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## Time for Harvest

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## *Appendix VI: Memorandum from the women of Kenya on the PSC Draft Constitution of Kenya (2010)*

### **RE: Please don't lose the gains for women**

The concerns of Kenyans since independence and in all aspects of life (political governance, economic development, land, use of national resources, access to services and opportunities in the public sector) have always been about breaching the inequalities and the consequent injustices they have caused various sections of the population are presented here below. The specific concerns that women would want reinstated in the draft constitution. These issues are not contentious and have been common features in all past draft constitutions.

### **Representation:**

#### *National values principles and goals:*

This is very important for constitution making. The CoE had properly entrenched these under Clause 13. They included key principles that are important for entrenching the culture of facilitating inclusion of vulnerable populations and ensuring equality for women and other marginalised groups. At Clause 13 (2), they had entrenched the principles of :

- (i) Ensuring full participation of women, persons with disabilities, marginalised communities and all other citizens in the political, social and economic life of the nation.
- (j) Implementing the principle that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The PSC draft has recommended removal of this clause among others. PSC has located this Principle (j) in the General principles for the electoral system and process by (Part I) - which talks about systems and processes but does not clearly place responsibility on ensuring the principle is actualised in practice.

#### *Proposal*

We urge you to revert to the CoE draft on the above provisions, or reconsider your recommendation.

### **Composition of the National Assembly**

The allocation of the seats in the national Assembly does not respect the principle of no more than two thirds of one gender.

### *Appendix IV: Committee of Experts Commissioner (CoE)*

Commissioner Nzamba Kitonga	–	Chairperson
Commissioner Atsango Chesoni	–	Vice chairperson
Commissioner Ekuru Aukot	–	Director
Commissioner Amos Wako	–	Attorney General
Commissioner Njoki S. Ndung’u		
Commissioner Christina Murray		
Commissioner Chaloka Beyani		
Commissioner Bobby Mkangi		
Commissioner Frederick E Ssempebwa		
Commissioner Abdirashid Abdullahi		
Commissioner Otiende Amollo		

### *Appendix V: List of constituencies referred to in the analysis*

Budalangi Constituency	Kilome Constituency
Butula Constituency	Kinangop Constituency
Dagoretti Constituency	Lari Constituency
Dhiwa Constituency	Limuru Constituency
Eldoret East Constituency	Makadara Constituency
Eldoret North constituency	Mandera East Constituency
Eldoret South constituency	Mandera West Constituency
Embakasi Constituency	Manyatta Constituency
Fafi Constituency	Matuga Constituency
Funyula Constituency	Mbeere Constituency
Gwasi Constituency	Meru North Constituency
Juja Constituency	Meru South Constituency
Kaiti Constituency	Mwatate Constituency
Kamukunji Constituency	Narok South Constituency
Kapenguria Constituency	Ndia Constituency
Kasarani Constituency	Rangwe Constituency
Keiyo North Constituency	Saboti Constituency
Keiyo South Constituency	South Kinangop Constituency
Kibwezi Constituency	Westlands Constituency

Of the 349 proposed parliamentary seats, only 47 (13.5 per cent) are special seats for women, which is below the threshold for affirmative action. There is also no proposal on how the one third will be achieved.

***Proposal:***

- 1). The special seats for women are increased to 74, from the proposed 47 to effectively address the principle of Affirmative Action.
- 2). Affirmative action measures are temporary measures that must aim at achieving the expected level of equality and should not be time bound.

**Devolution - public finance**

Chapter Twelve (Section 195 (5) of the PSC Draft on revenue allocation from national government to county government sets a minimum of 15 per cent of total national revenue. Even in low income countries, this does not satisfy the threshold for equitable resource allocation and will further marginalise women and other vulnerable groups, defeating the principle of Devolution.

***Proposal:***

- 1) If a minimum is to be maintained, we propose at least 40 per cent of the national revenue to be devolved to county governments to adequately address Kenya's development agenda.
- 2) The alternative to the above is to leave the criteria for resource allocation to legislation.

**Other issues: *Culture***

The CoE draft had helped to indicate what the parameters of culture should include. This is important for women and other marginalised groups because most of the violations they face are done in the name of culture and customary practices.

***Proposal***

Kindly re-instate the clause as captured in the CoE harmonised draft.

**The Bill of Rights**

The CoE entrenched the different socio-economic rights additional to the traditional civil and political rights, even though this would have been better achieved by out rightly recognizing the rights in ratified international human rights instruments. They repeated the government's obligation to domesticate these instruments.

The PSC draft recommended the deletion of the State Obligation to domesticate International Human Rights instruments as had been provided for by the CoE.

It deleted the socio-economic rights and relegated to parliament the sole power to decide, through legislation.

Effect – many interest groups will lose on inclusion of their rights – and the opportunity to share in the new constitutional order. Specific population groups have also lost in total; they include emergency populations, children and the elderly.

*Proposal:*

- 1) The recognition of the rights in ratified regional and international human rights instruments. This will be the greatest gain for all marginalised populations including women.
- 2) We insist that the recognition of these rights should not be downgraded to the level of legislation and at the discretion of Parliament.

### **The Right to Life**

Whereas the definition of when life begins does not add value on the provision on abortion, it has the potential of negatively impacting the health of women in certain matters as follows:

- a) Some forms of contraceptives will become unconstitutional;
- b) The administration of some forms of Post exposure prophylaxis measures after sexual violence may become unconstitutional;
- c) Because the sub-clause is not in any way linked to the others in 25 it could be interpreted negatively to require clearance of the constitutional court before women rushed in with ectopic pregnancies or conceptions that turn into tumours are operated.

### **The Gender Commission**

As the Women's Movement, we propose that the Gender Commission be entrenched in the Constitution.

Submitted by:

- Women in Law and Development Africa-Kenya (WILDAF Kenya),
- Kenya Women Parliamentary Association (KEWOPA),
- Development Through Media,
- Young Women Leadership Institute (YWLI),
- The Caucus for Women Leadership (CWL),
- Federation of Women Lawyers Kenya (FIDA K),
- Coalition on Violence Against Women (COVAW),
- The League of Muslim Women Kenya,
- Action Aid Kenya,

- Bridge Africa,
- Southern Oregon Research and Extension Centre (SOREC),
- The Women's Political Alliance Kenya,
- Maendeleo Ya Wanawake,
- Tomorrows Child Initiative,
- Women for Justice in Africa,
- African Woman and Child Feature Service (AWC),
- African Women Communication and Development Network (FEMNET),
- Kangemi Women Empowerment Centre,
- The League of Kenya Women Voters,
- Women Empowerment Society (WES),
- Centre for Rights Education and Awareness (CREAW),
- Collaborative Centre for Gender and Development (CCGD),
- National Council of Women of Kenya (NCWK).

cc

- The Chairman and members PSC
- Committee of Experts on the Constitution
- KEWOPA