

The Status of Compliance with the International Gender Related Legal Instruments in Africa: A Case Study of Kenya

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Abstract: 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 objective was to examine the AU institutional and legal framework on gender in education and politics in Africa and Kenya in particular. The study has used feminist theory to operationalize the study. The study has concluded that 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. 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.

Keywords: Gender Inequalities, Political policy.

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Introduction

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. According to Verger *et al.*, (2012), in 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 (Beijing declaration and Platform for action, 1995).

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 concerns (Schoenmeyer, 1996).

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 servant* where state parties are legally expected to live up to the obligations of 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.

AU institutional and legal framework on gender in education and politics in Africa

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 (ibid).

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 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 (ibid).

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 (ibid)..

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 (ibid)..

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.

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, NGEN, 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.

Discussion

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.

Conclusion and Policy Recommendations

The principle of gender equality in education and politics should be upheld since it is enshrined in the pre-ambule 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.

References

1. Beijing Declaration and Platform for action, 1995. Fourth world conference on women 15th September 1995, A conf. 177/20 (1995) and A/CONF 177/201.
2. Schoenmeyer, J.A. 1996. Book Review: From Basic Needs to Basic Rights: Women's Claim to Human Rights. Edited by Margaret A. Schuler. Washington, DC: Women, Law and Development International, 1995. 597 pages. Michigan Journal of Gender and Law, 3(2): 609-620.
3. Verger, A., Novelli, M. and Altinyelken, H.K. 2012. Global education policy and international development: An introductory framework. Global education policy and international development: New agendas, issues and policies, 3-32 pp.