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## Time for Harvest

Mukabi Kabira

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# *Foreword*

## *I*

*Patricia Kameri-Mbote, Professor of Law, School of Law, University of Nairobi, Kenya*

*Time for Harvest*: such a beautiful title for such a beautifully written book! How fitting that Wanjiku Mukabi Kabira should pen the story of the metaphorical “*Wanjiku*”, Kenya’s down to earth, resourceful but often excluded woman.

Wanjiku Kabira is indeed a gifted storyteller but her story is of a different genre. It spans the legal, historical, political, religious, social and cultural realms rendering a mosaic that details important issues in an intellectual but accessible form. Wanjiku’s use of Margaret Ogola’s novel, *The River and the Source* (1994), graphically paints the picture of Women’s Movement in Kenya which has had moments of great force, moments when it only trickled, moments when people thought it had dried up because they did not see it on the surface, and moments when it meandered as it sought the path of least resistance on its onward journey to the sea. The important thing, however, is that, it eventually reached the sea on August 27<sup>th</sup> 2010.

It is imperative that we endeavour to immortalise the stories told by women in their own words, unmediated by foreign languages and unadulterated by legalese which scholars have averred is male and promotes male values and can affect law’s efficacy to transform the quality of women’s lives (Carol Smart, 1989). We must also salute all those women who have been in the line of duty in different ways, some more visible than others – ‘nurturers and silent gardeners’ – but all contributing to the same cause. As the baton has passed from one group of women to another, the camaraderie is discernible in the invisible networks that women have maintained in support of the cause. The determination of women has seen them through divisive politics, use of ethnicity and social economic classes to create differences in the movement and caricaturing and victimisation of women who have staked their necks out in support for the cause. Professor Kabira tells these stories very deftly, sparing us the pain that was suffered by individual women and their families as they identified with what at times seemed like a mission impossible. They must be the women who, in her words, ‘have names, hearts that ache, eyes that weep, feet that hurt.’

The gallant male warriors in and outside parliament who supported the women’s cause are chronicled in the book. One would have thought that the women’s struggles for inclusion and recognition were a coup against the lawfully established government of men. Yet, these men voiced their opinions with conviction and diligence, providing a voice for the handful women

parliamentarians who could easily be muzzled by the sheer brute force of the male dominated parliament.

A new constitution for Kenya is a cause for celebration even as we monitor the implementation process which promises to present many hurdles. A constitution awash with provisions on gender equality is an even greater cause for celebration for Kenyan women. It is like children getting into the candy store and being told by their parents that they can have all the sweets they want. As the May 6<sup>th</sup> 2010 Draft of the constitution went through the referendum, there was anxiety that we could yet again miss the bus as we had always done in the past. We triumphed!

The constitution crystallises major gains towards gender equality and equity and in essence, delivers on many issues that have been at the heart of gender and pro-Women's Movements in Kenya from the 1980s. To have such gains in a constitution is no mean feat because the Constitution of the State is an agreement or compact among the people—the consensus amongst the people themselves and their collective wisdom.<sup>1</sup> The Constitution embodies the wishes and aspirations of the country and the framework within which public policies are made and implemented and differences and disputes among the people solved.

The whole process of the Constitutional Review, including the setting up of the Constitution of Kenya Review Commission (CKRC) and the Committee of Experts (CoE) entailed a struggle to ensure gender equality and equity. The exclusion of women from the process of constitution making and from the normative provisions of the constitution in the 1963 Independence Constitution and subsequent revisions thereto has had glaring manifestations. Firstly, women have been largely absent from politics and decision-making bodies in Kenya. Secondly, debates on proposed laws that affect women have been skewed in favour of dominant discourses on what women and men can and should do. In this schematic patriarchy, the rule of the fathers has taken centre stage as it is manifested in different forms of male dominance. Indeed, patriarchy is equated to male domination, a system of socio-cultural and legal relations in which men as a class have power over women as a class. Those power relations are social constructs and are neither biological nor natural. The power can be ideological, social, political and economic.

Prior to 2010, Kenya's Constitution unashamedly validated the subjugation of women and justified it on customary or religious grounds with respect to matters of 'personal law' (marriage, divorce, adoption, inheritance of property and burial). This blanket exemption meant that people could be discriminated against by the application of 'personal laws' without any opportunity to oppose

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<sup>1</sup> Y.P Ghai, 'Public Participation and Minorities, Minority Rights Group Report', United Kingdom, (2001) 5. (On file with the authors).

such discrimination. The mention of the Wambui Otieno Case in the book amply demonstrates the effect of this Constitution. Wambui Otieno sought to be granted the right to bury her dead husband in 1987 but she lost the case. Instead, her late husband's clan was granted the right to bury him (Ojwang & Mugambi, 1989; *Daily Nation*, May 1987). The cultural aspect of patriarchy in most cases takes the form of devaluation of women's work or achievements (ascribing these to men with whom they have relationships as fathers, husbands or sons) while the ideological aspect portrays women as natural, biological creatures inherently different but inferior *vis a vis* men (Hanne Petersen, 1994).

Further, women's attempts to ingrain equality in the compact of governance through legislative processes have failed as men use their numbers to buttress 'common wisdom' on relationships between men and women. This is amply demonstrated in the discussions in the book on the Hon. Phoebe Asiyo's Motion on Affirmative Action in 1997 and the second tabling of the Affirmative Action Bill to increase women's representation in electoral bodies in 2000. The quest for 50 seats for women in 2007 is significant in that women went to Parliament seeking a Constitutional Amendment with petitions from around the country and signatures from women from all walks of life. The fact that parliamentarians boycotted the session and thus ensured that there was no quorum to debate the proposed change to the Constitution illustrates the power dynamics in the August house as well as in the author's words 'the contempt with which the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> parliaments treated women's efforts towards Affirmative Action.'

At the risk of being a party spoiler, I must sound a word of caution as one that grew up on a farm and has watched 'the river flow and meander' for four decades. *Time for Harvest* is not the time to rest on our laurels. This is a time for hard work because change in societal norms and values does not happen overnight. The contestation will extend to the enforcement and implementation of the rights provided for in the Constitution. The struggle on the implementation of article 27 of the Bill of Rights that says: "not more than two thirds of either gender occupies any elective and appointive bodies" points to the hurdles ahead. Legal change as contained in the Constitution, must be accompanied by changes in social, political, cultural and other spheres. Indeed, reform of the law alone will not guarantee women's enjoyment of their rights. We should ensure that we do not stop at enshrining the rights in the Constitution but that the constitutional provisions inform law and practice. Work is, therefore, only just beginning and we need to schedule celebrations to take stock of the harvest in the barns!

## *The Book*

The book is divided into four parts each of which tells its own story.

Part I, entitled *The Path Travelled*, summarises the path that women have travelled to get to the negotiating table and ensure that they would harvest gains for Kenyan women. *Chapter 1* details the background to the harvest – *Clearing the Fields!* It describes Women’s Movement and gives a historical context to the ‘harvest’ at a very early stage. It isolates the rallying of women around the quest for Affirmative Action as its departure–point for watering of the Women’s Movement. The chapter illustrates women’s resilience in the face of great opposition. The ability of women to rise and stand up after losing, wipe off the dust and move forward comes out clearly.

*Chapter 2* is an intriguing story of women’s negotiation for participation in the Constitution Review Process (CRP). The diligence of women comes out clearly as they seek to inform themselves of what it means to make a Constitution for Kenya and where they could get into the process. The gains made by women through the Inter Party Parliamentary Group (IPPG) process in 1997 propelled women to a seat at the negotiation table for the law to guide the constitution review process. This provided the space for women to negotiate for Affirmative Action, to ensure representation in the review organs. The diversity of women groups in this process is impressive and points to the common causes of women even as detractors of the Women’s Movement have time and again sought to divide women along ethnic, political party, religious and social economic class lines. That a significant and forceful group of women got to the negotiation table demonstrates that women had learnt the ropes of the negotiation and bargaining process in the shark infested waters that are Kenya’s politics.

*Chapter 3* describes the shifting of gears from a few women at the table to a broader arena at the Bomas of Kenya where more Kenyan women were involved alongside men. In essence, the anxiety of women who appreciated the need to keep the unity and momentum was palpable as women checked into the Conference venue. The Constitution of Kenya Review Commission Draft had delivered many women’s issues and meetings held to review the document before it was taken to the conference had generally acknowledged the fact that women had made inroads in key areas. The need to secure these gains called for more women in the line of duty to whom the commissioners would hand over the baton at Bomas as well as continue fanning the flame.

Professor Kabira, as one of those handing over the baton, describes this process eloquently. This was to be the beginning of a rocky patch in the review process not just for women but for the country. The author captures the sites of struggle for women at the Bomas Conference; with parliamentarians; in the 2005 referendum and up to the generation of the Harmonised Draft of the Constitution by the Committee of Experts. She ably takes us through the

processes, side-shows and show-downs along the path, all along keeping the theme of women's participation alive and well. Reading the chapter makes one marvel at the resilience of all the participants in the struggle and hence, the need to remember those who have participated in it in innumerable ways. This, the author does very well through naming groups and individuals that were part of the struggle.

*Part II*, comprising Chapters 4 and 5, is entitled, *Harvesting Women's Voices*. It takes us through the treacherous, albeit fulfilling and joyous process of collecting views and receiving them in women's voices. In this part, Professor Kabira introduces the various communities that inhabit Kenya. She explains that for many women in these communities, their appearance before the CKRC was the first time they had given views in public. She captures gender-speak and power dynamics competently bringing out how women communicate their views among themselves as women, and when put together with men. She beautifully interjects the narrative literature and descriptions of people giving their views. This softens the message by removing the roughness that gender oppression so often comes with, without diluting the intellectual content. A lawyer or political scientist could write the same story very differently and the rendition would certainly not be the same. The effect of using literary pieces is brilliant as it contextualises women, women's lives, their views and their hopes for a better Kenya within a broader socio-economic fabric.

Divided into eight sub-sections covering the eight provinces (now 47 counties), the author presents a summary of views presented by women from different walks of life and men, highlighting the issues that stood out in the deliberations. The presentation of some of these in verbatim form gives a good sense of what the concerns in different parts of the country were for different women. What is amazing is the coherence and confluence of issues of concern for Kenyan women – from the grassroots to the cities and even from the ivory tower. These issues were not only the ones that directly affected them as women but those that concerned all Kenyans such as the system of governance, national values and principles and allocation of resources across the country.

Apart from constituency hearings covered in these eight sub-sections, women's organisations and women in academia presented their views at other fora. Chapter 5 highlights their views.

*Part III* is entitled, *Negotiating the Double Covenant*. It details women's negotiations at the Bomas Conference to ensure that the views they had given remained in the draft constitutional documents. *Chapter 6* recapitulates the process leading to the generation of the Constitution of Kenya Review Commission's Draft constitution in 2002 and the convening of the Bomas Conference as the Moi government lost to the National Rainbow Coalition (NARC). It gives details of the delegates at the Conference, particularly women; the strategies engaged by women to lobby and negotiate in the different

committees set up to put together different sections of the Constitution. To their credit, women led some of these committees and also provided skilful, thoughtful and representative views in the groups where they were assigned. They also artfully juggled the balls on different issues by maintaining close networks and feedback loops on what was going on in each committee.

*Chapter 7*, on the 2005 referendum, is a dark moment in the narrative. It details the politics surrounding the vote and how a few key figures swayed the vote with the majority voting without having read the document. Indeed, as Professor Kabira notes, the vote was not about the draft constitution. The unity forged by women through the process was shattered by ethnic and political alliances illustrating that women were not insulated from broader forces operating in the country at that time. The pain of women who had seen their dream so close to realisation and then slip by cannot be fully explained in words. Professor Kabira's use of quotes from women to describe their feelings is a brilliant way of spreading the pain and having it owned by different people. The pain was shared by different generations of women. The sisterhood in coping with the pain is probably where the strength to pick up the pieces and surge on came from. The ties that bound women together proved stronger than what had kept them apart in 2005 as they came together to contribute to the final push towards a new Constitution detailed as 'The First Season of Harvest' in *Chapter 8*.

Actually, the dream was 'deferred' not shattered. The establishment of the Committee of Experts and the generation of the Harmonised Draft saw women secure most of their gains both in the representation in the Committee as well as in the Harmonised Draft Constitution that was subjected to a referendum on August 4<sup>th</sup> 2010. The endorsement of the constitution by Kenyans and its subsequent promulgation on August 27<sup>th</sup> 2010 was a great triumph for Women's Movement in Kenya. Women of Kenya wisely gave politicians a wide berth when the latter attempted to introduce cleavages between them – this time, on religious grounds, having known that many women were devout followers in their respective faiths.

*Part IV*, appropriately entitled *Reflections*, provides reflections of Professor Kabira on her journey and that of Kenyan women. I am not surprised that she canvasses the issue of ethnicity in constitution-making in *Chapter 9*. Indeed, women's multiple identities play out in the quest for equal rights and it is not possible for women to have greater rights at the national plane than they have in the domestic and local planes. Her rendition is sobering coming at a time when we still wonder how Kenyans could set upon each other with machetes and realise how quiet women were in the entire period despite their suffering individually, as mothers, wives, daughters and sisters. In *Chapter 10*, she explains the strategic choices that women made in seeking to move into the arena from the sidelines. Some of these choices, such as Affirmative Action,



democratic electoral systems, and gender-based violence, had multiplier effects that enabled women to reach sites of struggle that they had not directly picked for engagement. This provides the context for discussions in *Chapter 11*, describing how women emerged from oblivion to spaces where their voices were sought and taken into account. *Chapter 12* concludes a captivating and emotive story that could not have been better told.

*Time for Harvest: Women and Constitution Making in Kenya* is thus, a very reader friendly and accessible book. Once you start reading it, it engages you fully and you want to know where the river emerges next. Knowing that the river is always there and always moving towards the sea keeps one reading on, even when the circumstances are extremely disheartening – for instance, after the 2005 referendum. It is a must read for students of politics, law, history, sociology, anthropology and even literature who want to know the path travelled by Kenyans, and women specifically, in getting to where we are. I must commend and thank Professor Kabira for immortalizing women’s struggles for space at the negotiation table.

## II

### *A Word from Lady Justice Nancy Baraza*

*Deputy Chief Justice, Kenya*

The women of Kenya have walked themselves into first class citizenship and congratulations! From the bleak days of severe marginalisation, days when words such as ‘women’ or ‘affirmative action’ were almost taboo in this country, ‘Time for Harvest’ captivatingly traces the women’s struggles to change their status, their lives and their entire destiny. It expositis the sheer ingenuity, perseverance and tenacity to contribute to the attainment of an all inclusive constitution that banishes, inter alia, gender discrimination in all spheres of life, including social, economic, cultural, and political spheres. In this way, it opens up massive space for women in this country to ‘exhale’. The constitution embraces the progressive values of non-discrimination, equality, equity, and social justice that will guide policy, attitudes and behaviour in Kenya. They will ensure the transformation of the female gender from a hitherto marginalised and oppressed state. Gender discrimination has hitherto been the hallmark of women’s lives in this country.

Professor Kabira captures the journey brilliantly. The book tells the story of many great women actors in the struggle and the nature of their contribution. It is a story of how sheer tenacity and versatility in these women beat all odds to realise a new constitutional order. All these actors recognised the importance



of networking and collaboration to ensure women's participation in the entire constitution-making process. Sharply aware that participation would have an impact on the content of the constitution, they left nothing to chance. And indeed, it did. Without women's participation, it is doubtful that the constitution could have captured all the gains for women that we now celebrate.

My special recognition in this entire struggle goes to Professor Kabira. An intelligent and sharp analytic, Professor Kabira was the strategist at very crucial times in the process. While designing the structures that would ensure women's participation in the process at the Constitution of Kenya Review Commission (the Commission that framed the constitution), Professor Kabira employed her intelligence, keen sense of detail and expertise to ensure this goal was realised. When it came to the framing of the constitution, Professor Kabira demonstrated a great sense of detail and alertness to ensure all the provisions that would guard women's concerns were captured. These gains remained intact even in the later harmonisation exercise that ushered in the constitution. I was privileged to have worked with Professor Kabira at this stage and I will forever be grateful to her for her work without which, perhaps these gains would have slipped out of attention.

The book is a manifestation of women's diligence and astuteness that have enabled them walk to freedom and emancipation. It is a great firsthand record of women's struggles into the new dawn. Women can now happily be born in this country.