and organizations within the state ,the questions of domestic violence are likely to be avoided leading to systemic discrimination against all the women who experience violence within the home.

This part analyses the legal and policy framework related to equality in Kenya, in order to assess its adequacy to address the various patterns of discrimination and inequalities manifested between the two genders. It addresses both the international legal obligations of the state and domestic and policy framework. In respect to domestic law, it examines the constitution of Kenya 2010, specific sections of the law. This part also examines the mechanisms for implementation and enforcement of the law, both through the courts and specialized institutions/commissions. The most recent Kenyan census indicate that women comprise over 50 percent of Kenyan population. However, the participation of women in the electoral process does not reflect this demographic reality. The reason behind this disparity have complex historical legal and cultural elements which were never given due focus in building the nation. Kenya is largely patriarchal society, which has contributed to women's subjugation in both the public and private spheres. Women have historically taken a secondary position to men, and this tradition is manifested in the practices, policies, and laws of the country.

In the past, women have faced several challenges, and the exclusion of women from legal, electoral and political processes is no exception. Despite the constitutional provisional outlawing discrimination on the basis of gender, women continue to suffer setbacks whenever they seek not only elective, but also appointive, positions in Kenya. It is evident that, if we are to achieve equality and equity between men and women and enable women to realize their full potential, women must be fully involved both in legal and political life .This chapter

seeks to assess the gender responsiveness of the electoral, legal, and policy framework in order to illustrate the environment that women encountered as they pursued their electoral and political rights.

3.1 An Overview of Gender disparities in sub-Saharan Education

While the world noisily ushered in a new year on January 1st, 2006, another global deadline was silently missed. Target 4 of the UN Millennium Development Goals projected the “elimination of gender disparity in primary and secondary education preferably by 2005 and in all levels of education no later than 2015.”⁵⁵ While numerous gains in universal primary education have been achieved worldwide, sub-Saharan Africa lags behind all of the world’s regions and a gender gap only exacerbates the problem. Progress toward gender equity in primary education has been slow. Eleven of the 14 countries of the world where less than 80 percent of school-age girls are enrolled are in sub-Saharan Africa.⁵⁶

In Africa, girls attend school for an average of only 2.82 years before they reach the age of 16. This is less than anywhere else in the world. Only 46 percent of girls enrolled in school in sub-Saharan Africa will complete primary school.⁵⁷ When one compares secondary school rates the numbers are much lower. Only 17 percent of girls in Africa are enrolled in secondary school.⁵⁸ In addition, drop-out rates are significantly higher for girls than for boys in secondary education. In sub-Saharan Africa, about 50 percent of women are illiterate compared to about 30 percent of men.⁵⁹ Gender inequality in education and in employment is estimated to have reduced sub-Saharan per capita growth in the 1960-1992 years by 0.8 percent per year.⁶⁰

⁵⁵ World Bank Millennium Development Report

⁵⁶ Data is from a United Nations Development Program Report entitled “Sub-Saharan Africa: The human costs of the 2015” “business-as-usual “scenario(2005)

⁵⁷ Oxfam Report on Girls Education in Africa

⁵⁸ UNESCO 2003 Report

⁵⁹ Ibid

⁶⁰ Blackden and Bhanu,1999

3.2 Assessing the progress of equal education in East Africa

By March 1999, Kenya, Uganda and Tanzania had made post-Beijing Plans for Action in which education and training of women and girls featured as priority areas. The following section will present a brief appraisal of the achievements of the last years. This appraisal is anchored around assessing progress in the six strategic objectives of BPFA and accompanying strategies identified in Nairobi.

3.3 Equal Access to education

While the commitment to access education to the citizenry has been a consistent feature in the education vision of Kenya, Uganda and Tanzania, the policies adopted in the 1980s were not in tandem with this vision. This was especially true given the effects of the World Bank engineered Structural Adjustment Programmes (SAPs) introduced in 1980s which shaped educational developments in the decades between NFLS and the BPFA (1985-1995). SAPs were economic recovery programmes, whose most obvious outcomes with regard to education, was less public expenditure on education. As a result, cost sharing in education was introduced. This resulted in many disadvantaged children especially girls, from rural communities, the urban poor and children with disabilities, not accessing formal education due to prohibitive cost associated with schooling. That the SAPs were introduced after NFLS, which had called for various strategies to address girls' poor participation in schools means that the NFLS calls for increased access were largely ignored in national planning in East Africa. Indeed; it is the "World Declaration on Education for All" of Jomtien 1990 that created a new impetus for addressing declining participation in education.

In an effort to domesticate the Jomtien declaration for example, the Ugandan government issued the white paper on education in 1992 which provides the official policy in

education⁶¹. It renewed calls for accessing and universalizing educational opportunities to its citizenry, a spirit that is carried on in the BPFA. The decade of 1995-2005 held more promise for East African countries with regards to delivering on national and international commitments to education, in terms of increasing access to primary and post primary institutions and closing the gender gaps in education. Reduction of the gender gap in education has emerged as the international development target for assessing progress towards gender equity and empowerment⁶². The democratization wave of the 1990s and political stability opened up spaces for diverse non-governmental organizations to participate in the provision of education. Furthermore, the three East African governments had begun to put in place policies and schemes that cushioned educational participation for women and girls

3.4 Primary education

The preoccupation with universalizing access to basic education is so central in national projections that it has become a “collective national philosophy”⁶³. Successive governments have implemented several schemes aimed at reaching the elusive Education for All (EFA) dream⁶⁴. The pace-setter in the current EFA campaign in East Africa is Uganda, which announced in 1996, the Universal Primary Education (UPE) drive stipulating free primary education for four children per family, two of whom had to be girls. This has since been expanded to include all children. Tanzania followed with a Five-Year plan on

⁶¹ Ministry of Education and Sports (MoES)/Government of Uganda (GOU); *Education Sector Strategic Plan 2004-2005*.

⁶² UNIFEM; *Progress in the World's Women. Biennial Report(2000)*

⁶³ Galabana, Justinian: *Developments and Issues regarding Universal Primary Education in Tanzania*. ADEA Biennial meeting. [http://www.adeanet.org/biennial/papers/en_arusha_galabawa.pdf\(2001\)7](http://www.adeanet.org/biennial/papers/en_arusha_galabawa.pdf(2001)7) accessed on 29.05.2007

⁶⁴ In Kenya for example, Presidential decrees have been issued in an attempt to expedite universal access. In 1971 a presidential decree abolished tuition fees for districts with unfavorable geographic conditions. Another decree followed in 1973 providing free education for classes 1-4. The 1978 decree made primary education free. Tanzania has consistently relied on national planning whose impact is analyzed in three phases. As noted by Galabana, *supra* note 16(2001), Phase 1 of 1967 to 1980 is associated with socialism and self reliance. There was phenomenal growth in education albeit the minimal external support. Phase II of 1980 to 1990s were marked with new economic thoughts that ushered in liberal ideas of market oriented schooling as exemplified in SAPs. School expansion declined. 1995 onwards has collective thoughts on poverty eradication that has seen abolition of school fees.

primary Education Development (2002-2006) in 2001 that abolished school fees and other mandatory parental contributions that had added to the cost of education. In Kenya ,a presidential proclamation led to the Free Primary Education(FPE)drive in 2003⁶⁵.All three countries have capitation grants⁶⁶ per child that support specific school requirements..The immediate impact of these positive developments has been an in the learner population in primary school. By 2003/4, Kenya, Uganda and Tanzania had a national gender ratio of 51:49 indicating a near gender parity in national primary school enrolment as indicated in the table below.

Table 3: Primary School Enrolment in Kenya, Uganda and Tanzania

Country	Enrolment	1985	1990	1995	2000	2004/5
Kenya	Total Enrolment	4,702,414	5,392,319	5,536,396	5,926,068	7,591,500
	Total Female	2,267,511	2,625,943	2,734,091	2,933,158	3,688,800
	%	48.2	48.7	49.4	49.5	48.6
	Increase in Female enrolment	-	358,432	108,148	199,063	755,642
	by %	-	15.8	4.1	7.3	25.7
Uganda	Total Enrolment	2,117,000	2,276,590	2,636,409	6,559,013	7,633,314
	Total Female	913,480	1,007,026	1,197,423	3,163,495	3,760,725

⁶⁵ Tanzania and Uganda primary education plans operate as education policies as opposed to be the Kenyan FPE drive is not embedded in policy.

⁶⁶ Under the free education schemes, governments provide funds to schools, calculated on the basis of pupil enrolment. The amounts per child are similar across East Africa.

	%	44	44.2	45.4	48.2	49.3
	Increase in Female enrolment	-	75,546	190,406	1,966,072	597,225
	by %	-	8.1	18.9	164.1	18.9
Tanzania	Total Enrolment	3,160,125	3,379,000	3,872,473	4,370,500	7,476,650
	Total Female %	1,575,585 49.8	1,673,765 49.5	1,913,000 49.4	2,164,000 49.5	3,685,496 48.8
	Increase in Female enrolment	-	98,182	239,235	251,000	1,521,496
	by %	-	6.2	14.2	13.1	70.3

The largest margins of increased access for girls have occurred in Uganda. Uganda has been the most proactive in promoting girl's education, on prioritizing the Girl-Child and Education in its educational interventions. Uganda has a child-child education strategy that outlines strategic interventions to accelerate girls' education. In a bid to improve the qualitative aspects of schooling, Uganda introduced the child friendly basic education and

learning programme; a concept with six broad components one of which is to make the school girl friendly. This includes having a senior woman teacher in each school that acts as a mentor and confidant to girls and helps them deal with issues of maturation.

Uganda also has in place affirmative action on school feeding and take-home rations for girls in selected districts. The institutionalized construction of gender segregated toilets and washrooms avails girls privacy when dealing with menstruation. In addition, the Girls Education Movement (GEM), initiated by UNICEF-Uganda, has been lauded as giving girls (and boys) the space to take charge of destiny. The children reach out to one another and help each other to remain in school through for instance using proceeds from income generating activities to purchase uniform for the needy⁶⁷. The quantitative results of this specific focus can be seen in the four times increase in the raw number of girls in primary schools since 1985.

The East African countries have introduced parallel school alternatives, generally categorized as Non Formal Education (NFE) programmes, in an attempt to attract learners who are above the official entry age. Tanzania and Uganda are more advanced in terms of the scope and institutionalization of these alternatives, some of which, like the complementary Basic Education (COBE)⁶⁸ in Uganda are managed by the respective education ministries. In Kenya, the NFE programmes for school aged children are individual or organization sponsored, small scale, and until recently operated outside the formal education provision, though they actively sought to provide formal education and training. NFEs have been instrumental in giving girls a second chance to attain formal education. The 2006 COBET enrolment for example stood at 129,845 boys and 91,634 girls (41 percent). More attention however, needs to be paid to the quality of NFE provisions, particularly addressing its linkage

⁶⁷ UNICEF/GOU; *Supra* Note 14(2005)

⁶⁸ Other programmes that are officially recognized but are run by private organizations with varying degrees of government MoES collaboration include; Alternative Basic Education for the Karamoja (ABEK), Basic Education for the Urban Poor Areas (BEUPA), Child Centred Alternative Non-Formal Community Based Education (CHANCE) and Non-Formal Education in Mubende.

to formal institutions and the potential for progression. Without this, NFE will occupy low cadre positions in society.

3.5 Secondary Education

The massive expansion in primary school enrolment spiraled public demands for accessible secondary education. While Tanzania followed a systematic plan. “The Secondary Education Development Plan 2004-2009” to expand the secondary school base, Uganda and Kenya relied on presidential decrees issued in 2006 and 2007 respectively that declared free secondary education that basically entails tuition fees waivers. The planning and proclamations notwithstanding, the gains in secondary school access since 1985 have been very modest and rank way below gross enrolment in primary schools.

Table 4: Primary and Secondary School Gross Enrolment Ratio in Uganda, Tanzania, Kenya⁶⁹

Country	1985		1990		1995		2000		2004	
	Pri	sec	pri	Sec	Pri	sec	pri	sec	pri	sec
Uganda	73.2	10	68.7	12.5	74.3	12	127.3	15.9	125.4	18.6
Tanzania	75	3.3	67.2	4.7	66.8	5.4	66	5.9	101	-
Kenya	99	21.3	94.5	23.8	84.9	24.4	97.7	39.2	111.3	48 ⁷⁰

The minimal enrolment in the secondary school sub-sector is compounded by the fact that not all who complete primary schooling, despite meeting the secondary school

⁶⁹ World Bank Summary Education Profiles; Kenya, Uganda, Tanzania
<http://devdata.worldbank.org/edstats/summaryEducationProfiles/CountryData> accessed on 28.05.2007

⁷⁰ For Unity, international available statistics have been used. There is however a huge variation in some figures when compared with locally available statistics. For example the Central Bureau of Statistics; *Economic Survey* Government printers (Nairobi) (2006) 24 calculates secondary GER at 29.1% in 2004 though the World Bank sources indicates 48%

qualification, transition⁷¹.Recent years have however witnessed increased enrolment. In Kenya for example, the transition rate from primary to secondary rose from 43.6 percent in 2002 to 50.5 percent in 2004 and by 2006 stood at 57.0 percent⁷².Boys ‘transition is slightly higher. The number of learners transiting in Tanzania rose from 15 percent in 1995 to 49.3 percent in 2005⁷³.The quota system in Tanzania’s secondary school admission has benefitted girls. Community secondary schools are expected to have a 50-50 enrolment of boys and girls.

3.6 Gaps and challenges in accessing education to girls and women in East Africa

The review of education in East Africa for women and girls has shown that considerable progress has been made to meet the goals identified in Nairobi(1985)and Beijing(1995).This progress has been cushioned by the policy prioritization, strategic involvement and funding from governments, organizations and individuals. However, challenges remain in the region with regards to full implementation on f NFLS and BPFA. These represent gaps that require renewed focus and commitments as the recommendations shall later point out in the relevant chapter..

3.7 Contributing Factors to Gender Inequality in Education

Gender inequality in sub-Saharan African education is deeply-rooted and stems from a few persistent problems confronting African society, namely—poverty, gender discrimination and cultural traditions, HIV/AIDS, armed conflict and other crisis, and lack of infrastructure. Girls are much more likely than boys to miss out on educational opportunities because of poverty. Hidden costs such as books, uniforms, food, and supplies often prohibit

⁷¹ Other contributing factors include prohibitive costs of secondary schooling, lack of space, and low valuation of education.

⁷² GOK/MoE,2006;“Education Sector Report”(Unpublished)

⁷³ Sumra, R, 2006;“*Access to Education: Climbing the ladder in Tanzania. Final Report*”

the education of daughters. On top of these direct expenses, the indirect or opportunity costs of lost income further decrease girls' chances of attending school.

The gendered division of labor within the household results in higher opportunity costs for girls' schooling. In sub-Saharan Africa, girls spend four times as much time working on productive tasks in the household than boys.⁷⁴ Since girls' role in housework is so much greater, parents lose more 'free' labor by sending them to school than they do by educating boys.

National poverty rates also limit the accessibility of schooling. Countries with huge amounts of debt often have to make cuts in the educational spending. As a result, school facilities are poorly maintained, teachers are underpaid, unmotivated, and unqualified, teacher-to-pupil ratios soar, books and supplies are limited, and school fees. Under these circumstances, families may be apprehensive about having their daughters traveling long distances on unsafe roads and they may see little value in such under-funded schools. In developing countries with poorly developed infrastructure and institutions, there may be little employment payoffs for pursuing a higher degree in education and the cost of life years invested, fees, and lost income could outweigh the marginal benefit of higher education.

Customary gender roles and traditions are another limiting factor on girls' education. Patriarchal social constructs and beliefs in male entitlement ensure that when educational opportunities are restricted, boys are given preference. Social customs concerning sibling obligations may imply that parents would ultimately benefit materially more from the education of boys than of girls, even given similar earnings.⁷⁵

⁷⁴ UNFPA-Gender Responsive Program for poverty eradication

⁷⁵ Colclough, Christopher et.al. *Achieving schooling for All in Africa: Cost ,Commitment, and Gender*,Ashgate:Burlington,2003

Early marriage for girls is pervasive in many cultures, and especially where it is customary for the bride to be sent to live as part of the husband's family, parents may have little economic incentive to invest in their daughter's education. Out of wedlock pregnancy is considered a disgrace in most parts of sub-Saharan Africa, and the higher risk of sexual harassment and violence as well as a scarcity of birth control and family planning education contribute to the early marriage of girls and consequently, lower educational attainment.⁷⁶ Too often, schools themselves contribute to the disproportionate ratio of girl/boy enrolment. There are few female teachers to serve as positive role models and those that are teaching, are often unqualified and underpaid. In addition, teachers' attitudes often reflect, rather than question, the gendered attitudes prevalent in the wider society.

A survey of educators in Ghana, Malawi, Mali, Senegal, Uganda, and Zambia found that their attitudes revealed distinct gender biases. The surveys revealed that these teachers believed that boys are more intelligent than girls and also that girls are naturally better at arts subjects while boys are better at science.⁷⁷ Outdated textbooks can reinforce these gender stereotypes, with boys depicted as active and girls as passive.⁷⁸

Female students are often under-encouraged in the disciplines of math, science, and technology and may not see the relevance of the learning material to future employment. Instead, women often find themselves in traditionally 'feminine' disciplines like nursing. This ultimately limits choice and diversification within the labor market. Countries must take measures to expand their infrastructure and economy to accommodate this level of development.

⁷⁶ GAP Report 2006

⁷⁷ Colclough, 154

⁷⁸ GAP Report 2006

The gendered division of household chores is practiced within schools themselves—reinforcing the stereotype of women as ‘home-makers.’ In general, girls spend more time performing non-school activities during school hours, such as cleaning the classrooms, fetching water for the school, and performing tasks for the teachers.⁷⁹ Such expectations result in girls being timid and less self-confident of their abilities and serve to reinforce boys’ gendered perceptions. Gender sensitivity among teachers is vital for reversing the cultural norms that marginalize women into roles of domestic servitude and obedience.

The high infection rates of HIV/AIDS in sub-Saharan Africa also serve as a negative force on girls’ education. The AIDS virus disproportionately affects young people, especially young women. Approximately a quarter of the 40 million people suffering from AIDS are between the ages of 15 and 24, and in sub-Saharan Africa, women in this age group are three times as likely to be infected as men.⁸⁰ Because of the entrenched gender roles in African society, women have relatively low bargaining power in negotiating relationships.

In places where limited educational and economic opportunities exist for women, poverty pressures and family burdens lead women to trade sex for survival. Where women have low status, diminished financial autonomy, and are dependent upon men for support, abstaining from sex or insisting upon the use of condoms are simply not feasible options. In addition, physical and sexual violence affect women’s ability to protect themselves from infection. Refusing sex, inquiring about past partners, or demanding contraceptive use have all been described as triggers to sexual violence, and yet, these are all suggested as important behavioral guidelines in HIV prevention. While short-term remedies such as wider condom distribution and increased safe sex education should be priorities, much wider interventions such as increasing the economic and social

⁷⁹ Colclough 153

⁸⁰ Kim, Julia, “Gaining a foothold: tackling poverty, gender inequality, and HIV in Africa” *BMJ* (2005)

empowerment of women must be improved to reduce women's vulnerability to HIV/AIDS and sexual violence.

The destructive impact of AIDS extends beyond those living with the disease—it has orphaned countless children in sub-Saharan Africa and has dramatically reduced life expectancy in many of these nations. With an average life expectancy of 46 years, many people in sub-Saharan Africa regard higher educational attainment as a poor investment compared with going directly to work. As a result of the magnitude of the pandemic, much international aid and attention is used to combat the disease, and consequently, the educational sector has suffered as resources and even teachers have been squandered to the disease.

A whole generation of orphans must now fend for themselves without the care and guidance of parents. Girls are regularly taken out of school to care for ailing family members or work to replace lost income, but the sad irony is that education is the best long-term way to curtail the spread of the disease.

One final factor limiting the equitable education of women in many sub-Saharan countries is the prevalence of civil conflict in the region. In the west, Liberia remains in an unstable peace, Sierra Leone continues to sink into oblivion, and Cote d'Ivoire teeters on the brink of civil war. Nigeria's fragile "democracy" seems more and more to be a misnomer. There is persistent conflict in Congo, and the genocide and displacement in Sudan show no signs of abating. Somalia has erupted in civil war once again (though one could argue it never stopped) and in the south, the once promising Zimbabwe has fallen victim to political and economic crisis.

These are a few of the most glaring conflicts, and unsurprisingly, girls in these countries have precious few opportunities or capabilities to pursue their education. Famine is pervasive in many of these countries and newspaper accounts of Sudan

describe the cost-benefit analysis starving families are forced to make when they decide to send their women out to collect food aid under the high probability that they could be raped in order to save the lives of the men, who would surely be killed by Janjaweed militias.

3.8 International Legal Framework

A country's legal framework includes international conventions, which enrich a country's status by establishing international law, customs, best practices, and the generally recognized principles of law. In fact, Kenya recognized this significance in its Constitution by recognizing international law and the conventions Kenya subscribes to as part of its domestic law: *The general rules of international law shall form part of the law in Kenya. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.*⁸¹

The international instruments contain many provisions that require action on the part of the Government of Kenya to ensure that discrimination against women, which has contributed to their low representation in the political arena, is eliminated and that active efforts toward increasing women's participation are made. Given the Constitution's recognition of international treaties and conventions as part of the domestic legal framework, a discussion of the international and regional instruments related to women's political participation to which Kenya is subject is relevant.

3.3.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) has had a profound influence on the development of international human rights law with its principles elaborated in a number of binding instruments.

⁸¹ Article 5 and 6, Constitution of Kenya

Though not technically binding on signatories, the 1948 Declaration has acquired the status of customary international law, owing to the fact that most countries have consistently promoted adherence to its articles and accepted its provisions as law for over 50 years. The UDHR has some important provisions related to gender equality, including: Prohibition of discrimination; Need for inclusion and participation of all (including women) in governance. Given the current struggles that women face, it is surprising to note that these two important principles have existed for a long time at this highest echelon of international law. It provides women in Kenya with an undisputable claim and right to realize equality in electoral and political life. Further, these principles are well articulated in Kenya's Constitution and other national laws.

3.3.2 International Covenant on Civil and Political Rights (ICCPR)

Kenya is a party to the ICCPR , which provides that every citizen shall have the right and the opportunity without any distinctions and without unreasonable restrictions to: Take part in the conduct of public affairs, directly or through freely chosen representatives; Vote and be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and; Have access, on general terms of equality, to public services in their country.

The importance of the rights outlined in the first and last bullets protect women's engagement in political life despite any traditional customs and practices, which generally dictate that women should not pursue leadership roles.

3.3.3 Convention on the Elimination of all Forms of Discrimination (CEDAW)

CEDAW is a key and indispensable reference for women rights' advocates as it outlines several important principles related to women's involvement in political life: It seeks to integrate women into decision-making processes and eradicate impediments women face in effective participation in societal affairs; It provides that State parties shall take appropriate

measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

3.3.4 African Charter on Human and People's Rights (ACHPR)

Regionally, Kenya is a party to the ACHPR, which establishes the following key principle for elections: Every citizen (both women and men) shall have the right to participate freely in the government of their country, either directly or through freely chosen representatives in accordance with the provisions of the law.

This principle establishes the crucial link between democracy and inclusion. Kenya has since harmonized this provision into its Constitution, which states that 'the people may exercise their sovereign power either directly or through their democratically elected representatives.'⁸²

3.9 Other Regional Conventions

Although Kenya has only signed some of the key regional treaties and is yet to ratify them all, the intention to live up to the principles of such instruments warrants mention. The following conventions have been signed, though not ratified, by the Government of Kenya:

The African Charter on Democracy, Elections, and Governance, which aims to promote

representative governance and promote and protect the full realization of rights; The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), which aims to ensure participation in the political and decision-making processes in the country.

⁸² Article 1(2), Constitution of Kenya

In 2004, the Government of Kenya signed the Declaration on Gender Equality in Africa⁸³ through which State parties undertake to ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and ensure its implementation. In the opinion of FIDA, Kenya has a solid international foundation for the protection and enhancement of women's rights as women pursue representation and leadership. However, even where instruments have been signed and ratified, the Government of Kenya is yet to fully meet its obligation as duty bearer by putting in place policies or laws that give impetus to women's participation in political life and aggressively address discrimination.⁸⁴

3.10 National Legal Framework

3.3.3.1 The Electoral System

Kenya's electoral system is a combination of two mechanisms: First-Past-the-Post, and Proportional Representation. First-Past-the-Post (FPTP) is the more predominant limb of Kenya's electoral system and, in fact, is the most widely used electoral system in the world. The Kenyan electoral system has been a First-Past-the-Post system since independence. In this system, the winning candidate is the one who gets the largest number of votes in an election. The rest of the votes garnered by the other candidates do not count. This system has been roundly criticized in the past as, among other things, it encourages a "winner-take-all" mentality. Consequently, reform of the electoral system has been a part of Kenya's constitutional reform debate.

The FPTP system is generally not deemed favorable for increasing women's participation in elective leadership. In fact, the FPTP system does not usually lead to many successful women candidates. In the United States—a country that uses FPTP—women hold 98, or 18.3 percent, of the 535 seats.⁹ A similar outcome is also evident in the United

⁸³ Legal Instrument available on achpr.org/instruments/declaration-on-gender-equality-in-africa/

⁸⁴ CEDAW concluding Observations on Kenya 2011 Report; CEDAW/C/SR.963, CEDAW/C/SR.964

Kingdom, which also follows an FPTP system. Out of 650 MPs, only 143 women (22 percent) were elected in the 2010 elections.¹⁰ conversely, in Denmark, where a proportional representation system is used, 37.7percent of MPs are women⁸⁵.

In Kenya, FPTP has been well documented as being unfriendly to achieving a fair level of representation for women⁸⁶. During the 2013 elections, this very narrative played out. It was not uncommon to hear voters say that, as much as they would want to vote for a woman, they did not want to “waste” their votes as the chances of the woman winning were pretty slim to begin with. The drawbacks of FPTP are further aggravated in a society such as Kenya’s that remains both disinterested and sometimes antagonistic toward promoting women’s engagement in active and competitive politics. Besides the 47 elective seats reserved for women in the National Assembly, the FPTP system has not provided any particular benefit to women candidates as it does nothing to address historical injustices and other disadvantages that naturally accrue to special interest groups.

Proportional representation (PR) is a concept in voting systems used to elect an assembly or council. PR means that the number of seats won by a party or group of candidates is proportionate to the number of votes received. The basic principles underlying proportional representation elections are that all voters deserve representation and that all political groups in society deserve to be represented in the legislature in proportion to their strength in the electorate.

How it works: Legislators are elected in constituencies and wards.⁸⁷ Each party puts up a list or slate of candidates equal to the number of seats in the constituency (or ward). Independent candidates may also contest, and they are also listed on the ballot as if they were

⁸⁵ see <http://www.kvinfo.dk/side/675/article/53/>

⁸⁶ Report of the Independent Review Commission (IREC) on the 2007 General Elections held in Kenya

⁸⁷ Kenya has 290 constituencies spread across 47 counties. The constituencies are broken down into 1,450 wards

their own party. Once the votes are counted, the nomination slots are shared among the parties according to the proportion of votes they received.

There are three broad types of list systems, which include a closed list, an open list, and a free list. Kenya uses a closed party list system. As the name suggests, a closed party list is one in which the list is developed by the party and once developed and handed over to the electoral commission, the parties cannot change the list or the order of names on the list. Seats are awarded to candidates on the party list in the order they appear on the submitted list.⁸⁸

The true essence of PR is that every vote counts and everyone should have the right to fair representation. However, as implemented in Kenya, PR does not achieve this gain of utilizing all votes cast because allocation of the nominated seats is based on the number of elective seats won by political parties, rather than the number of votes received.

Thus, in Kenya, parties nominate additional members in proportion to the number of elective seats won. This type of PR system tends to produce disproportionate outcomes and to be biased in favor of larger political groups because larger parties will produce more elected members and, thus, have the opportunity to nominate more members from the party list. Equally, it follows that the smaller parties, which tend to be friendlier to women's engagement in politics, do not get opportunities to nominate as many members. Another challenge associated with the proportional representation system is that the party leadership puts together the party list. Thus, individuals receiving a winnable place on the party list are usually those with better relationships with the party leaders. Therefore, it can result in the nomination of candidates who are partial to the party leadership and, therefore, likely to be puppets, rather than representatives of the special interest groups they are meant to serve.

⁸⁸ Article 90 constitution of Kenya

In the 2013 elections, PR did not present as many opportunities as it should have given that the two-thirds principle of gender representation was not fully implemented at the national level. Women actually received fewer seats at the national level through nomination than in the previous mandate.

Assessment of electoral system: As it is currently, the Kenyan electoral system can guarantee sustainable women's representation only if accompanied by an electoral environment that encourages and enables women to contest elections successfully in the single-member constituencies (i.e., FPTP). Such an environment can be achieved when political will exists and when political parties make conscious and deliberate efforts to include women in leadership, policies, and practice.

3.3.3.2 The 2010 Constitution of Kenya

For a very long time, Kenyan legislation had not been addressing the prevalent gender equity and equality issues that hamper women's political participation and representation. This reality changed during the historic constitutional referendum held on August 4, 2010 where Kenyans voted in favor of a new Constitution that aims to enable men and women to realize equal rights and opportunities.

The Constitution of Kenya has been lauded as one of the best in the world, particularly in its provisions on human rights, equality, and inclusiveness. FIDA Kenya is inclined to agree, and, indeed, the preamble to the Constitution echoes this fact that...*the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.....human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.*

These national values and principles guide all Kenyans and bind all state organs, state officers, and public officers. Women in Kenya have great cause for celebration as the

Constitution contains several provisions that aim to protect, fulfill, enhance, and promote women's rights in Kenya in all spheres of life. These provisions are commonly referred to as 'women's gains.' Below is an exhaustive discussion of these constitutional provisions and their significance in expanding the space for women to exercise their civil and political rights.

3.3.3.3.1 Gender Parity in Elections and Politics: Two-Thirds Rule of Gender Representation

One of the most fundamental women's gains secured under the Constitution is the opportunity and guarantee of effective representation of women via the *two-thirds principle of gender representation*. The two-thirds principle dictates that 'not more than two-thirds of members of appointive and elective bodies shall be of the same gender.' This principle has been reiterated in two significant parts of the Constitution—the Bill of Rights and the general principles of the electoral system. *Article 27(8) states: In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Article 81 states: The electoral system shall comply with the following principles—(b) not more than two-thirds of the members of elective public bodies shall be of the same gender.* The two-thirds provision is, indeed, a significant gain, and the immediate rationale of the two-thirds principle is to bring about gender parity and gender equity in representation, which is presented through the two-fold processes of elections and appointments in Kenya. Therefore, all elective bodies must approximate the image of the society they purport to represent.

Full implementation of the two-thirds principle would have resulted in at least one-third representation of women in Parliament, which includes the National Assembly and the Senate, and in the County Assemblies. As it is, this principle was only realized at the County Assembly level. Unfortunately, this principle is one of the key gains that suffered the greatest setback in terms of partial implementation. Attempts to require that the two-thirds principle

be implemented in Parliament did not result in a positive outcome. Although the Constitution provides for the two-thirds gender rule of representation, it fails to provide a clear mechanism for the realization of the same in the Senate and the National Assembly. The main challenge to the actualization of this principle was the actual impossibility of realizing the two-thirds principle without an amendment to the current Constitution.

A request for an advisory opinion was filed by the Attorney General at the Supreme Court seeking a determination as to whether the two-thirds rule was to be implemented immediately—i.e., during the 2013 elections—or progressively. The Supreme Court determined that the two-thirds principle was to be realized progressively and the requisite implementing law passed by 2015.⁸⁹ As such, after the March 4, 2013 elections, this affirmative action principle was only upheld in relation to County Assemblies, while the Parliament comprises more than two-thirds of male members.

3.3.3.3.2 Equality, Non-Discrimination, and Inclusion

The Constitution delivers on its promise of gender equity through various provisions. Article 27 of the Constitution demands participation, inclusiveness, and protection of minorities and marginalized groups and demands that legislative and policy measures be taken to facilitate the implementation of the Constitution.

Article 27(3) of the Constitution states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Equality is defined as similarity of treatment as it is legally, constitutionally, and divinely given. It is a fundamental right. These provisions provide important additional protections that go beyond the protection from discrimination provided for in Article 27(4) of the Constitution, which prohibits discrimination on grounds of disability and age.

⁸⁹ In a Matter of principle of Gender Representation in the National Assembly and the Senate[2012],Eklr,Supreme Court of Kenya, Advisory Opinion No.2 of 2012.

Article 27(6) recognizes the principle of affirmative action, a concept that requires the State to take legislative and other measures designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination. Article 27(8) requires the State to take measures that ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender. Separate provisions create reserved positions for women in the National Assembly, Senate, and County Assemblies. These provisions have had a significant positive effect on women's representation and have enhanced women's role in the decision-making process at all levels of government.

3.3.3.3 Implementation of rights & fundamental freedoms must address vulnerable groups

Article 21(3) of the Constitution imposes an obligation on state actors to address the needs of all vulnerable groups in society, including women. It demands recognition of human rights as one of the ground rules for national development and actualization of fundamental rights and responsibilities for both men and women. To fully realize this gain, there is a need to integrate the promotion and protection of human rights into national policies and to support the inclusion of human rights provisions through subsequent legislation.

3.3.3.4 Political rights

Article 38(1) of the Constitution provides that every citizen has the right to make political choices, which include the right to form and participate in forming a political party. Every citizen has the right to participate in the activities of or recruit members for a political party. The provision further secures the right to free, fair, and regular elections based on universal suffrage and the free expression of the will of electors. It secures the right of women to participate as voters and in politics to ensure their representation.

3.3.3.3.5 Political parties, gender equality & inclusion

Article 91 of the Constitution mandates political parties to respect the right of every Kenyan to participate in the political process. This provision demands the respect of human rights and fundamental freedoms and gender equality and equity. It requires each political party to respect the right of minorities and marginalized groups to participate in the political process in accordance with the principle of the Constitution and the rule of law. Together with other

Constitutional provisions, Article 91 go a long way in creating an environment that encourages equal participation for men and women willing to run for elective posts. Political parties as bodies with elective positions must uphold the core values and general principles of equity and equality. Therefore, it is the duty of all political parties to accommodate all Kenyans, be they women, marginalized groups, minorities, persons with disabilities, or the youth as all these categories of people best represent the issues affecting them.

3.3.3.3.6 Provision for affirmative action seats in the Senate

Article 98 of the Constitution states that the composition of the Senate must include forty- seven (47) members, each elected by the registered voters of the counties with each county constituting a single-member constituency. Sixteen (16) women members must be nominated by political parties according to the proportion of their members in the Senate. The provision also requires two members—one man and one woman—representing the youth, and two members—one man and one woman—representing persons with disabilities, to be part of the Senate. These provisions ultimately create an opportunity for women to be represented in the Senate.

3.3.3.3.7 Legislation to promote the representation of women and other groups

Article 100 of the Constitution confers on Parliament the duty to enact legislation that promotes the representation of women, persons with disabilities, youth, ethnic and other

minorities, and marginalized communities in Parliament. This substantive provision is crucial in the materialization of the two-thirds gender principle.

3.3.3.3.8 Gender representation in devolved government and structures

Article 175 of the Constitution sets out the principles that must govern devolved government. Regarding gender representation, Article 175(c) of the Constitution envisages a situation where no more than two-thirds of the members of representative bodies in each county government are of the same gender. Article 177(1) (b) of the Constitution provides that a county assembly must consist of a number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly is of the same gender.

The same emphasis on the two-thirds gender principle is reiterated in Article 197(1), which provides that not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender. All the provisions on the two-thirds gender principle are designed to ensure that men and women, as well as other vulnerable groups, are involved in the decision-making process and the general running of affairs in the county.

3.3.3.3.9 Gender representation in public service

Article 232 of the Constitution provides for the values and principles of public service, which include the duty to afford adequate and equal opportunities for appointment, training, and advancement at all levels of public service for men and women, members of all ethnic groups, and persons with disabilities. Rights provided in the Constitution may not be limited, Article 24 of the Constitution provides that a right or fundamental freedom in the Bill of Rights cannot be limited except by law, and even then, the extent of that the limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom and after taking into account all relevant factors. Therefore, women's rights must not continue to be treated as obscure undefined rights.

The foregoing scrutiny of constitutional gains for women is necessary and clear proof that the highest and most influential law of the land has provided a suitable and favorable ground for women to pursue their civic and political rights. It is also the baseline and yardstick by which the reader must assess the electoral environment and performance of institutions and other stakeholders who had a responsibility to enhance the participation of women in elections and politics. Implementing bodies had wide discretion and constitutional backing to significantly expand the space for women's participation through faithful implementation, as well as formulation, of positive measures inspired by the Constitution.

Unfortunately, despite these very progressive gains, the experiences and performance of women during the 2013 elections was not as significantly altered as expected. This outcome is largely due to explicit violation or half-hearted implementation of the Constitution. For all these progressive provisions to have had any effect in addressing gender inequality Implementation was crucial, otherwise they would remain rights merely on paper.

Implementation rested on duty bearers, i.e., those organs, state offices, public offices, and institutions mandated or otherwise predisposed to guarantee the actualization of these rights. For instance, it was incumbent on Parliament to take the necessary legislative measures required to implement these gains. Election-related institutions and political parties similarly had a key role to promote women's leadership and ensure women reaped the gains.

Although the Constitution undoubtedly offers a wide range of protective clauses aimed at promoting equality and curbing discrimination of women, FIDA Kenya contends that most of these gains were not fully realized during the 2013 elections.

3.11 The 2011 Elections Act

The Elections Act is the playbook that governs and determines the procedure and nature of elections in Kenya. It provides for the conduct of elections for the various elective offices. FIDA Kenya analyzed this key act and its accompanying regulations in order to

establish the degree to which it is gender-responsive. One of the gains achieved by the Elections Act is the consolidation of all electoral laws into one piece of legislation; previously, the electoral framework was contained in various pieces of legislation.

The main focus of the Elections Act is the conduct of elections in line with the Constitution, and, toward this effort, it includes and expands on various constitutional provisions on elections. The Act also contains provisions aimed at enhancing the space for increased participation of women in politics. Some of the key highlights and gains include:

Any citizen of Kenya who has attained the age of 18 years can register as a voter. Through this provision, suffrage for young women is guaranteed. Voters wishing to transfer their registration to an electoral area other than where they registered are permitted to do so. The provision ensures that even women who have been internally displaced as a result of civil strife can transfer registration and participate.⁹⁰

Persons are still eligible to vote even if they fail to produce a voter's card, which reduces the barriers to women's suffrage. It is useful because, in some cases, women's voter cards are withheld or in the custody of their spouses or male relatives. Makes provision for proportional representation through the use of mixed-member party lists pursuant to the Constitution.

Where a representative from a political party dies, it provides that the replacement from the party list must be of the same gender. Defines as an offence to be in possession of someone else's voting card without authorization, which gives women a remedy when their cards are withheld.

Defines as an offence the use of force or violence during the election period, i.e., to compel or prevent a person from voting. This measure responds to past situations in which violence has forced women to stay away from the polls. Defines as an offence for a person to

⁹⁰ Kenya Human Rights Commission: "Out in the cold": The Fate of Internally Displaced persons in Kenya, 2008-2009.

interfere with free political will by canvassing and campaigning using language that is threatening, abusive, or insulting or engaging in any kind of action that may advocate hatred, incite violence, or influence the voters on grounds of ethnicity, race, religion, gender, or any other grounds of discrimination.

Defines as an offence, leading to disqualification, for a candidate to engage in bribery or violence during the nomination process. Defines as an offence for a political party to knowingly nominate a candidate, who does not meet constitutional requirements; where such offence is grave, the presidential candidate of that party shall not be eligible to contest. The election regulations incorporated affirmative action by subsidizing half the nomination fees of all women candidates.

All these provisions address challenges that women have previously faced while pursuing elective office. However, in the same breath, FIDA Kenya concluded that the Act took on a very minimalistic approach in giving life to the letter and spirit of the Constitution. Namely, only the mandatory gender equality provisions were incorporated. The Act did not go further to extrapolate the various gender gains by providing more clarity on implementation. The following gaps and drawbacks in the Act were noted:

The act did not clarify implementation of the two-thirds principle via the proportional representation mechanism. While the act made provision for a mixed-member party list, it simply restated the constitutional provision. The act should have included further provisions, such as regulating the development of the lists or affirmative action measures requiring the party list to start with a woman's name in order to present increased chances for representation.

The election timelines suffered several amendments at the hands of Parliament. These amendments affected the safeguards put in place to curb party hopping. The amendments also affected the electoral commission's ability to manage the elections,

resulting in a disorganized electoral environment that disproportionately affected women’s candidature.

The Act failed to include a provision for the principal register to be gender disaggregated, which would have facilitated monitoring both by the commission and other stakeholders, especially bearing in mind the historical under-registration of women voters.

There was a requirement to only produce the identification document presented during registration. This condition may have created a barrier in cases where husbands and other male relatives withhold women’s identification cards.

With regard to voter education, the Act should have provided some more specific guidance on timelines within which voter education should be conducted and even on targeting of traditionally marginalized groups.

With regard to petition fees, the Act requires petitioners disputing the validity of election results to deposit a security for costs within 10 days of filing a petition. While potentially effective in discouraging frivolous suits, the costs proved to be prohibitive, especially for women candidates who tended to be less financially resourced.

Position against which a petition is filed Cost in Kshs.

Member of a County Assembly 100,000

Member of Parliament (National Assembly and Senate) 500,000

County Governor 500,000

President 1,000,000

While several of these items were regulated by the Elections Regulations, defining them in the Election Act itself would have given them greater legal sanction—and perhaps have encouraged greater compliance by the duty bearers. Further, as a legal act, it may have created greater awareness among the public at large.

The Electoral Code of Conduct is a schedule of the Elections Act and deserves special mention as it is pivotal to guaranteeing free and fair elections. The objective of the Code was ‘to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation, or reprisals.’⁹¹ The Code was binding on all political parties and candidates, together with their officials and agents.

Some relevant commitments required of registered political parties, referendum committees, officials of political parties and referendum committees, and candidates included⁹² adhering to the values and principles of the Constitution, promoting gender equality within political parties, condemning, avoiding, and taking steps to prevent violence and intimidation, promoting voter education, Instructing candidates, office bearers, agents, members, and persons who support the political parties of their obligations under the Code, promoting the fair representation of special interest groups, generally, affirming the rights of all participants in an election to: Express divergent political opinions; debate and contest the policies and programmes of other parties; canvass freely for membership and support from voters; subject to the Public Order Act, hold public meetings; attend public meetings convened by others; distribute non-offensive electoral literature and campaign material; publish and distribute non-offensive notices and advertisements; erect non-offensive banners, placards, and posters; remove all banners, placards, and posters erected during the election period; Promote free electoral campaigns by all lawful means; and Co-operate with the Commission and the relevant government agencies and other authorities in the investigation of issues and allegations arising during the election period.

⁹¹ Section 3, Electoral Code of conduct, Schedule Two, Elections Acts 2011

⁹² Section 5, Electoral Code of Conduct, Schedule Two, Elections Act 2011

The Code also contains clauses aimed at building a culture of tolerance, which require adherence by those bound by the Code. It includes obligations to⁹³ publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language, or any kind of action, which may lead to violence or intimidation.

Refrain from any action involving violence or intimidation; Ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration, or other event of a political nature.

Do nothing to impede the right of any party, through its candidates, canvassers, and representatives to have reasonable access to voters for the purpose of conducting voter education, fundraising, canvassing membership, or soliciting support.

Refrain from any attempt to abuse a position of power, privilege, or influence, including parental, patriarchal, state, or traditional authority for political purposes, including any offer of reward or threat of penalty; and avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth.

The Code also regulates engagement with the Independent Electoral and Boundaries Commission (IEBC)⁹⁴ it is a positive measure as it reinforces the authority of the IEBC and clearly delineates the roles of the political parties vis-a-vis the IEBC. Structured regulation of the political field is of benefit to women in that it limits the space for abrasive and aggressive modes of political engagement, thereby encouraging their participation.

There are two sets of sanctions applicable to breaches of the Electoral Code of Conduct, which provide a clear way for women candidates to seek redress⁹⁵ sanctions that are issuable by the Commission; and sanctions that are issuable by the High Court at the insistence of the Commission.

⁹³ Section 6, Electoral Code of Conduct, Schedule Two, Elections Act 2011

⁹⁴ Section 6(k) Electoral Code of Conduct, Schedule Two, Elections Act 2011

⁹⁵ Section 7, 8 & 9 Electoral Code of Conduct, Schedule Two, Elections Act 2011

It is FIDA Kenya's finding⁴ that the Code offered wider protections, and its full implementation would improve the field, for women's engagement in political life. Overall, the Code was gender-responsive and its effective implementation would curb common disruptive and abusive practices that women candidates face and that work to exclude women from competitive politics. The Code set out provisions that could generally promote an atmosphere and culture of tolerance, courtesy, and respect with regard to engagement in politics.

It had been hoped that these provisions would make the political field friendlier to women and redress the combative and hostile nature of competitive politics. Unfortunately, the narratives of women candidates covered later in this report will reveal that the Electoral Code of Conduct was not respected and did not serve to level the playing field.

The Political Parties Act provides for the registration, regulation, and overall management of political parties. Significantly, the Constitution envisages that political parties are required to respect the right of all persons, including minorities and marginalized groups, to participate in the political process and promote human rights and fundamental freedoms and gender equality and equity. FIDA Kenya reviewed the Act to establish whether the constitutional requirements were taken into consideration in seeking to address the historical realities that have meant that politics in Kenya has remained a largely male domain.

The Act contains a number of provisions aimed at protecting women and promoting their participation with the expectation of its implementation by political parties. These provisions provide clear opportunities to enhance the participation of women in politics and the electoral process and bridge the gender gap. The provisions include:

The members recruited by political parties must reflect regional and ethnic diversity, gender balance, and the representation of minorities and marginalized groups. The composition of parties' governing boards must reflect regional and ethnic diversity, gender

balance, and representation of minorities and marginalized groups. Both genders must take part in the management of political parties, such that not more than two-thirds of the members of a party's governing body should be of the same gender.

As a requirement for full registration and for receiving the political parties' fund, a party's governing body must satisfy the two-thirds principle of representation in its membership and governing body.

Requires parties to set aside 30 percent of the political parties' fund for promoting the representation in Parliament and in the County Assemblies of women, persons with disabilities, youth, and ethnic and other minorities, and marginalized communities.

The Code of Conduct under the act directs parties to respect and promote gender equity and equality, human rights, and fundamental freedoms, as well as practice tolerance and inclusive political activities. The office of the Registrar of Political Parties can deregister parties that fail to meet gender requirements, do not promote free and fair nominations, and do not respect national values, which include equality and inclusiveness.

The establishment of the Political Parties' Liaison Committee (PPLC) to facilitate coordination between the political parties, IEBC, and the Registrar of Political Parties for smooth flow of mandates. The establishment of the Political Parties' Disputes Tribunal, which provides an impartial Platform to address grievances that women may encounter as they pursue engagement in political parties.

The act provides for the registration and management of parties, defining certain criteria to remain registered. The structured management of political parties increases the need for adoption and application of rules and regulations, which, in turn, offers opportunities to include measures to address the inclusion of women in political life. The Code of Conduct guides relations and, among other things, prohibits abuse of women members.

While the Act contains the mentioned gender responsive provisions, it did not succeed in significantly expanding the space for women's participation in politics for various reasons. First, implementation of the Act was very half-hearted with political parties implementing only those mandatory provisions, and even then, instances of circumvention were many. For instance, it was widely reported and documented that the membership lists of political parties were fraught with fraud with parties failing to conduct genuine registration of members and, instead, lifting names of the unknowing public from various public records. As a result, the very key constitutional provision of political party inclusion of women was defeated.

Furthermore, even in the governing bodies, parties took on a very minimalistic approach by ensuring that women did not benefit from the influential positions of party leadership, but were relegated to peripheral roles in the governing bodies. Since membership and governance represent the very basic units of a political party, the compromise on these two aspects completely undermines a party's ability to be gender-responsive.

Second, the Act merely restated those requirements stipulated in the Constitution, but failed to enact other progressive and positive measures. The Act could have provided more specific and precise measures for the parties to put in place. For instance, instead of merely requiring parties to observe gender equality, more substantive provisions could have been defined, such as:

Guidelines for achieving the two-thirds principle through political party interventions, including nomination rules that incorporate affirmative action measures by requiring a certain proportion of contested seats to be set aside for women, particularly in areas where the party is popular. While the Act requires records of political parties to include copies of the policies and plans of the political party, the Act missed the opportunity to require parties to prepare and provide an affirmative action policy.

Third, the provisions related to the Political Parties' Disputes Tribunal requires one to have exhausted internal political party dispute resolution mechanisms before bringing a case to the Tribunal. The Political Party Act failed to define any regulations for these internal dispute resolution mechanisms; and even worse, the party leadership was quite likely to be the offending party, thus making the solution self-defeating.

3.12 Conclusion

There still persist numerous inequalities both in education and politics in Kenya occasioned by different factors as enumerated in this chapter. These inequalities have continued to impact on the development prospects of women in Kenya. Kenya is signatory to numerous legal instruments that puts obligation to the political leadership to live up to its international obligation as espoused by a principle of international law, *pacta sunt servant*. It is evident though that much more need to be done to guarantee women and girls gender equality.

The Kenyan government has been on the forefront in terms of signing to different instruments of law including those that are gender related. The constitution of Kenya being the supreme law gives gender issues important attention through different articles of the constitution. The implementation of certain specific clauses of the constitution that are gender related have of recent been subject to massive politics in the parliament drawing sharp differences among the male and female politicians, at the centre of politics has been the question of 2/3 gender rule which has constitutional timelines, this clearly shows resistance to implement what is already captured in the constitution.

CHAPTER FOUR

ASSESSING THE IMPLEMENTATION OF THE LEGAL TOOLS AND HOW THEY IMPACT EDUCATION AND POLITICS IN KENYA

4.0 Introduction

This chapter seeks to analyze the extent of implementation of various legal tools in regard to education. This is with the understanding and knowledge that Kenya has signed and eventually ratified a number of international conventions/treaties that put a lot of emphasis on the fact that there is need to have gender equality but with particular emphasis to education. Following the Jomtien Declaration on Education for All(EFA) of 1990, to which Kenya is a signatory ,various national conferences were organized .They included the 1992 National Conference on EFA held in Kisumu,which recommended strategies that would ensure the attainment of basic education by the year 2000;the 1992 National Conference on the Girl Child ,held in Nyeri,and the 1994 National Symposium on Education of Girls held in Machakos.

One outcome of the Machakos symposium was the setting up of a Gender and Education Task Force and the Girl Child Project implemented jointly by the Kenya Institute of Education (KIE) and the MoEST.The second phase of the project recommended parents, chiefs, and community leaders in selected disadvantaged districts as potentially key actors in community advocacy for issues within various sections of the ministry with members drawn from various departments and parastatals of the ministry. Officers were required to monitor gender responsiveness within their sections and inform the Gender Unit.

In terms of improving girls' performance in SMT subjects, the Machakos Symposium recommended that efforts be made to equitably distribute science equipments to girls' and mixed secondary schools at a ratio of one to two. This meant that for every item given to boys' school,two were given to girls 'and mixed schools. Equally important, closing the

gender gap in the teacher training colleges was considered a priority. As a step to realize this, one wing of the Kenya Science Teachers College male dormitory was converted into accommodation space for females, thus allowing increased intake of girls.

A similar response was noted at University through the lowering of the intake points by one point in favor of females since 1996. Notably, even with this kind of affirmative action at university, the ratio of girls to boys remains relatively low, with the number of girls equivalent to about one third that of the boys. This indicates that transition rates from lower levels of education for the girls dwindled drastically. Gender sensitive policies in the country have also supported the establishment of a gender disaggregated data bank at the ministry that helps to identify gender disparities in the education system.

As Kenya navigates through the 21st Century, national examination plans reveal the absence of comprehensive gender policies with specific monitoring and evaluation guidelines. Kenya government hardly provides effective guidance on how to ensure that schools are not only learner-friendly, but also that they are gender-responsive and that they ensure that girls are made to feel safe at school. What is very clear to all concerned with gender equality especially in the area of education is that unless policies are explicit on girls' education needs, the gender gap would continue to be skewed in favor of boys.

To address the educational challenges of the 21st century, there is need to locate gender within a broader policy concerns and in the context of the global focus on EFA, the MDGs and other international conventions and treaties that advocate equal education for every person. Government's slow action on relevant recommendations in such documents often results in the infringement of the rights of the people, especially women and girls and this has far-reaching implications for the socio-economic and political development of a nation. The following are some of the key international treaties that embrace gender equality

in education. The International Convention on Civil and Political Rights (ICCPR), which was adopted in 1966 and came into force 10 years later in 1976, albeit with a limited coverage of gender and education issues.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which was developed specifically with gender in mind and adopted in 1976. It covers all types of discrimination at all levels and came into force in 1981. Some 173 countries, including Kenya, ratified this convention.

The Convention on the Rights of the Child (CRC) that was adopted in 1989 and came into force a year later. Kenya is among the 190 countries that ratified it. This convention is unique because of its strong emphasis on clear measures for promoting free primary education, human rights education, sex education, reproductive health and gender-responsive curricula.

In terms of political promises that require no unwavering commitment on the part of governments, the following are key. The Vienna Declaration and Programme of Action (1993) stresses the state's obligation to promote gender equality in education. The International Conference on Population and Development (1994) demonstrated increased awareness of gender issues not only in education but also in the areas of population control and reproductive health.

The Beijing Declaration and Platform of Action (1995) reaffirmed the Vienna Declaration that Rights of women and girls are inalienable, indivisible and an integral part of human rights. The agenda of this platform of action seeks not only to promote, but also to protect the full enjoyment of all human rights and the fundamental freedoms of all women.

The World Summit for Social Development (1995) ushered in a new consensus on the need to put people at the centre of development through community capacity development in ways that enhance equality and equity between women and men and the attainment of universal and equitable access to education and enhanced primary health care.

However, since political declarations tend to serve political ends and are difficult to monitor and evaluate, the idea of having clear targets and dates by which to measure success is a crucial strategy in any development agenda, not least, education. It is equally sad that the increased participation of women in formal-sector employment has not challenged, in any substantial way, the patriarchal ideologies that characterized most traditional cultures, which colonialism perfected by alienating women in all sectors of development in most fundamental ways, commencing with female exclusion from formal education. Despite demonstration by research that women play a key role in social and economic development, gender differences in education and formal employment have continued to retard the female potential in favor of the male.

It is a tragedy to women and girls in Kenya considering that the role of policy in addressing gender gaps in education seems to stop at formulation and declarations mainly because the practical aspects of implementation fail to define clearly strategic plans that address specific issues of access, quality, retention and performance. Further, proper monitoring and evaluation mechanisms for gender equality are not yet fully available. It is therefore in this view that international frameworks for action were developed to help translate, in practical ways, the declarations and the expressed political commitments on gender equality in education.

The first part of Chapter Five of this study describes and analyses general legal gender related legal tools that have been observed in regard to women political space and

environment in Kenya. This includes the status of ACHPR, NFLS and BPFA and their priorities. After a general look into the legal tools, the Chapter focuses on engendering legislative processes and legal achievement in the key areas of education and politics, there is also the issue of increased presence of women in decision-making. This is informed by various examples from other related studies that have indicated that there is an increased activism and call for women to be made visible as a key component of gender mainstreaming hence need for gender equality.

ACHPR and its status of Compliance in Kenya: Kenya is a party to the ACHPR which establishes the following key principles, for elections; Every citizen (both women and men) shall have the right to participate freely in the governance of their country, either directly or through freely chosen representatives in accordance with the provisions of the law.

This principle establishes the crucial link between democracy and inclusion. Kenya has since harmonized this provision into its constitution, which states that the people may exercise their sovereign power either directly or through their democratically elected representatives. Other important legal tools that Kenya has in the past expressed some ray of interest to adhere to with no signs of committing fully to the same are also still waiting. Although Kenya has only signed some of the key regional treaties and is yet to ratify them all, the intention to live up to the principles of such instruments warrants mention. The following conventions have been signed, though not ratified, by the government of Kenya. The African Charter on Democracy, Election, and Governance, which aims to promote representative governance and protect and promote the full realization of rights.

The protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo protocol), which aims to ensure participation in the political and decision-making processes in the country. In 2004, the government of Kenya signed the

Declaration on Gender Equality in Africa through the state parties undertake to ratify the protocol to the African Charter on Human and People’s Rights on the rights of Women in Africa and ensure its logical implementation.

In the opinion of FIDA, Kenya has a solid international foundation for the protection and enhancement of women’s rights as women pursue representation and leadership. However, even where instruments have been signed and ratified, the Government of Kenya is yet to fully meet its obligation as duty bearer by putting in place policies or laws that give impetus to women’s participation in political life and aggressively address discrimination.

4.1 Convention on the Elimination of all Forms of Discrimination (CEDA W)

CEDAW is a key and indispensable reference for women rights’ advocates as it outlines several important principles related to women’s involvement in political life. It seeks to integrate women into decision-making processes and eradicate impediments women face in effective participation in societal affairs. It provides that State parties shall take appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

Table 1: International Meetings on Education.

1985 3 rd World Conference on Women (Nairobi)
1985 4 th International Conference on Adult Education(Paris)
1990 World Declaration on Education for all (Jomtien)
1990 World Summit for Children
1993 The Education for Girls: the Ouagadougou Declaration and Framework for Action

1994 World Conference on Special needs Education: Access and Quality (Salamanca)
1994 International Conference on Population and Development (Cairo)
1995 World Summit for social development (Copenhagen)
1995 Fourth World Conference on Women (Beijing)
1996 Mid Term Meeting of the International Consultative Forum on EFA (Amman)
1997 5 th International Conference on Adult Education (Hamburg)
1997 International Conference on Child Labour
2000 world education forum (Dakar)
2000 Millennium Development Goals

An examination of the priority needs identified in Nairobi and Beijing depicts a clear sequential development. The strategies in the NFLS in 1985 are concretized in the BPFA in 1995. BPFA benefited from the invigorated energy and vision of the World Declaration on Education For All (EFA) of Jomtien 1990⁹⁶. Together, the three meetings (Nairobi, Beijing and Jomtien) provide the most comprehensive vision for girls' and women's education that continues to be reflected in subsequent international documents, such as the Dakar Framework for Action and the MDGs. There is general consistency and agreement in international documents on the call to avail education to all, just as there is commitment by national governments to domesticate these actions. A few points of divergence can be noted in the recommendations of the international meetings:

⁹⁶ The United Nations (UNESCO) has organized several intergovernmental and world congresses that have resulted in policy documents and frameworks for action in education. The two most prominent world gatherings in the recent past are: the World Declaration on Education for All (Jomtien 1990) and the Dakar Framework for Action (2000). The Jomtien conference can be said to be the single most important event that resulted in renewed emphasis on universalizing education. Dakar 2000 does not differ much in content, emphasis on direction.

Shifts in the time frame for achieving the targets. For example, though Nairobi does not indicate a specific year for universalizing access to basic education, Beijing and Jomtien suggest 2000, while Dakar and the MDGs push it to 2015

Different stress points: The NFLS encouraged the “development of education programmes to enable men to assume as much responsibility as women in upbringing of children and maintenance of the household”(paragraph 173).The closest statement in the BPFA is under Objective B.4,Action plan B that seeks to“ *develop training programmes and materials for teachers and educators that raise awareness about the status ,role and contribution of women and men in the family*”⁹⁷.An opportunity for action is missed by failing to follow up on the male focus as highlighted in Nairobi; embracing emerging realities. The BPFA addressed emerging needs like life skills and education on HIV/AIDS, areas that were not yet pertinent in the NFLS of 1985.

Addressing quality: The Dakar meeting stresses on the need to ensure completion and quality education .The MDGs reiterate the essence of paying attention to completion of schooling.

Table 2 summarizes the education priorities and calls for action in NFLS (1985), BPFA (1995), DPFA (2000) and MDGs (2000).

Table 2: Priority Areas in Education

Beijing Platform for action (BPFA) 1995 ⁹⁸	Nairobi Forward Looking strategies (NFLS) 1985 ⁹⁹	Dakar Framework for Action (DPFA) 2000 ¹⁰⁰	Millennium Development Goals (MDGs)2000 ¹⁰¹
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⁹⁷ United Nations; *The Beijing Declaration and Platform for Action*. Fourth World Conference on Women(1996)46-55

⁹⁸ *Ibid*,BPFA

⁹⁹ United Nations; *supra* note (1985) 4.

¹⁰⁰ UNESCO;*The Dakar Framework For Action, Education For All: Meeting Our Collective Commitments* (UNESCO Paris) (2000)

¹⁰¹ United Nations Towards Universal Primary Education: Investments and Incentives: *Achieving Millennium Development Goals*.UN Millennium Project (2005)

<p>B1:Ensure equal access to education</p> <p>a):Advance goals of equal access</p> <p>b):Provide universal access by 2000,close gender gap by 2005, universal primary education (UPE) by 2015</p> <p>c):Eliminate gender disparities in tertiary levels</p> <p>d):Create gender sensitive education system</p> <p>e):Provide young women with, technical training</p> <p>f):Increase enrolment and retention of girls</p> <p>g):Eliminate barriers to schooling of pregnant adolescents and young mothers</p>	<p>Paragraph 165:Address causes of absenteeism and dropout among girls</p> <p>Paragraph 166:Avail scholarships and other forms of support</p>	<p>Ensure by 2015 all children, particularly girls have access to and complete free and compulsory primary education of good quality.</p>	<p>Achieve UPE</p> <p>Target: Ensure that by 2015 children everywhere, boys and girls alike, will be able to complete a full course of primary schooling</p>
<p>B2: Eradicate illiteracy among women</p> <p>a):Reduce female illiteracy by half its 1990 level</p> <p>b):Ensure gender equality in completion of Primary schooling for girls by 2000</p>	<p>Paragraph 164:Elimination of illiteracy by 2000</p>	<p>Achieve 50percent improvement in all level of adult literacy, especially for women</p>	

<p>c):eliminate gender gaps in basics and functional literacy</p> <p>d): Encourage adult and family engagement to promote literacy</p>			
<p>B3: Improve women's access to training,science,technology and continuing educating</p> <p>a):Develop training policies for entry to the labour market</p> <p>b):Recognize non formal education opportunities</p> <p>c):Provide information on availability, benefits of training in science and technology</p> <p>d):Design education and training programme to offer new knowledge and skills</p> <p>e):Diversity vocational and technical training and improve access</p>	<p>Paragraph 169:encourage girls to study scientific, technical and managerial subjects</p> <p>Para 171:Diversify/increase access to science,voc tech for especially the poorest women</p>	<p>Eliminate gender disparity in primary and secondary education by 2005 and achieve gender equality in education by 2015 ensuring girl's full and equal access</p>	<p>Promote gender equality and empower women</p> <p>Target: Eliminate gender disparity in primary and secondary education preferably by 2005 and to all levels no later than 2015</p>
<p>B4:Develop non-discriminatory Education and training</p> <p>a):develop curricula and text books aids free of gender stereotypes</p>	<p>Para163:Strengthen the participation of women at all levels of national educational policy formulation levels</p>	<p>Equitable access to basic and continuing education for all adults.</p> <p>Ensure that the</p>	

<p>b):Develop training programmes for teachers and educators to raise a awareness on contribution of women and men in the family</p> <p>c):Develop programme on effective strategies for gender sensitive teaching</p> <p>d) Ensure that female teachers and professors have same opportunities and equal status.</p> <p>e):Introduce training in peaceful conflict resolution</p> <p>f):Increase proportion of women in educational policy and decision making</p> <p>g):Develop gender studies and research at all levels</p> <p>h):Develop leadership training opportunities</p> <p>i)Education and training programmes to respect multilingualism and non-discriminatory</p> <p>j):Remove legal/social barriers to sexual and reproductive health</p>	<p>Para167:Examine curricula,textbooks,retrain personnel to eliminate gender stereotyping</p> <p>Para168:Promote women’s studies and perspectives from women</p>	<p>learning needs of young people and adults are meet through equitable access to basic and continuing education for all adults.</p>	
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<p>k):Guidance/support to raise a awareness on responsibility, avoid unwanted pregnancy,STD,especially HIV/AIDS</p> <p>l):Provide recreation and sports activities</p> <p>n):Recognize rights on indigenous women and girls</p> <p>q):Promote education and training for rural women</p>			
<p>B5:Allocate resources for monitoring implementation of educational reforms</p> <p>Governments: to provide required budgetary resources to the education sector: and establish a mechanism to monitor reforms and measures</p>			
<p>B6:Promote long life education and training for girls and women</p> <p>a):avail broad range of education and training programmes</p> <p>b):Promote support in child care to enable mothers continue</p>	<p>Para170:Flexible and accessible education and occupational training</p>		

schooling			
c):Create flexible programmes			

4.2 NFLS and BPFA and their importance to education

In 2006, 21 years after the Nairobi Conference, various scholars conducted sector reviews of key areas identified in the Nairobi Forward Looking Strategies (NFLS). The purpose of these reviews was to reflect upon the national and International commitments women made seeking to advance their human rights and social justice. The sector reviews thus re-visit the resolutions made in the NFLS, which have since been expanded in the Beijing Platform for Action (BPFA), analyzing the achievements, gaps, silences and challenges. The sector reviews have a specific focus on women in Kenya, Uganda and Tanzania. Given that the 3rd UN Women's conference was held in Africa and in Nairobi, it seemed only natural that women from the region should take the lead in examining its impact on them. In this sense therefore, the Nairobi +21 sector appraisals present a "scholarly" commemoration of the historic conference that has been cited as the impetus for the growth and energy of many women-focused organizations in the East African Region.

At the end of the Nairobi Conference, there was hope that great steps would be taken towards women advancement... The NFLS were seen as contributing to the continued strengthening of the economic, political, social and legal aspects of women's lives. Five years later, in 1989, the commission on the status of women (CSW) reviewed the implementation of NFLS. The conclusion reached by CSW was that although many gains were being made

especially with regards to reforming laws and the economic inclusion of women there had not been a sufficient improvement in the overall condition and position of women.

The themes of *equality, development and peace* linked to the sectors of *employment, health and education* in relation to women's advancement have been a central focus in the four world conferences for women organized under the auspices of the United Nations (UN). First adopted in Mexico in 1975, these concepts formed the focus of the UN decade for women 1976-1985. They were reaffirmed in the mid-decade world conference in Copenhagen. The Nairobi conference of 1985 appraised the achievements of the decade and came forth with more strategies that were concretized in Beijing 1995 under twelve critical areas¹⁰². Education was conceptualized as being at the very core of achieving the goals of women's achievement. This is confirmed by Paragraph 15 of the NFLS that the "*enhancement of women's equal participation in development and peace requires the development of the human resource*"¹⁰³. The undisputed belief in the power of education, informed by modernization and human capital theories, is that the development of human capital is a prerequisite for development and it can only be attained through formal education. These theories informed the framework of Women in Development (WID) approaches that provided the dominant understanding in NFLS guiding expansion of education and literacy opportunities for women. The WID approach to education did not confront the gendered constitution of social structures that had resulted in women's disadvantaged position. It is the BPFA, informed by gender and development (GAD) approaches that argued for the removal of the structural barriers to gender equality in education and the relevance of addressing power relations.

Over the last twenty years, several world summits and conferences have provided policy documents and frameworks for action in education, with Millennium Development

¹⁰² Sara J.Ruto, Patricia Kameri-Mbote, Jacinta Muteshi-Strachan ed, *Promises & Realities, Taking stock of the 3rd UN international women's conference*, ACTS press, 2009

¹⁰³ Ibid

Goals (MDGs) being the most recent goal setting stage and focus for world governments. In Kenya, for example, the document containing current planning for education, the Kenyan education sector support program (KESSP) 2005-2010 states that: KESSP is based on the rationale of the overall policy goal of achieving Education For All and the Government's commitment to the attainment of Millennium Development Goals¹⁰⁴. The shift of world attention and resources to MDGs have in general been faulted as “*being soft goals that lack targets and indicators for the most important issues affecting women*”. The MDG education goal has gender specific indicators; however education analysts have been critical of the education specific targets for being “cautiously phrased”¹⁰⁵. For example, though completion of education is mentioned, they omit free and compulsory education and literacy provisions which are crucial for achieving gender equality and equity.

4.3 Engendering legislative processes and legal achievements

Kenya, Tanzania and Uganda have ratified CEDAW¹⁰⁶ and identified a ministry to oversee women's development concerns. Furthermore, formal gender equality in the Constitutions and non-discrimination on the basis of sex, are enshrined in all East African constitutions¹⁰⁷. Women in East Africa struggled to engender their national constitution to assure both men and women fair access to power and equality before the law.

In Uganda, the support to the ACFODE's LINK Programme played a pivotal role in the constitutional making process under the Women's Caucus that deemed women the most organized constituency in the constitutional review processes¹⁰⁸. The 1995 Constitution of Uganda domesticates CEDAW, by providing for equal rights of men and women in a family,

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Uganda on July 22nd 1985, Tanzania August 20, 1985 and Kenya March 9, 1984

¹⁰⁷ Article 21 constitution of Uganda 1995, The 13th Amendment to the 1977 constitution of Tanzania in 1992; the amendment of section 82(3) of the constitution of Kenya, November, 1997.

¹⁰⁸ Women's caucus was comprised of NAWOU, ACFODE and FIDA, Uganda Gender Resource Centre, the ministry of Gender and Community Development and the Gender Working Group of Parliament

affirmative action in favor of marginalized groups, affirmative action for women, outlaws negative culture, provides for a woman representative for every district and guarantees at least one third of each of the Local Government seats for women. While the Local Government's Amendment Act of Uganda (2001) provides for one-third women representation in statutory bodies such as District Service Commissions, Local Government Public Accounts Committees and District Tender Boards.

In Kenya, the 1997 Constitutional Amendment Act makes it mandatory for parties to allocate half of nominations slots to women. Albeit defeated in the referendum, the 2005 Draft Constitution of Kenya represents a recognition of gender equality and affirmative action for elective posts, equality before the law, land rights and outlaws harmful practices. In Kenya, human rights and women's organizations, such as Kenya Human Rights Commission, Institute for Education and Democracy, League of Women Voters and FIDA-Kenya sought to enhance the effective participation of women delegates in the constitutional review committees and protected the gains of women by crafting gender responsive provisions for the draft constitution¹⁰⁹ but the review process remains unfinished work. Tanzania constitutionalised affirmative action provides for 20 per cent special seats for women in parliament through party nomination in proportion to the seats won by parties. Further, the Village Land Act of 1998 not only outlaws discriminatory culture but also provides for a minimum of two women on Tanzanian Village Councils.

At the sub-regional level, the fundamental principles of the East African Community Treaty include "good governance, and adherence to the principle of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as recognition, promotion, and protection of human and people's rights in accordance with

¹⁰⁹ Interview Wambui-Kimathi 11th April 2006 and Jacinta Muteshi 12th April 2006

the provisions of the African Charter on Human and Peoples' Rights" (Article. 6). Further, Chapter 22 of the same Treaty acknowledges the Role of Women in Development.

At a global level, the Nairobi conference resulted in the establishment of national machineries for women. For instance in 1976, United Nations Development Fund for Women (UNIFEM) was a mere voluntary fund geared at the empowerment of women at the community level. With the impetus of Nairobi, UNIFEM became a mandate of the UN, with increased funding coupled with the establishment of regional offices in Africa¹¹⁰. Similarly, the mandate of the Commission on the Status of Women established in 1947 was broadened to monitoring of the implementation of NFLS.

4.4 Increased presence of women at decision-making levels

Women's political participation has been the least contentious of women's rights, as evidenced by the adoption of the Convention on the Political Rights of Women in 1952, as the first articulation of women specific human right to vote, stand for elections and hold office. However, it was the Nairobi conference that directly impacted on women's role as decision- makers. Thus, the increasing election or nomination of women to public offices evidences the enhanced confidence of women to contest for political power and growing public acceptance of women as independent political actors.

In Tanzania¹¹¹, the percentage of women parliamentarians rose from 16per cent in 1999 to 21.1 per cent in 2002. Out of the 283 parliamentarians, 65 are women of which 12 competed for constituency seats. The number of women ministers rose from 9 per cent in 1980, to 19 percent in 1994 and by 2000 there were 4 ministers out of 27 totaling 15 per cent and 4 Deputy Ministers out of 17 totaling 24 per cent. In Zanzibar, prior to the 2001

¹¹⁰ Interview Nyaradzai Gumbonzvanda, Resident Representative UNIFEM, Eastern Africa, 10th April 2006

¹¹¹ SADC Gender Monitor: Monitoring the implementation of commitment to BPFA by SADC members, Issue 2, March(2000), 19

elections, Fatuma Maghimbi headed the Opposition. The newly-elected government of Tanzania of 2005 boasts of 5 female and 25 male ministers and 10 out of 31 deputy Ministers. Women head the prestigious ministries of Finance and Foreign Affairs.¹⁸ Tanzania also produced the first African woman UN Deputy Secretary-General, Asha Rose Migiro in 2006 and the First President of the Pan-African Parliament, Gertrude Mongella in 2004.

Despite the absence of affirmative action in law, comparable trends are discernible in Kenya with women parliamentary candidates gradually increasing from 4 in 1969, to 19 in 1992 and to 50 in 1997.¹⁹ Women councilors in the semi-autonomous local governments have increased from 2.7 per cent in 1992 to 8.1 per cent in 1998. In 2003, there were 385 women candidates out of 7,008, vying for local government and most instructive is that unsuccessful candidates were pleased with having exercised their right to compete for elective posts. Furthermore, in the 2003 election, the incoming NARC government increased the number of women ministers to 3 at cabinet level and 4 as Assistant ministers with 18 women members of Parliament, of which 9 had competed for constituency seats and the rest, nominated by the government.

In Uganda, during the 1996 parliamentary elections, 8 women successfully competed for constituency seats. In 1998, there were 7 women out of the total 47 Cabinet ministers and 51 women out of the 226 Members of Parliament. By 2005, women occupied nearly 25 per cent of parliamentary seats and 30 per cent of the Local governance councilors. In 2005, women constituted 32 out of 56 Deputy District Speakers, and 40 out of 45 Deputy Chairpersons. Eight of the District Speakers are women and there was one District Chairperson, Josephine Kasya of Kanungu District while Specioza Kazibwe served as the first woman Vice President in Uganda from 1994-2003; she was also the first in Africa.

At the regional level, a third of the 27 members of the East African Legislative Assembly are women, with four out of the seven Standing Committees chaired by women. There is one female judge, Solomy Bossa, out of the six judges of the East Africa Court of Justice. To date, the top leadership of the East African Community (EAC) is dominated by men and they outnumber women in prestigious positions within the EAC.

The increased participation of women in decision-making is a fundamental building block for more effective presence and impudence in shaping national political discourses. There are gender national policies and gender is incorporated into national planning policies of the three East African countries. Gender advocates are utilizing gender budgeting tools to influence the allocation of resources towards services and amenities favoring women, such as access to safe water, health services, reproductive health and safe motherhood. FOWODE in Uganda, TGNP in Tanzania and CGDD in Kenya spearhead these processes.

4.5 Conclusion

The implementation of gender related legal tools in Kenya has is a long and hectic process which is bound to take long before it is finally accomplished given the nature of most African societies that are majorly patriarchal. Most women and girls have not benefitted from education because of factors that are known to all especially policy makers who ought to have taken into account different factors that have made it difficult for women and girls to be treated the same way men are treated and try to fill the gap of gender equality. There is still much to be done considering that women are supposed to be given advantage over men in almost all the spheres of life. Affirmative action has not yet delivered as it should have and lives many women and girls disadvantaged in their pursuit for gender equality. It is imperative to note that the implementation of the constitution is progressive and it is only fair to give it time it deserves to deliver for not only women and girls but to all.

The connection between implementation of legal tools and increase in women in education and politics is that the more legal tools are implemented; more women and girls are made visible. Where laws are not adhered to, women are left behind both in education and politics. Kenya is in the process of putting structures in place to make it easy for women and girls participate freely in education and politics without obstacles. Political parties are in the spot in terms of making it difficult for women to freely participate in party politics without being undermined. This is part of what needs to be done next by political parties so that women are treated equally and right.

CHAPTER FIVE

ANALYZING CHALLENGES FACING WOMEN ACCESSING EDUCATION AND POLITICS IN KENYA

5.0 Introduction

This chapter seeks to analyze all the challenges facing women and girls both in education and in politics as they struggle to achieve gender equality. The challenges/obstacles is a culmination of the study findings hence a clear and real issues women and girls are facing everyday as they pursue this struggle to be served with equal right.

The review of education in East Africa and particularly in Kenya for women and girls has shown that considerable progress has been made to meet the goals identified in Nairobi(1985)and Beijing(1995).This progress has been cushioned by the policy prioritization, strategic involvement and funding from governments, organizations and individuals.However,challenges remain with regards to the full implementation of NFLS and BPFA.These represent gaps that require renewed focus on the part of relevant institutions and stakeholders. The study has explored the issues that would ensure universal access to education for women and girls given that educational access has emerged as the international target that measures social development.

Refocusing towards the unreached: East Africa and Kenya in particular is united in missed targets of achieving UPE and reducing gender gaps. A fashion has emerged of postponing the peoples who have traditionally been poorly served by formal education establishments. National education policies and drives have had negligible impact among the nomadic, agro-pastoralist and hard to reach areas. The so called “Northern frontier districts” of Kenya continue to register very low enrolment and completion rates especially for girls. In Kenya moreover, it is well documented that FPE has had negligible impact in North Eastern region. This depicts not only very low enrolment but also a wider gender gap. Girls in such regions continue to face a multitude of problems stemming from the socio-cultural belief

systems such as early/forced marriage and female circumcision, which curtail their efforts at formal schooling.

Retaining the numbers: Retention and completion rates in primary school remain dismal for Kenya and the rest of East African countries. In Kenya, of the 949,787 pupils who enrolled in Standard 1 in 1996, only 543,558 (or 57.2 percent) completed primary education in 2003. Of these, slightly higher figures of 58.4 were girls¹¹². This is one of the highest completion rates ever achieved as previous years have consistently recorded below the 50 percent mark.

Creating a gender sensitive education system: The BPFSA views this in relation to the number of women and men participating in education, administration and policy making. Using teacher numbers as an example, the representation of females in the teaching profession decreases higher up the academic teaching ladder. While urban schools often have a higher proportion of female teachers, some schools in the North eastern region of Kenya have very minimal woman presence; most teachers, workers or managers in such areas tend to be men.

Quality of provision: The mass inflow of children following free education calls led to overcrowded classrooms, overstretched learning resources, overworked and often undertrained teachers'. These factors undermined quality of education. The failure to increase the number of teachers, given the much higher pupil enrolments has clearly led to overburdening of available teachers. This has negative implications on the general quality of educational provision for all and consequently on the realization of equity and gender equality in education.

Eliminating barriers to schooling for pregnant adolescents and young mothers: Kenya and Uganda have a girl'-entry policy while Tanzania is yet to institute one. On the whole

¹¹² MoEST/GOK; Medium Term Expenditure Framework 2005/6-2007/8. Delivering the Economic Recovery Strategic Priorities (2004)95

there seems to be a lack of pro-activeness and urgency in harmonizing and implementing a comprehensive legal framework that protects and promotes the education rights of pregnant adolescents and young mothers. For example, in Kenya, while the Children's Act Chapter 586 of the Laws of Kenya, promulgated in 2001, stipulates that compulsory education should be available for all and that "nobody should subject a child to female circumcision, early marriage or any cultural rights..."¹¹³, the Education Act Chapter 211 of the Laws of Kenya, the official document regulating education in the country, is silent on such issues.

Impact of conflict: One of the biggest impediments to access, quality, equity and gender equality in educational participation and performance is civil conflict. Sections of North Eastern and Rift valley are confronted by periodic inter-ethnic clashes. Girls' education within such conflict prone areas are bleak.

Complementary programmes: Given skewed historical development of formal education opportunities that tended to favor men/boys, the vast majority of those in need of basic literacy remain to be women/girls. For this group complementary opportunities outside the formal school system are the best second chance of redressing the missed opportunities of education and training. Literacy programmes are however under-funded and under developed. The ripple effect is that the vast majority of rural women are locked out of other opportunities that formal education can accord them as they lack basic literacy skills.

A number of studies highlight the ambivalence towards investment in female education. Some parents believe that boys are more intelligent, that they perform better in school and that they are a better educational investment than girls. A factor that is often ignored in parental preference for boys' education is the prevalence of patrilineal inheritance systems. As the prime beneficiaries of family assets, boys are favoured in capital human investment decisions. In addition, parents worry about wasting money on the education of

¹¹³ The Children Act Cap 586 Laws of Kenya

girls who are likely to get pregnant or married before completing their schooling. There is also the strong belief that once married, girls become part of another family and parental investment is lost¹¹⁴. In some cases, therefore, the lack of money is an excuse for the reluctance of parents and families to invest in the education of girls because they do not perceive the value of education for girls and also because of the socio-cultural perceptions about the role of women in society.

There is also the high opportunity cost of girls' education. In many communities child labour is critical for the survival of some households, and schooling represents a high opportunity cost to those sending children to school. Although child labor for agricultural, domestic and marketing tasks cut across gender lines, when it comes to child care, girls are more likely to be involved than boys.

The rapid growth in urbanization has also increased the demand for domestic labour. Poor rural households have responded by sending their daughters in the domestic labour market in exchange for regular cash income. This also draws young girls away from schools. Their parents receive payment for their services, but the girls have little or no opportunity to return to school.

Another important factor related to girls' participation is the continuing importance of institutions such as bride price, polygamy, adultery, fines, and the economic value of girl, especially in the rural areas. Girls are an important source of income for their families, and the need for additional household income often takes priority over education. The high status accorded to marriage and motherhood in many communities impacts negatively on female participation in education.¹¹⁵ In poor households, this value certainly takes on a significant meaning, particularly as girls approach puberty.

¹¹⁴ Odaga and Heneveld, 1995

¹¹⁵ Cammish and Brock, 1994

Cultural expectations and values also play an important role in influencing the pattern of women's participation in formal education. There are regions where parents wish to protect their daughters from contact with foreign cultures. Even in regions where there is acceptance of the importance of education for women, it has been observed that parents tend to discourage 'too much' education for their daughters. There is always the fear that if a girl is highly educated, she will have difficulties in finding a husband or being "a good wife"

Religion, especially Islam, has usually been associated with low female participation in schools. In Kenya, on the whole, areas where Islam has existed for many years, like the Coast region and many parts of North-Eastern Kenya, there has developed an educational system and ideology, which is considered by many Muslims as largely acceptable. Consequently attempts to establish a Western system of education does not normally meet their approval.¹¹⁶ Some Muslims considered the Christian presence through the schools disruptive. School is perceived to be the instrument for the spread of non-Muslim ideology and culture.

With regard to girl's education in particular, some religious leaders prefer Islamic education for their daughters as they fear that Western education promote values and behavior that are contrary to cultural norms often articulated as religious edicts. Western education, according to them, leads to certain unacceptable innovations which alter the accepted views held by male members of the society of the ideal wife and bring about changes in the prescribed roles of women, which have been rigidly defined by religion and custom. They tend to see an ideal woman as submissive, obedient and content to enjoy status of her husband.¹¹⁷

Politically, it is not a secret that in Kenya women are under-represented. From the first general election held in Kenya after independence to the most recent one of 2013. Men

¹¹⁶ Belloti, 1975
¹¹⁷ Clarke, 1978

have been majority in parliament. There was not a single woman in the first legislature in 1963 and today female representation has only improved slightly. There was 4.1 per cent female representation in parliament in 1997, 8.1 per cent in 2002 and 9.8 per cent in 2007. Even with the COK(2010) providing for Two-Thirds gender rule, the 2013 general elections saw only 16 women elected MPs out of the 290 constituency seats, 88 women elected out of 1,450 ward representatives seat, and no woman elected either as governor or senator.

Recognizing the possibility of violating the COK (2010) during the 2013 general elections, the AG filed a Request for an Advisory Opinion at the Supreme Court seeking guidance on the Two-Thirds Gender principle. In December 2012, the Supreme Court by majority opinion found out that the Two-Thirds gender principle had not been transformed into a full right capable of direct enforcement.

The Court opined that the gender principle requires progressive implementation and prescribed a timeline for implementation by calling on parliament to enact appropriate legislation by Aug 27, 2015. The clamor for a solution to beat this deadline has resulted into a highly emotive debate with wide ranging proposals from different lawmakers/persons. This debate has also attracted a lot of politics and “battle of sexes “that is watering down the substance of constitutionality of the matter, again patriarchy is proofing its dominance. This is very evident in the constitution of Kenya (Amendment) Bill 2015, proposed by Samuel Chepkonga of the Justice and Legal Committee of National Assembly, an amendment that provides for the amendment of Article 81(b) of the COK (2010) so that the gender principle is achieved progressively, setting aside the five- year deadline and therefore delaying the implementation of the Two-Third rule. Even though it meets the Supreme Court deadline, this postpones the realization of the important right on women representation.

Ultimately, the challenge for Kenya is not only how to implement the 2/3 gender rule and other important pieces of legislation aimed at improving status of women and girls in Kenya but to ensure that the rule eventually becomes unnecessary. This therefore implies that a national strategy for achieving a balanced female representation should sit alongside the immediate issue of gender quota system. Any sustainable solution for Kenya should consider the role of political parties, women's groups and CSOs as an essential ingredient and component for long term success.

5.1 Conclusion

There are still many challenges that are impeding gender equality agenda in Kenya and for this reason, all Kenyans irrespective of their gender, political affiliation, religious line/creed and other convictions and persuasions have to come together for this noble idea and agenda to be achieved.

CHAPTER SIX

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

The purpose of this final chapter is to examine in broader sense the findings of the study. This chapter is structured as follows: the first section will present summary of the findings and their implications. The next will discuss the recommendations for further research.

6.1 Summary of the Findings

A few key points came up in this study's quest to explain the issue of status of compliance with international gender related legal tools in Africa and specifically in Kenya. It became apparent that most studies have dwelt on how gender inequalities can be addressed and really not touching on the specific areas where inequalities do exist. The conclusion of the existence of gender inequalities in Africa and in Kenya in particular has had a long history and is as old as mankind. One of the findings of the study that kept occurring as an obstacle to realizing gender equality in Kenya is lack/insufficient political will to pass, enact or domesticate laws that guarantee gender equality to all.

There has unfortunately been lack of commitment on the part of the political leadership of the country that has seen important national, regional and international legal obligations not fully adhered to. This factor is premised on the knowledge that if a signed Convention or Treaty is not implemented as it is often the case; the integrity of the document and its substance comes under question. A history has demonstrated always that if a signed agreement of any given nature is not implemented for whatever reasons is nothing but a meaningless piece of paper.

This study has also identified that women needs and interests have been marginalized in the development of political policy. It is necessary that clear institutional strategies are put in place to realize gender equality in political parties' participation. This is made even urgent given the provisions of the constitution on the gender equity and the political parties Act 2011 on gender representation. Without clear rules and regulation offering direction on how political parties affairs are supposed to be carried out especially in the issues of gender representation/participation, it will still be a lasting challenge for women to manouvre and feel served with justice. This is especially integral considering the UN position where it outlines gender mainstreaming as...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, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.

Moreover, this study acknowledged that not much has been done in terms of pushing for gender equality agenda by the relevant institutions/stakeholders. In order for the different actors to have a stronger support and woo parliament to make necessary legislations, much concerted effort needed to have been embraced, this has since been been missing rendering it hard for gender equality struggle to achieve its objectives. The known institutions that have been in the forefront in this agenda are: National Gender and Equality Commission, The Federation of women lawyers-Kenya(FIDA),Kenya Women Parliamentary Association(KEWOPA),Kenya National Commission on Human Rights and LSK.All these institutions work independently and it is difficult for them to push a similar agenda at the same time rendering it hard for the gender equality agenda to be won. This problem is made worse by the fact that not all women support gender equality, most of whom argue that they are comfortable under prevailing situation and circumstances, this therefore makes it difficult for the agenda to make sense.

By their very nature, men have always not wanted to be challenged by women, this has given a fertile ground to patriarchy and this doesn't seem to end any time soon. The large male constituency who continue to dominate this scene and flourish in the glory of political power and influence are still an obstacle to gender equality quest in Kenya. This therefore implies that male dominance in the public sphere is a reality, thus organizing for initiatives that challenge the status quo requires women and other relevant lobby groups to remain accurately aware of "backlash" It is therefore important for women organizing to continuously keep abreast of how the male network will infiltrate and cause splinters within the movement. This requires continuous assessments of the political, social and economic environment that will inform initiatives and provide it with proactive strategies to quell male insurgencies.

Gender equality in Kenya should just be left to the political leadership alone, they are multiple cultures and traditions that have gone contrary to the spirit of gender equality in Kenya. Child-marriages, Female Genital Mutilation (FGM), male child preference and a host of other primitive and outdated practices have in a big way hampered development of a girl child. For gender equality to be achieved there is need for such traditions, beliefs and cultures to be abandoned and give a girl-child chance to realize her dream in life.

FIDA in its submission reiterates the importance of implementing the constitution to the latter and with particular emphasis on the gender articles. This is recognition that the 2010 constitution is the best legal document to have been passed by the people of Kenya since independence. Women remain optimistic that the 2010 constitution will eventually deliver to them the much longed for goals. However; the institutions tasked with the role of ensuring gender equality must put in place effective structures to help achieve the intended goals.

There teething problems among gender related institutions and infiltration of politics in the same institutions has rendered some of them seek their own selfish interests and ends instead of performing the mandate for which they were formed. This has therefore caused politization of very important issues affecting women and girls in this country, a case in point is the Maendeleo Ya Wanawake Organization that has been in long wrangles of succession bringing to question the motive of those involved in such wrangles. It is common knowledge that those seeking leadership positions in such organizations and institutions are there to serve their own selfish interests and not the interest of majority of women in this country. In addition the women who have been considered for leadership positions under 2/3 gender rule have not represented women adequately because most of whom are under men and there is hardly any decision they can make independently without seeking input of male colleagues in those institutions, this still makes it hard for women to have a breakthrough hence hard to realize gender equality.

Education is very key to liberate women from the bondage of inequality, whereas the social returns of female education are often estimated in terms of girls' schooling and aspects such as health, fertility and children's, the strategic approach of engaging men in supporting female education is relatively weak in the education sector as in other development sectors. Observation reveals that while it is assumed that education, in itself, would influence positively, women's attitudes towards confronting their own oppression, especially in the domestic arena and in the workplace. Various studies have attempted to demonstrate a direct relationship between education and advancement in the production processes for both women and men, whereby primary education, for example is linked to increases in farm productivity.

Further, study identified that there is a strong link between primary education and non-formal training programmes that broaden participants' horizons, raising their aspirations

and familiarizing them with relevant modern concepts and institutional frameworks. However, gender dimensions in education continue to face serious challenges from low rates of female participation, transition, performance and educational achievement. Because of this, men have continued to benefit more in productive ventures as women remain in reproductive activities that link them directly to the traditional feminization of the domestic arena.

Generally, women tend to play the dominant role in financing their children's education, paying school fees for all the children, especially in situations where men have refused to support girls' schooling. In such a context, it is clear that maternal education is the main influence on children's schooling, with the effect on girls roughly twice as great in terms of enrolment and transition to the next grade. Although paternal education also promotes children's enrolment, particularly for girls more than for boys, this is despite a demonstration of the positive effects of female education on national development, the majority of African and specifically Kenyan women have historically continued to receive a relatively inferior education in terms of quality. In this kind of situation, women are ill-prepared to compete equally with their male counterparts for jobs that require formal education or high-level technological skills and professionalism.

There is some aspect of political will that exists in the relevant and line ministries. However, the commitment is not to the expected level. This makes it difficult for the implementation of the different legislations and anti-discrimination laws and the existence of equality divisions or focal points within ministries. This is one of the major obstacles to the achievement of gender equality and needs to be addressed urgently for justice and fairness to be seen dispensed to women, girls and other vulnerable and special interest groups.

Sufficient awareness raising in all organs is lacking and there is no internal gender trainings within ministries, equally discouraging is the fact that gender auditing and

budgeting is non-existent in most of the organs/institutions interviewed. Sufficient gender disaggregated data are not available in most institutions visited, this therefore points to the fact that even though knowledge exists in the ministries on gender relations, this is not supported by strong gender studies and the administrative system in most organs are excluded from this knowledge.

Financial and human resources are not adequate to undertake gender analysis and gender mainstreaming in the institutions studied and this is compounded by the fact that there is no documentation system in terms of identifying the progress made by different actors, this creates discontinuity with regard to the activities of the relevant institutions. It has also been difficult to identify who is doing what and who accountable for what specific gender issue in some cases and there is also lack of follow-up mechanism established to assess outcomes through gender mainstreaming as there is no effective monitoring and evaluation systems and tools.

In sum, this study has sought to enrich the understanding of the status of compliance with international gender related legal tools in Africa but specifically in Kenya. The implementation of various legal tools that would then give or guarantee women their inalienable human rights is key in accomplishing the object of this study. While there exist challenges in implementing the much anticipated legal provisions in the area of gender, there is also success story as far as women issues are concerned in Kenya especially their recognition in the constitution, so with the full implementation of the constitution, women are expected to eventually live their dream.

6.2 Theoretical Perspectives

The fundamental belief among feminists is the acknowledgement that social inequalities based on gender must be stopped from continuing. Feminism gives recognition of both male and female gender as equal. Within the thinking of liberal feminism as one of the strands of feminism is the strong advocacy of women as having equal rights as men. It is on this basis that gender equality has to be achieved/attained across to give women a voice and platform to live to their expectations and dreams. But to achieve gender equality requires that the underlying sources of contestations and obstacles which are considered impediments to girls/women emancipation be addressed. The failure to recognize gender equality in different spheres of life escalates the problem of gender dimension of inequalities. Gender inequality remains a major obstacle to finding progress and development based on gender equality. While any solution to gender inequality that ignores the involvement of women cannot be a longterm, a solution that takes into consideration concerns of a vast proportion of the population which is women can lay a good basis in terms of being accommodative of women.

The implication of taking gender equality concern of taking gender equality concern in different aspects/areas of life has far-reaching consequences on the methodology to be used, this study not exception. When policy makers ignore the need to address gender inequality, then resultant animosity and discontent is created to the detriment of the progress of the country. However, the inclusion of all people regardless of their gender in the broad agenda of making women visible and being treated right by giving precedence of implementing relevant and necessary gender related legal tools is the way to go. This is the whole idea behind feminism as the theory used to inform this study.

6.3 Hypothetical Assumptions

From an epistemological and methodological perspective, this research involved a case study so it may not generalize. Generalizations are usually done from many cases which then ensure the validity and reliability of data collected. Validity and reliability are important more especially in qualitative research. Criticisms and inductivism indicate that it is not possible to generalize from case studies except under special circumstances that one can really draw reliable generalizations about an issue, event or a phenomenon. Although this study is a single case, it draws from other African countries for instance, Uganda and Tanzania to give insightful and important information to be able to reach specific conclusions. By taking into account other cases done by other scholars, this research essentially creates a generic base for multiple observations and conclusions. It is this generic base that enables generalizations to be made. This provides an escape way from criticisms about single cases thus validating the findings. Reliability is also achieved since its conclusions are not derived from this case alone but incorporates observations and conclusions of other case studies done by other scholars like Maria Nzomo, Fatuma N. Chege and Daniel N. Sifuna, Patricia Kameri-Mbote et al. To strengthen the methodology two approaches were employed to collect and analyse data, case analysis and cross case. Case analysis approach helped the research to find new variables in aspects of the case study. Cross case approach helped in capturing different aspects from a comparative perspective by drawing conclusions of other scholars. From this understanding the case study provides a heuristic advantage from which new variables and hypotheses may be constructed.

6.3.1 Objective One and corresponding hypothesis one

Following the first objective of the study, a hypothesis can be constructed. Focusing on the concerns over the capacity of African Union to address issues of gender inequalities across the continent Kenya being a member. A number of scholars and commentators have alluded to the fact that enough has not been done to help stamp out gender inequalities on the continent especially in the specific areas of education and political participation. This is because many African states are signatories to the African charter but ratification in individual states is still an issue because of a number of factors including lack of necessary political will. It then follows that implementation of such important and useful legal tools by the states Kenya included would more likely be successful if there is commitment from the government both in words and deeds and the opposite is true.

Based on this claim, the hypothesis is that women and girls will most likely be empowered successfully if they are given access to education as one of their basic right. Important still is the aspect of different relevant groups, institutions and other stakeholders/parties working with government for durable solutions to gender inequality. The conclusion drawn is that for such implementation of gender equality to succeed, there must be a multi-faceted approach to make the government live to the commitment of ensuring gender equality not only in education and politics but also in other important areas of life

6.3.2 Objective Two and corresponding hypothesis two

Literature on gender equality and specifically feminism points out men and women deserve equality in all opportunities, treatment, respect and social rights. One way reducing gender discrimination and tension as a result of gender inequality is to ensure a gender responsive society. It is at this level that girls and women must be allowed to participate

actively in politics. The study establishes that from this assumption that resistance to allow women participate actively in party politics is travesty to justice and may not yield any tangible solution any time soon. The solution is that political parties have no option but to heed to the existing provisions of the law and statutes and allow women their rightful space in party politics. The study therefore concludes on the basis of this claim that a gender responsive society is more likely to be effectively well coordinated if there is harmony, rule of law in the running of political parties and satisfaction between male and female gender. The study thus calls for need to realize the importance of ensuring gender equality at all levels. This study recommends that it only takes political parties laying necessary infrastructure for women and fair competition for them to compete fairly.

6.3.3 Objective Three and corresponding hypothesis three

Many scholars suggest that in terms of making treaties and conventions or any other legal tool succeed in terms of implementation, the role of the government is very key given that it is the legal personality. This study from the review of literature establishes that no implantation of a legal tool can be successful if the government is not willing to implement the same and it concludes that there is need for governments to live up to their international obligations without any failure because in case of failures, a section of the population ends up being deprived of its rights. Building from this perspective a specific third hypothesis is that the success or failure of implementation of any legal tool depends on a number of factors but political leadership/will is key.

The study's objective has been achieved; firstly, it has examined the AU institutional and legal framework on gender in education and politics with a view to giving an accurate description of how AU mechanism operates in terms of addressing gender inequality menace in Africa but more importantly Kenya. In this case the study has given a detailed account

which forms a basis of the events and the entire discourse. In addition, the study provided analytical perspective of the phenomenon under study as an explanatory basis. It is on this account that the conclusions were derived. Proceeding from these objectives, the study's hypotheses were confirmed. Although full implementation is the most referred to condition for success in any international commitment, this study confirms that there are others.

Theoretically, this study proves that a holistic approach is necessary to deliver an outcome that would apply. The study establishes that implementation success is the function of multiple and broader factors that range from patriarchy, nature of socialization to government willingness, so it is a host of relationships of the stakeholders to international dynamics.

Considering the objectives of the study and its methodology, the hypotheses drawn are assumptions based on the findings and observations. The popular refrain that observations are theory laden does not mean that they are theory determined. On this basis the research progressed on the basis of theory building through induction. In this sense, it has some heuristics advantages. The suggested variables of willingness and readiness on the part of the government to implement international legal tools in question create new areas of study which through deductive methods may lead to further affirmation and building of substantive theory in these kinds of engagements in adherence to treaty/convention implementation.

6.2 Policy Recommendations

The principle of gender equality in education and politics should be upheld since it is enshrined in the pre-amble of the constitution as part of the fundamental rights hence the political leadership has fundamental duty to fulfill and also directive principles sections of the

Kenyan constitution. The constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in their favour.

The first official policy document that addresses issues of equality in Kenya is the Constitution, which prohibits discrimination between different social groups. Soon after independence in 1963, the government published *Sessional Paper No. 10 of 1965, African Socialism and its Applications to Planning in Kenya*, which emphasized the country's commitment to the objectives of individual freedom, social justice and human dignity, including freedom of conscience, freedom from want, ignorance, disease and exploitation; enhancing equal opportunity and a high growing per capita income which is equitably distributed. However, even with the seemingly good intentions, this Sessional Paper hardly mentions, let alone addresses, the gender dimension as the crucial defining factor in the existing inequalities between women and men, girls and boys in all sections of society.

Further, the first and second National Development Plans, 1965-70 and 1970-73, which mainly addressed the need to translate political independence into economic and social realities, did not mention women at all, giving the impression that women did not have a role to play in national development besides their traditional reproduction obligations. However, the government constituted a women's division in the Ministry of Culture and Social Services, a Department of Women's Education in the Ministry of Education and Maternal/Child Health Services within the Ministry of Health (Royal Netherlands Embassy, 1994). The common denominator in all these initiatives was the concern for women as an independent group that did not have any significant links with the men in society. The first direct mention of women in government documents since independence was in the third National Development Plan (1974-1978), which coincided with the Women's Decade of 1976-1985 and the government's creation of the Women's Bureau in 1976 as part of the national machinery for integrating

women in development. The operative units of the Bureau include processing of statistics, legal issues, appropriate technology, information and communication, non-governmental organizations, handicrafts, small-scale businesses, and agricultural and horticultural developments.

The National Development Plan helped guide new ways of programming that portrayed a clear bias towards activities that directly or indirectly promoted women's integration in development. Successive development plans re-emphasized this trend. As a division of the Department of Social Services in the Ministry of Culture and Social Services, the Women's Bureau had the broad objectives of ensuring that women were integrated in the development processes. Hence, as a follow up and part of the implementation of the World Plan of Action emanating from the First World Conference on Women held in Mexico in 1975, the Bureau's mandate was expanded to include policy formulation, coordination and harmonization of women's activities within government ministries and NGOs. It was also mandated to collect and analyze data and information on gender issues as well as coordinate, monitor and evaluate women's projects.

Thus, the Bureau helped create awareness of the actual position of women and the potential they have in national development, mobilizing women's groups for socio-economic activities and liaising with governmental, non-governmental, international and bilateral agencies in funding and implementing programmes that aim at improving the conditions of women. Although these developments were highly significant, the Third World Conference on Women held in Nairobi in 1985 (popularly referred to as 'Forum 85') clearly accelerated the impetus for gender research and policy formulation in the country, thus, moving away from the tendency of focusing on women *per se*. This Forum highlighted and substantially raised awareness about fundamental issues affecting the status of women and girls in Kenya within

the context of human rights and democratic education. Thus, it became possible to critique education that sidelined girls and women vis-à-vis their male counterparts as undemocratic

While concrete action in favor of gender equality has remained a great challenge to the government, it is noteworthy that since 'Forum 85' gender issues have taken centre stage in activities by non-governmental organization (NGOs) and in policy statements. For example, the ensuing national development plans deliberately portrayed the government's effort to include the gender dimension in development programmes. Unfortunately, however, top government officials continued to interpret gender issues as women's issues, thus responding with contempt to initiatives intended to bring women on board in development policies and action on an equal level with the men. The trashing of the *Beijing Declaration and Platform of Action* emanating from the Fourth World Conference on Women held in Beijing in 1995 bears testimony to the previous Kanu's government's lack of commitment towards gender equality. Since the publication of the 1994/96 Development Plan, however, colonial subjugation of women has been criticized for its Victorian attitudes towards women and exposed as being responsible for the erosion of women's traditional economic and social status.

The development plans expressed the intention of government to put women at the centre of development strategies not only in economic development, but also in the private ownership and control of wealth, increased education, improved health facilities, urbanization, employment and leadership roles (Republic of Kenya, 1993). Such well-meaning expressions suggest a changed stance on the part of government to improve gender equality in the country. Nonetheless, it is important to bear in mind that deep structures that govern gender inequalities tend to militate against the perceived successes in advocating and reinforcing gender equality in all sectors of government and society. This is mainly because, until the change of political leadership in 2002, such pious platitudes lacked political commitment as exemplified in the non-ratification of key policy documents that sought to promote women as

key actors and partners in development. For example, the Kenya Women's Bureau is on record as having drafted policy documents that were sensitive to gender issues, but which have remained unattended for more than a decade, thus slighting their objectives to: Improve income-generation through gainful employment and access to the means of production; Ease access to basic services such as health, water and sanitation; Improve affordable and accessible technology that would minimize domestic workloads; Increase gender awareness and sensitization in all sectors of development that would facilitate smooth implementation of gender sensitive policies and programmes; Lobby for a gender-sensitive legal framework and practice that would facilitate fairness and justice to the women of Kenya relative to the men (Royal Netherlands Embassy, 1994).

The new political leadership, which on assuming power in 2002, re-introduced Free Primary Education (FPE), has increased access to education at the primary level. However, issues of gender inequalities need to be addressed at all levels. The gender gap in access as well as issues of quality, poverty and pedagogy, all of which are crucial in ensuring positive education- al outcomes for both the girls and the boys, continue to raise concern.

The absence of gender policies that would ensure that gains at primary school were not lost during the transition to the secondary level underscore the need for strategic planning. This would help improve the educational status of girls and women in the broader analysis. The implication is that for a majority of girls compared to boys, primary education could be terminal, as has been the tradition in the country in the past. Attempts to increase opportunities for women and girls in science, mathematics and technical (SMT) subjects at secondary and university levels have taken high priority in policy discussions in the country. However, the commitment to translate this priority into action has remained problematic for many schools that lack the required human and material resources.

In addition, even where such resources are available for the girls, career information

and counseling has remained wanting, thus continuing to mystify the SMTs, excluding and condemning most girls to a future that lacks adequate scientific and technological knowledge and skills, which are crucial in the development, not only of girls, but also of the nation. Even though role modeling through female teachers has proved quite effective in some single-sex secondary schools in the country, where girl schools have tended to outperform boys schools in science and mathematics, very few girls' and mixed schools can boast of such advantages.

Following the Jomtien Declaration on Education for All (EFA) of 1990, to which Kenya was a signatory, various national conferences were organized. They include the 1992 National Conference on EFA held in Kisumu, which recommended strategies that would ensure the attainment of basic education by the year 2000; the 1992 National Conference on the Girl Child, held in Nyeri, and the 1994 National Symposium on Education of Girls held in Machakos. This is one of the key conferences from which policies in engendering education are derived.

Within the framework of a democratic policy, the laws, development policies, plans and programs that have been in effect since 1975 aim at women's advancement in different spheres and must be adhered to. From the Third National Development Plan (1974-1978) onwards, there has been a marked shift in the approach to women's issues. In recent years, the empowerment of women has been recognized as a central issue in determining the status of women, therefore there is need for the existing legislations to be effected fully outlawing discrimination on the basis of sex and many practices that perpetuate inequalities. By law, women and men in Kenya have equal access to political participation and education services. Key legislative changes should be undertaken with the potential to greatly improve the overall situation of women in Kenya.

Kenya has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them being CEDAW, this very important instrument should be implemented fully so that women and girls are guaranteed of all their rights without being denied any of them, this is the role of the government .

The Mexico Plan of Action(1975),the NFLS(1985) and the Beijing Declaration and Plan of Action(1995)have been unreservedly endorsed by Kenya and appropriate follow up needs to be done to make sure that all the components of these documents are implemented without any failure.

There is need for a vibrant women's movement and a widespread network of NGOs with a strong grassroots presence and deep insight into women's concerns so that they can contribute to initiatives of inspiring initiatives for empowerment of women.

Considering that there still exists a wide gap between the goals enunciated in the constitution,legislation,policies,plans,programs and related mechanisms, there is need for harmony to be forged by parliament and other relevant institutions to streamline the situational reality of the status of women in Kenya

The underlying causes of gender inequality are related to the social and economic structure, which is based on informal and formal norms and practices. There is need for an overhaul of the existing structure and mindset and this can only be done effectively by well developed institutions with political goodwill. Here education is very key because it passess information to all people.

6.3 Recommendations for Further Research

As demonstrated in this study, there has been more rhetoric in implementing policies to redress the imbalances in girls and women participation both in education and politics.

Kenya seems to lag behind in the area of implementing policies meant to enhance gender equality with other sister states in the East African Community, Tanzania and Uganda. Despite the few achievements realized in Kenya, there is increasing recognition that the continued poor participation of girls and women in the said areas is a major obstacle to all spheres of economic development. This study comes at a time when Kenya is facing challenges to live up to the spirit of the constitution especially on gender issues. Kenya just like most African countries has demonstrated a commitment to achieving EFA and MDGs on gender which among other things, require ensuring that by 2015(already within deadline period) all children particularly girls, children in difficult circumstances and others have access to a complete free and compulsory primary education of good quality. While its widely lauded that the successful implementation of FPE in 2003 increased access and participation of children from poor socio-economic backgrounds especially girls, the government has to put in place systems to ensure gender mainstreaming in education. Equally important is a deep look into the effectiveness of the education given to these children especially girls in much overcrowded classrooms, becoming much more difficult for teachers to give instructions.

The tragedy to the realization of the gender equality in education in the country is neither lack of knowledge nor the necessary policy options, but rather, the challenge seems to be one of bringing necessary political commitment, expertise and resources together in order to respond to the task as contend many studies. To meet this challenge the government must do a lot in terms of showing a strong political commitment to creating an enabling environment for promoting gender equality in education and politics through legislative as well as policy reforms, and a redistribution of resources with a particular focus on female education and introducing special measures aimed at reducing inequalities. Without such strategies, achieving EFA and MDGs remain a mirage or pipe dream. This study was not able

to able to interrogate the quality of education that offered to girls and women because it dwelt much on access to education yet access alone is not sufficient enough to make us believe that the government is rightfully and adequately meeting its obligation by giving education to women and girls. The study propose that the quality and substance of education mediated be looked into so that its worth to women and girls can be ascertained and a way forward be drawn.

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APPENDIX 1

Letter of introduction

APPENDIX 2

STUDENT QUESTIONNAIRE

I am student at the University of Nairobi pursuing Master of Arts Degree in Diplomacy. I am conducting this research to examine the status of compliance with international gender related legal instruments in Africa: A case study of Kenya. I kindly request you to complete the following questionnaire. Your answer will be treated with utmost confidentiality and you will be anonymous.

Section A – Background Information (Tick Appropriately)

Gender Male Female

Age.....

Profession/Occupation.....

Experience years of work.....

Section B: (Tick Appropriately)

1. Are the relevant government institutions given the mandate to ensure gender equality to their mandate?

Yes No

2. Are the women in Kenya visible enough as required by the following international gender related legal instruments?

a. Convention on Elimination of All forms of Discrimination Against Women

(CEDAW)

Yes

No

b. Universal Declaration of Human Rights (UDHR) (1948)

Yes

No

c. Africa Charter on Human and People's Right

Yes

No

d. Beijing Declaration and Platform for Action (1995).

Yes

No

3. To what extent is gender based violence common in Kenya?

Low

Average

High

Very High

4. What is your approval of the current gender mainstreaming in Kenya?

Low

Average

High

Very High

5. Patriarchy has played a major role in gender inequality and discrimination in Kenya

Strong agree

Agree

Ambivalent

Disagree

Strongly Disagree

6. Women are often financially dependent on men

True

False

7. There is gender equality in most government institutions in Kenya

True

False

8. Most women are comfortable with gender equality

Strong agree

Agree

Ambivalent

Disagree

Strongly Disagree

Section C

9. Have you been discriminated against on the basis of your gender

Yes

No

10. How do you rate the government's strategies to combat gender inequality

Good

Poor

Average

None

Section D

11. Do you support the idea that gender equality is a good thing for a Kenyan woman?

Yes

No

12. Most men are in support of gender equality.

True

False

THANK YOU FOR YOUR CO-OPERATION

Appendix 3

FIDA Interview Guide

I am a student of the University of Nairobi pursuing Master of Arts Degree in Diplomacy. I am carrying out this research to examine the status of compliance with the international gender related legal instruments in Africa: A case study of Kenya. I kindly request you to allow me interview you on the said topic. It will take about 15 minutes to respond to my concerns. Your response will be treated with utmost confidentiality and you will remain anonymous.

1. How do you rate the status of women today from where you sit on scale of 0 – 10?
2. Have you achieved your target so far?
3. What is your projection in 5 years as regards Kenyan women in terms of education and gender based violence?
4. Has our country done enough to facilitate gender equality?
5. What are the marked failures of the Kenyan government in the struggle of emancipating Kenyan women?
6. Are the different relevant institutions both governmental and nongovernmental on the right course in terms of fighting gender discrimination and inequalities in Kenya?
7. What can you say about the 2010 constitution in respect to gender equality?
8. How far have we gone as a country in terms of implementing different international gender related legal instruments?
9. Despite high profile cabinet positions for women in Jubilee government, is the entire women fraternity benefiting from such appointments?
10. To what extent are the cultural practices among some Kenyan communities contributing to gender based violence especially among women?

11. What strategies have you put in place to make the government compliant with international gender related tools as required by such instruments?
12. What nature of penalties and legal redress have you employed in different reported cases of gender based violence that can then help to act as deterrent?
13. What do you consider to be significant success to gender equality in Kenya?.
14. In your considered opinion, what can you say is the greatest achievement in this struggle of gender equality so far especially in education and politics.
15. According to you, has the numerical expansion in the number of women in politics and other decision-making positions translated to any significant gains on the side of women and girls in Kenya?
16. How effective are the structures and institutions in this country in terms of championing gender equality debate in this country?
17. What is your on the status of implementation of the Article on gender rule/principle?

THANK YOU FOR YOUR CO-OPERATION