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KENYA: A SITUATIONAL ANALYSIS OF WOMEN'S PARTICIPATION IN PEACE PROCESSES

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Continued polarisation along ethnic lines and political affiliation hindered women and the women's movement.

BACKGROUND TO THE CONFLICT

The divisions in Kenya between different ethnic communities stem from the forcible alienation and appropriation of land by colonial and subsequent post-colonial governments. The unequal distribution of resources, the favouring of some ethnic groups over others in the allocation of public positions of power, and the belief that public positions bring advantages to the entire ethnic community has prompted deep cleavages between groups based on promoting and protecting 'their own' community's interests over all others. This is characterised by divide and rule techniques and mobilisation against the 'other' where Kenyan politicians champion ethnic interest, turning politics into an ethnic rather than issue-based contestation (Nderitu 2014: 9-10, 12). Violence in Kenya became institutionalised with recurring election related violence since the introduction of multi-party democracy in 1991.

Political violence erupted once again in 2007-2008 in response to alleged rigging of the 2007 presidential election between the two major political parties and their candidates: The Party of National Unity (PNU) headed by Mwai Kibaki and the Orange Democratic Movement (ODM) led by Raila Odinga. The violence had a distinctly ethnic form, a culmination of tensions and grievances between different ethnic groups. There was widespread violence in ODM strongholds, mainly in the Rift Valley, low-income areas of Nairobi, Coast and Nyanza provinces (Wanyeki 2008: 94).

Cases of extrajudicial killings by police forces, burning of private and public property, and increased rates of GBV were reported (Wanyeki 2008: 94). Over 600,000 people were displaced and at least 1,333 died, with an estimated 900 cases of SGBV perpetrated by militia groups, humanitarian workers, and Kenyan security forces (HRW 2016: 4). Other estimates are higher with 1,500 people killed, more than 3,000 women raped, and over 300,000 displaced (Shackel and Fiske 2016: 18). The crisis had economic, political and humanitarian impacts, and mediation was swiftly put on the agenda. Former UN Secretary-General Kofi Annan was mandated by the African Union to head the

panel of Eminent African Personalities to lead the Kenya National Dialogue and Reconciliation Process (KNDR). During the 41-day mediation process the parties attending the KNDR agreed upon four agenda items:

1. Immediate action to stop the violence and restore fundamental rights and liberties;
2. Immediate measures to address the humanitarian crisis, and promote healing and reconciliation;
3. How to overcome the political crisis;
4. Addressing long-term issues, including constitutional reform.

WOMEN'S PARTICIPATION IN THE PEACE PROCESS

During the violence, human rights and women's civil society maintained calls for dialogue, monitored the violence, and took measures to de-escalate tensions (Tripp 2015: 37). Women were directly present in the KNDR as members of the panel, senior advisers to the mediator, mediation support roles, senior members of political delegations, and as civil society leaders. One in four members of the negotiating team were women which represented a high number of women (McGhie and Wamai 2011: 4). Women mobilised in a range of ways while the formal process was under way. For instance, Vital Voices Women's Group paired up with Burundian women to share experiences of conflict and the Burundian peace process. Kenyans for Peace, Truth and Justice (KPTJ) met continuously throughout the crisis to discuss ways to address it (McGhie and Wamai 2011: 16). The Kenya Women's Consultative Group maintained consistent messages of dialogue and held a one-day meeting with more than 50 women to discuss ways to bring about peace and mediation, later forming a consultative group that presented a memorandum to the mediation team.

The Women's Memorandum called for, inter alia, the implementation of UNSCR 1325, attention to the gendered aspects of humanitarian relief particularly for internally displaced people (IDPs), and recommended to address root causes of violence through transitional justice mechanisms, and constitutional and electoral reform (McGhie and Wamai 2011: 20). Local level initiatives of reconciliation in communities were held in tandem with the national level dialogue (McGhie and Wamai 2011: 16-17).

McGhie and Wamai (2011) cite two important factors that impacted the ways in which women's concerns

were incorporated in the negotiations. First, they identify civil society's capacity to mobilise and ensure that women's issues were presented to the mediation team. Second, the inclusion of Mrs. Graça Machel, the former Mozambican and South African First Lady, as part of the Panel of Eminent African Personalities. Machel, via the mediation team, pushed for the inclusion of women's issues. Furthermore, Machel called women together to overcome differences along ethnic divisions in order to work together as a unified front to focus on women's issues. However, continued polarisation along ethnic lines, political affiliation and generational differences hindered women and the women's movement's capacity to present a unified front. There was much more focus on humanitarian issues by the women's movement rather than political advocacy around the structural issues. Civil society was hampered by the dilemma on whether to promote their agenda through political connections and risk politicisation of their interventions, or only engage with the formal mediating teams, particularly considering the politically charged atmosphere. Furthermore, engaging the women's movement and civil society was only pursued by the mediation team on an ad hoc basis, and always as an add-on, rather than an effort to integrate women and gender throughout the process (see McGhie and Wamai 2011: 22-23).

Kenya's National Dialogue and Reconciliation process was aimed at addressing political, economic and ethnic grievances and produced four major agenda items. The first three prioritised halting the violence, addressing the immediate humanitarian crises and agreeing upon power-sharing arrangements between the two major political parties. This included measures to provide security and protection of vulnerable groups, including women, and provision of basic services such as health care for IDPs, focusing on women, children, disabled and, people living with HIV and AIDS. Measures also included the participation of women in reconciliation and peacebuilding committees at the grassroots level. Moreover, during this process commissions were agreed upon in which the Truth, Justice and Reconciliation Commission required a gender balance to be taken into account when selecting the commissioners. The final agenda item, agenda four on the Statement of Principles on Long-Term Issues and Solutions, recognises that issues related to gender inequality is a key challenge in Kenya.

Furthermore, the agreements' implementation framework ensures gender equity, the development of an Affirmative Action Policy, and enhancement of the Women's Enterprise Fund. Agenda four also contained provisions for constitutional and legal reform that led to the promulgation of the 2010 Constitution that was adopted after a national referendum in which 67 per cent of Kenyans approved.

The adoption of a new Constitution in 2010 was the end of a two decade long process of pushes

for constitutional reform and affirmative action for increased women's representation (Tripp 2017: 88). The 2010 Kenyan Constitution contains gender provisions relating to human rights, participation, and development. It contains equal citizenship laws between mothers and fathers, including the ability to confer Kenyan citizenship to foreign spouses and children born outside of the country (Articles 13-14). Furthermore, women and men have the right to equal treatment and equal opportunities in the political, economic, cultural, and social spheres (Article 27), and the state shall not discriminate against any person on any ground inter alia sex, pregnancy, and marital status (Article 27). Article 27 also calls for legislative and affirmative action to redress disadvantage suffered by individuals or groups because of past discrimination and marginalisation, with respect to governance, education, economic opportunity, employment and other such factors.

The 2010 Constitution also contains provisions for women's participation, including a restriction on elected and appointed bodies being comprised of more than two-thirds of the same gender (Article 27(8)) and; gender quotas at both federal and county levels within the Judiciary, National Assembly and Senate, including one woman representing persons with disabilities and another for youth. The Constitution contains provisions to eliminate gender discrimination in law, customs, and practices related to land and property, and to implement gender mainstreaming in national development. Furthermore, the Constitution provides for the domestication of international law, including ratified treaties such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol, a regional guarantee of women's rights and gender equality.

Contentious issues in the Constitution related to gender provisions, included land, same sex marriages, abortion and constitutional recognition of the Kadhi courts, which oversee Muslim laws relating to marriage, divorce and inheritance for the Muslim community. Abortion is not permitted unless in the opinion of a trained health professional, emergency treatment, or the life or health of the mother is in danger (Article 26(4)).

The 2010 constitution contains provisions on women's participation, including restricting elected and appointed bodies of having no more than two-thirds of the same gender, and gender quotas at federal and local levels within the judiciary.

Women in Kenya are multi-burdened and ‘time-poor’, burdened with household tasks, such as collecting firewood and pounding grain.

WOMEN’S POLITICAL PARTICIPATION BEFORE, DURING AND AFTER CONFLICT

The 2010 Constitution devolved power from the previously highly centralised executive Kenyan government to 47 Political and Administrative Counties. The government is essentially split into two levels: the national level made up of the Senate, National Assembly and Presidency; and the local level made up of County Assemblies and governors. The Constitution states that no more than two-thirds of any appointed or elected body shall be made up of one gender, and was solidified in the Political Parties Act (2011) that provided for proportional representation through mixed-member party lists. Prior to the 2013 elections women made up approximately 9 per cent of the parliament. In other words, from independence in 1963 until the 2013 elections, only 50 women were ever elected where women’s current increased descriptive representation in the national and local legislatures is the result of reserved seat gender quotas (Tripp, Lott, and Khabure 2014: 20). At the executive level, 30 per cent of Ministerial Level Positions in 2015 were filled by women, including key ‘power’ portfolios of defence and foreign affairs (AUC 2016: 18; Tripp et al. 2014: 22).

Critics have pointed out that these appointments were more tokenistic, based on connections rather than merit. The lack of women in lower level governance prior to the 2017 election (i.e. there were no female governors of the 47 counties or mayors from the top ten cities) highlights the tokenistic nature of women’s descriptive representation (Tripp et al. 2014: 22). However the August 2017 election saw three female governors elected to that position for the first time, and three women elected to the Senate in their own right (not appointed based on party seat numbers). Nevertheless, both national and county level governments failed to implement the two-thirds gender rule with women winning or being appointed to 18 out of 68 Senate seats (26.74 per cent) and 76 of 350 seats (21.84 per cent) in the National Assembly (IPU 2017).

Women’s increased political presence has been met with backlash by male elites, portrayed as men ‘losing out’ due to women’s increased representation. The two-third principle has been actively fought against in parliament with bills such as one that would defer implementation until 2037. Reserved seats for women are ghettoised and contributes to the misconception that women are there to articulate only women’s interests and not act as full parliamentarians (Nyabola 2016: 13). Ever increasing levels of violence against female candidates and politicians, as well as their supporters, is characterised by threats and acts of verbal violence and SGBV (Berry, Bouka and Kamuru 2017).

WOMEN’S ECONOMIC PARTICIPATION BEFORE, DURING AND AFTER CONFLICT

According to the UN Economic Commission for Africa in 2015, Kenya’s informal sector employment was an estimated 77.9 per cent of the total workforce, increasing to more than 80 per cent among women. Similarly, the 2015 Kenya Economic Survey recorded that the informal sector employed 11.8 million persons in 2014, compared with 2.4 million in the formal sector (USDOS 2016). In 2007, women accounted for 46 per cent of the economically active population of which 49 per cent of the economically active women worked in agriculture. In 2003, women constituted 64 per cent of subsistence farmers and 80 per cent of the agricultural labour force, often working on an unpaid basis (FAO 2018).

Women in Kenya constitute 60.8 per cent of unpaid family workers (World Bank 2007: 14). They are multi-burdened and ‘time-poor’, burdened with household tasks, such as collecting firewood and pounding grain. Only 30 per cent of households in Kenya have access to piped water supplies. Fetching water can account for up to 40 per cent of a woman’s day, taking from 3 to 5.25 hours (World Bank 2007: 14).

One third of households are headed by women (KDHS 2014: 11). As of 2003, 80 per cent of female headed households lived under the poverty line, in part because of their limited ownership of and access to land (FAO 2018). Land and property rights is a major barrier to women’s economic participation in Kenya, where it is a crucial source of social and cultural identity, political participation and decision-making power (FIDA). In 2016, women held only six percent of land titles, of which the majority were joint titles, and accessed only seven per cent of formal financial credit awarded in the country (USDOS 2016). Lack of awareness of different property and inheritance rights, and legalities, hinders women’s access to land and resources.

Unmarried daughters have a right to use paternal land but are permitted to plant only annual crops and not permanent crops or erect structures. If and when a father allocates land to any unmarried or divorced daughters, these women in most instances are likely to be forcefully evicted from the land by their male siblings, who believe that daughters should not have a share of paternal land (FAO 2018). Among the Luo ethnic group, women have limited 'tree rights' where they cannot plant trees, and older women usually have stronger tree rights, such as the right to harvest fuel wood and fruit from communal land and land owned by men (FAO 2018). Land and property disputes are often referred to male local chiefs and the council of elders who follow customary law and more often than not will favour male dominance on issues of access and ownership of property (Ellis et al. 2007: 66).

Widows are extremely vulnerable to loss of land and inheritance because the deceased husband's families often evict them and sell off the land (Shackel and Fiske 2016: 41). As a result of the 2007-2008 electoral violence, some women lost their capacity to generate income either through being widowed, displaced, losing access to land, or having capital stolen and businesses destroyed (Shackel and Fiske 2016: 78).

WOMEN'S CIVIL SOCIETY PARTICIPATION BEFORE, DURING AND AFTER CONFLICT

Women's mobilisation was dominated by the Kenya Africa National Union (KANU) in the post-independence (1964) period through patronage based organisations like the Mandeleo ya Wanawake (MYWO). The KANU gradually co-opted the large women's organisation MWYO so that by 1987, it was fully under KANU's control during a time of economic decline and loss of political legitimacy. By expanding its control over MYWOs twenty thousand member groups, KANU hoped to spread its influence and legitimise itself by tying it to grassroots organisations to shore up support. Furthermore, access to MYWOs funds and donor money that had been diverted from government initiatives also made it an attractive takeover (Tripp et al. 2009: 46). In contrast to overt co-optation, in other contexts the regime infused local organisations with patron-client relations. The well known *harambee* self-help movement in Kenya increasingly fell subject to various clientelistic manipulations. The *harambee* movement involved many women who led community initiatives to build schools, clinics, wells, cattle dip etc., exchanging their votes for resources. This facilitated initiatives that were not necessarily serving to the interests of the community but intended to reflect positively on the patron (politician) (Tripp et al. 2009: 46).

Since the 1990s, the women's movement has been a key driver of democratisation and constitution making process. Despite many differences, women united to embrace a common agenda when it mattered, as demonstrated during the KNDR process (Tripp, Lott and Khabure 2014: 9-10). However, since the passing of the 2010 Constitution, the women's movement has been somewhat divided reflecting the ethnic and political divisions within the country. There has been a loss of mobilisation with much of the focus concentrated on the implementation of the two-thirds gender quota at the national level. Furthermore, there was little activism against the passing of the 2014 Marriage Bill that legalises polygamy and allows men to marry multiple women without the consent of their wife (Tripp, Lott, Khabure 2014: 10). Few formal mechanisms exist for the women's movement to engage with governmental processes. Women's organisations are coalesced under the National Women Steering Committee, established after the 2010 Constitution, which is the key organisation that advocates for women's political participation and to ensure the implementation of the Constitution (Tripp, Lott and Khabure 2014: 10). Many of the best women leaders have shifted into government and private sectors. Funding has also shifted away from civil society to the government (Tripp, Lott and Khabure 2014: 10).

In recent years there has been a clamp down on civil society and media by the government, intensifying in the run up and aftermath of the August 2017 elections. This includes the suspension of NGOs by the Coordination Board and police raids of civil society organisations' offices, such as prominent organisations like the Kenya Human Rights Commission (KHRC) and the Africa Centre for Open Governance (Africog). Journalists and bloggers have faced intimidation, physical abuse, beatings and job loss, particularly when reporting on corruption, disputed land acquisition, counterterrorism operations and post-electoral violence (HRW 2017). Furthermore, the recent 2018 media blackouts during the continued election turmoil in January 2018 has prompted concern over the increasing authoritarianism of the Kenyan state (Wadekar 2018).

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