



POLICY BRIEF

Number 3 | July 2013

Gender and Reconciliation in the New Kenya

Equality at the Heart

Peter Nordström

SUMMARY

Five years ago, Kenya suffered some of its darkest days following a disputed general election in December 2007 and the subsequent eruption of violence along ethnic lines. In order to attain sustainable peace and reconciliation, it is critical that Kenya address all underlying tensions that have historically spurred violence. Important progress has been made. The enactment of a progressive Constitution in August 2010 was a milestone in the modern history of Kenya. In May 2013, the Truth, Justice and Reconciliation Commission (TJRC) concluded its work conducted over four years by publishing its report on gross violations of human rights and historical injustices in Kenya from 12 December 1963 to 28 February 2008.

The Constitution has reinforced the power of the people over its elected leaders. A constitutionally protected Bill of Rights with far-reaching safeguards for human rights (including political, economic and social rights) shields the Kenyan people from abuse, discrimination and marginalisation. The Constitution (2010) gives equal rights to all Kenyans, including those who have previously suffered marginalisation and discrimination. It identifies women as a marginalised group and includes provisions for affirmative action to strengthen their position in society.

Similarly, the recently published report by the TJRC has dedicated a separate volume (IIC) to 'the stories and narratives of groups of people that are provided special protection under domestic ►►

and international law because of a history of discrimination and oppression'.¹ Among the groups targeted by Volume IIC of the TJRC report are women. At the heart of the effort to build a peaceful Kenya is promoting reconciliation – a crucial aspect of which is gender equality.

This Policy Brief argues the interdependence of reconciliation and gender equality, as well as the need to mainstream a gender perspective in the reconciliation process in Kenya. Mainstreaming a gender perspective includes incorporating strategies to ensure a focus on gender and women's issues in all dimensions of design, implementation, monitoring, and evaluation of policies and programmes.² The Policy Brief argues that gender equality is an essential aspect of reconciliation – and therefore that mainstreaming a gender perspective in all policy areas is instrumental to a successful reconciliation process. The Brief looks specifically at the case of Kenya, analysing – from a gender perspective – the ongoing efforts at promoting reconciliation in the country. The analysis takes into account the role of women in Kenyan society, and the country's guiding political and legal frameworks.

The Policy Brief makes a number of recommendations to key actors in Kenya, including government, civil society and the international community.

RECOMMENDATIONS

To the Government of Kenya

1. Continue commitment to the reform process and demonstrate that government will represent the interest of *all* Kenyans – without fear or favour.
2. Make a strong commitment to the implementation of the constitutional provisions on gender representation, including working closely with county governments in this regard. The appointment of Cabinet Secretaries was a litmus test with regard to female representation at the top administrative level of government; ensure that this sets the precedent for future appointments at all levels of the public sector.
3. Coordinate closely with county governments to ensure gender is mainstreamed in all policy areas and that practices that discriminate against women are fought with vigour. This includes monitoring the implementation of national legislation at the county level.
4. Following the release of the TJRC report, take the necessary action – in close coordination with all other relevant actors from the public sector and civil society – to analyse the findings, paying special attention to the gender aspects thereof, and make a firm commitment to addressing the issues arising, using the necessary means and resources in accordance with the relevant recommendations of the TJRC.
5. In the light of developments since their initial adoption, and taking into account the relevant findings of the TJRC report, update the National Gender and Development Policy (2000) and the Plan of Action to Implement the National Policy on Gender and Development.
6. Based on the principle that rebuilding broken relations in a society has to be a comprehensive process in which all affected are given the chance to participate, ensure that women are included as active participants in the national reconciliation process.
7. In promoting reconciliation and national cohesion in Kenya, take a firm lead and set an example in adopting a coordinated and inclusive approach – with purposeful emphasis on the inclusion of women. Establish an intra-ministerial working group responsible for mainstreaming a gender perspective in all relevant policy areas.
8. Ensure adequate funding is allocated for ministries, commissions and other actors specifically working towards gender mainstreaming.
9. To promote coordination, information sharing and mainstreaming of gender in Kenya, establish a forum on gender issues with members from government, the public sector,

independent commissions, civil society, the private sector and international partners.

10. Draft and propose the legislation necessary to implement the constitutional provisions on gender equality and equal rights. Specifically, spearhead the full and unconditional implementation of the Sexual Offences Act (No. 3 of 2006), and propose amendments where appropriate.
11. Dedicate sufficient funds for far-reaching programmes aimed at civic education and capacity building on gender-related issues.

To County Governments

1. Ensure the full and unconditional implementation at county level of national legislation aimed at eradicating gender inequality and discriminatory practices.
2. Coordinate closely with the national government and community leaders, faith-based organisations and civil society organisations to mainstream gender into all policy areas and programmes.
3. Follow up on the relevant findings of the TJRC report and take the necessary action to promote reconciliation at county and local levels.
4. Dedicate sufficient funds for far-reaching programmes aimed at civic education and capacity building on gender-related issues.

To Political Parties

1. Evaluate internal decision-making mechanisms in the light of existing legislation on gender representation and take the necessary actions to fulfil the stated requirements.
2. Host leadership programmes aimed at youth, with a particular focus on empowering and capacitating skilled and informed female leadership.
3. Provide ongoing support and technical training to potential female candidates and representatives to ensure they are equipped with the necessary skills to run effective campaigns.
4. Maintain a gender perspective in all decision-making processes and in the development of all new policies of the party.

To the Implementation Committee of the Truth, Justice and Reconciliation Commission (TJRC) report

1. Publicise special analyses of the gender aspects of the TJRC's findings, and clearly articulate concrete recommendations for restructuring and transforming gender imbalances in Kenyan society.
2. Ensure wide dissemination of and civic education on the findings of the TJRC report and their implications for Kenyan society, especially with regard to acts of sexual violence committed during the post-election violence.
3. Engage closely with all relevant actors, including representatives of national, county and local governments, civil society, and victims and survivors as defined by the TJRC, to follow up on the findings of the report, its recommendations and the way forward.
4. Make publicly available all statements and research material that informed the TJRC report and promote independent studies of the material.

To the Judiciary

1. Acknowledge the marginalised position of women in Kenya and be sensitive to their specific needs with regard to the law.
2. Provide compulsory training to personnel to ensure they are equipped with the necessary

skills to respond to and meet women's specific needs when interacting with the judicial system.

3. Continue debating and implementing necessary reforms that pertain to gender justice in order to further improve the public's confidence in the judicial system with regard to gender equality and gender justice.
4. Remain vigilant in defending and upholding constitutional provisions on gender equality.

To the Kenyan Police Service

1. Continue building institutional and personnel capacity to adopt and adhere to gender-sensitive approaches to service delivery.
2. Continue implementing the necessary reforms and reorganising the Police Service to better represent the composition of Kenyan society, including women, at all levels of the Police Service hierarchy.
3. Further develop the community policing concept to prevent crimes, and engage communities in civic education on how to fight gender-based violence and sexual crime.
4. Continue to support the establishment of gender desks at each station with trained police who are capacitated to provide support to women who have suffered gender-based or domestic violence. This should be done with the long-term goal of capacitating all police officers in providing the necessary support.

To Civil Society

1. Remain vigilant and engage actively and constructively with government and all other relevant actors in promoting gender equality and reconciliation.
2. Engage in discussions and provide advice on gender and reconciliation to stakeholders at national and local levels, in the interests of promoting a gender-sensitive approach.

To the Media

1. Participate in and champion civic education on the need to maintain a gender perspective in the reform and reconciliation process in Kenya.
2. Ensure that reporting is gender-sensitive, does not discriminate against any group in society, and actively contributes to dismantling historical narratives that perpetuate existing stereotypes of an ethnic or gender nature.

To Kenya's International Partners

1. Maintain support to government and civil society in the work of promoting gender equality and awareness in Kenya.
2. Include a gender perspective in all development cooperation programmes in Kenya.
3. Encourage progress on gender equality and gender mainstreaming in the regular dialogue with the Government of Kenya.
4. Encourage and maintain pressure on the Government of Kenya to fully comply with its international and national legal obligations to ensure the eradication of all forms of discrimination against women.

Background

Kenya has an unprecedented opportunity to promote reconciliation and national cohesion. The new constitutional framework with its devolved county structures can contribute to the initiation of further reforms and strengthen public participation by bringing the government closer to the people. However, many challenges still face Kenya on its path towards building a socially cohesive and integrated, democratic nation. The post-election violence of 2007/2008 constituted an eruption of underlying tensions in Kenyan society, spurred by decades of marginalisation of many of the country's people by the government and resulting unequal distribution of resources. Many of the injustices that scar Kenya remain unresolved. To compound the problem, the women of Kenya, due to their further marginalised position in a highly patriarchal society, have been particularly affected.

Women have been subjected to sexual violence and domestic abuse. Women have also for the most part been denied rights, and historically excluded from decision-making at all levels of society, their voices silenced. While some progress has been achieved,³ the marginalised position of women was highlighted in the March 2013 general election; in the first place, few women candidates were nominated by their parties for political seats, and those who did run were largely discredited by opponents, the media and parts of the electorate.⁴

In the light of the recent publishing of the report by the TJRC, and as Kenya moves towards implementation of the report's recommendations, it is necessary to remember that a country can neither reconcile nor develop unless the population – in full – is included in a comprehensive reconciliation process.

Defining the role of gender in reconciliation processes

Reconciliation is a process of repairing damaged relationships.⁵ Approaches often used in reconciliation include truth-seeking, dialogue, acknowledgement, various forms of justice, reparations, memorialisation, trauma healing and others. Reconciliation takes place both between individuals and groups in society, and between members of society and the state. State-led steps towards reconciliation should include institutional reforms, as well as policies for reparations and acknowledgement.

'Gender' refers to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women respectively. Gender roles and what is considered masculine and feminine vary between cultures. Thus, the concept of gender refers primarily to social and cultural differences between women and men, rather than the biological.⁶

Kenya's National Gender and Equality Commission Bill (2011) defines 'gender mainstreaming' as ensuring that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures. This includes implementing such policies, laws and administrative procedures in all political, economic and societal spheres, so as to ensure that women and men benefit equally and that inequality is not perpetuated.⁷

Promoting the understanding of the different roles and experiences of men and women in conflict is necessary to improve the design of reconciliation initiatives and to ensure that the needs of the entire population are addressed in the process. Whether reconciling relationships between individuals and groups or between the state and society, the inclusion of a gender lens throughout the process increases the likelihood of success and sustainability.

A nation is defined by its people and the social relationships between them. Any system of governance should have as its primary responsibility to represent the interests and protect the rights of its people in full. The implementation of a governance system that safeguards the rights

of all its citizens is highly effective in redefining the social relationships between people and between the people and the state.⁸ However, any system of governance will inevitably fail unless damaged relationships between people, and between the people and the state, are repaired. Reconciliation cannot be imposed with a top-down approach. In order to re-establish trust among constituents in a society, it is necessary for the authorities to promote a climate that encourages personal steps towards reconciliation.⁹

A country recovering from conflict faces a number of challenges in dire need of being addressed shortly after the restoration of peace. Justice and reconciliation processes have to be initiated; transitional authorities have to be established; the security sector has to be reformed; and essential infrastructure and social services need to be rebuilt. Given the many challenges at hand, gender aspects are often overlooked. However, long-term success in tackling the above mentioned challenges depends on adopting an inclusive approach and the need to address underlying causes of the conflict. Such causes often include competition for political representation, discrimination and marginalisation (whether based on gender, ethnicity, geographical location or political affiliation), unequal distribution of resources, and human rights abuses, all of which affect women and men differently and breed tensions in society. Failing to fully understand the different experiences and needs of men and women will undermine efforts to promote sustainable peace and reconciliation.

Violent conflicts tend to include predominantly male combatants. Even when women hold combat positions during conflict, they are often sidelined in the making of political and strategy decisions and in the negotiation of peace processes. In the case of Kenya, women serve on the front lines of the Kenya Defence Forces in small numbers and in low-ranking positions.¹⁰ The appointment in April 2013 of Raychelle Awuor Omamo as Cabinet Secretary for Defence – the first woman to be appointed to the post – is a promising development that may challenge the hitherto male-dominated organisational culture. And in the Kenya Police Service, the ambition is to raise the number of women from the current low level of 11 per cent of the service.¹¹ Women have been left out due to this 'armed patriarchy', with little or no influence over decisions relevant to the conflict although they are always affected and often involved both in combat and non-combat activities relating to a conflict.¹²

Women are also often the subjects of sexual violence and other serious violations as a result of conflict; abuses that inflict physical wounds, trauma, and/or stigmatisation, in the process reinforcing women's subordinate role in society.¹³ It is necessary to dissolve the culture of violence seen both during times of conflict and in the unequal gender structure in society. This entails a focus on gender-based violence as a product not only of the conflict but also of gender identities in a highly patriarchal society.¹⁴ Domestic violence and sexual abuse are rife even after peace agreements have been signed,¹⁵ and targeted measures are needed to address the psychological and physical wounds suffered. Discriminatory legislation needs to be amended and discriminatory cultural practices abandoned for women to take an active part in society, and for crimes committed against women to be investigated with the same vigour as other crimes.

Experiences from conflicts have shown that women, as non-combatants, can act as peace catalysts by bridging the divide between belligerent communities and groups. While men in such contexts predominantly engage in battle and provide political leadership, women are left to care for the subsistence of their families and the affairs of their communities. In these situations, women can be living a 'life between two guns', often experiencing harassment by all groups in the conflict.¹⁶ Similarly, refugee populations are constituted of on average 80 per cent women and children. Yet, despite the majority being women, male refugees often get disproportionate access to food and other commodities. Men also tend to monopolise decision-making structures within refugee camps and other temporary settlements.¹⁷ The same development has been recorded among the internally displaced persons (IDP) in Kenya following the post-election violence in 2007/2008. In its report, the TJRC has documented widespread abuses of women both during the post-election violence and in the camps for IDPs that were established in the aftermath of the

violence.¹⁸ In addition, humanitarian organisations and NGOs have recorded a high incidence of sexual and other forms of violence against women living in IDP camps in Kenya.¹⁹

Given the different roles and experiences of men and women in conflict, maintaining a gender perspective is thus a vitally important aspect of reconciliation, both during and after violent conflict and civil strife. Failure to include women in the political processes leading up to and following a peace settlement breeds a culture of exclusion of key stakeholders and thus risks undermining the sustainability of a peace agreement and impeding efforts at building an inclusive society.

By the same token, applying a gender perspective to conflict requires understanding the role of men, who are often both perpetrators and victims. Armed conflict encourages a 'warrior identity', which affects combatants and ex-combatants, hindering their return to civilian life in a post-conflict setting.²⁰ The 'warrior identity' includes an unsound quest for personal honour, glory and reputation, an emphasis on physical courage, and disdain for commercial activities such as farming.²¹ Dismantling this harmful identity and reintegrating men into their communities is necessary for post-conflict reconciliation. Equally important is focusing on rebuilding respectful relations between men and women.

Existing frameworks for including gender in the Kenyan reconciliation process

It is widely recognised that conflict analysis and post-conflict reconstruction need to take into account how different social groups are involved and affected.²² With the adoption of the United Nations (UN) Security Council Resolution 1325 in October 2000, the international community recognised the important role played by women in conflict resolution and peace-building. The resolution also stresses the importance of women's 'participation and full involvement' after a peace agreement has been signed. It specifically mentions, with regard to conflict prevention, the need for women to play a larger role in decision-making processes. Although the resolution is a milestone in the history of the UN and an important recognition of one of the main impediments to peace-building worldwide, the challenge lies in its implementation. In many countries (including Kenya) endemic discrimination is still a significant barrier to achieving the resolution's goal of inclusivity and gender equality.²³

In a number of subsequent resolutions, the Security Council reconfirmed its position and established a framework to address conflict-related sexual violence (resolutions 1820 and 1888), and strengthening the role of women in peace processes and peace-building efforts (resolution 1890). Moreover, within the framework of the UN, a number of other tools have been developed to address the marginalised position of women in many contemporary societies. Kenya ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984 and has reported on its compliance to the UN Committee on the Elimination of Discrimination Against Women on a regular basis.²⁴ However, Kenya has not ratified the Optional Protocol granting individuals and groups the right to complain. In 2010 Kenya also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (also known as 'the Maputo Protocol'). The African Union, of which Kenya is a member state, in December 2004 passed the Solemn Declaration on Gender Equality in Africa. The declaration commits member states to promoting gender equality. In addition, Kenya has ratified the East African Community (EAC) Treaty, which in article 5.3(e) states the commitment of EAC and member states to 'the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development'.

Kenya has been criticised by the UN for failing to counter institutionalised discrimination against women in Kenya. The UN Committee on Economic, Social and Cultural Rights has expressed concern about the high incidence of domestic violence in the country and the absence of criminal law provision specifically criminalising such violence.²⁵ Discriminatory and harmful

practices directed against women, such as forced marriages and female genital mutilation, are still prevalent. Although the protection of women's rights in areas of private law (property rights, marital law and inheritance) has improved as a result of the Matrimonial Property Bill 2012 and the Marriage Bill 2012, existing cultural practices that vitiate women's rights are still prevalent and must be addressed if the legislation is to have its full effect.²⁶

The Constitution of Kenya (2010) provides a foundation for the work that lies ahead in eradicating discrimination against and abuse of women. Existing legislation needs to be amended and new legislation enacted to implement the constitutionally safeguarded provisions. The Sexual Offences Act (No. 3 of 2006) is a progressive piece of legislation that seeks to improve the protection of women against sexual abuse. However, more work is needed, especially with regard to civic education. Efforts need to be directed at capacitating the Kenyan Police Service and the judiciary to better safeguard the rights of women. The Female Genital Mutilation Act (No. 32 of 2011) provides for the practice of female genital mutilation to be stopped, but its enforcement is lacking. Similarly, the government needs to take action to update key policies: namely, its National Policy on Gender and Development, established in 2000, and the Plan of Action to Implement the National Policy on Gender and Reconciliation (for the period 2008 to 2012). A gender policy, building on the aforementioned documents, was adopted by the Ministry of Gender, Children and Social Development in July 2011 and provides a good foundation for the work ahead.²⁷ It will require firm commitment on the part of government, combined with coordinated efforts at the national and local levels, if discriminatory practices are to be stopped.

Kenya's civil society has played a pivotal role in pushing for reforms and needs to maintain pressure at all levels. It has successfully empowered women to play a larger role in society, be it in politics or in the economy. Building on these experiences can provide useful lessons as Kenya moves towards reconciliation and a socially cohesive nation. Strong political leadership and openness to including all relevant actors will be necessary to alter the structures and practices that discriminate against women. These structures and practices have largely prevented women from participating actively in politics at the national and local levels. As a result of patriarchal structures in Kenyan society, women are also often prevented from making independent political choices because of pressure from their husbands. In addition, women are often marginalised in appointment procedures to senior positions in public services, which further reinforces existing prejudices against women in leadership.²⁸ Political parties need to lead the way in coaching and supporting a new generation of female leaders to rise through the political ranks.

Mainstreaming a gender perspective in the reconciliation process in Kenya

Reconciliation is an overarching process and ultimately a goal. The process is complex, involving many interconnected levels and issues, ranging from truth and justice to acknowledgement and healing. The process of reconciliation seeks to mend and possibly alter the very fabric of a society to create conditions for sustainable peace and development. It is ever evolving, as new issues and conflicts may arise in need of being addressed in the course of the process. Establishing means to address and overcome differences in a peaceful manner is necessary as there will always be challenges to our co-existence within and between societies. What reconciliation entails is the establishment of a society encompassing all of the interests and experiences of its people, and that can overcome challenges by peaceful means and learn from the past.

Although there are no blueprints for promoting reconciliation, there are aspects of the process that are universal and indispensable. Inclusivity is at the core of any reconciliation process. That is to say, reconciliation involves all sectors of society, not just those who have directly suffered from abuse, violence, injustice or the like. It involves perpetrators, victims and victim-perpetrators. It involves their relatives, friends and neighbours. It involves women, children and men alike. Rebuilding broken relations in a society has to be a comprehensive process in which

all affected are given the chance to voice their concerns, their suffering and their hopes for the future. Excluding women from this process excludes and alienates them from society. In Kenya, this alienation of and non-participation by half the population runs the risk of severely hampering the crucial national healing and reconciliation process. For healing to take place the particular ways in which women have been hurt through violence and other conflicts, and continue to be hurt by the nature of patriarchy in Kenya, must be acknowledged and addressed.²⁹

Mainstreaming a gender perspective in the reconciliation process in Kenya will ensure that gender and women's issues are included and that women are involved in all dimensions of designing, implementing, monitoring and evaluating policies and programmes promoting reconciliation.³⁰ Equally important is to promote equal opportunities to thrive in a post-conflict society striving towards reconciliation. Marginalisation, discrimination and unequal distribution of resources are part of the underlying causes of conflict. In the case of Kenya, they have been its Achilles' heel.³¹ Failure to address these inflammable issues will undermine any attempts to promote reconciliation, and instead increase tensions in society with the risk of reigniting conflict.

The TJRC report, released in May 2013, is informed by the large number of public hearings that have been conducted throughout Kenya. These hearings offered an unprecedented opportunity for women to tell their stories and voice their grievances. The records from the hearings constitute a wealth of knowledge that should be used to better understand patterns of gender-based violence and discrimination against women in Kenya.³² Furthermore, the records will be essential in informing policy-makers and practitioners on how to relate to and treat traumatised women as a result of committed abuses and injustices, how to understand the history of Kenya from women's perspectives, and how to design and implement gender-sensitive policies and interventions. As mentioned earlier, the TJRC report includes a special volume (IIC) on women and other marginalised groups. Building on the findings of the report, the government will play a pivotal role in ensuring that there is an established national policy on how to mainstream a gender perspective in the reconciliation process and all other policy areas.

The National Gender and Equality Commission (NGEC) has an important role to play in safeguarding and promoting gender equality in Kenya. Created from the respected Kenya National Human Rights Commission (KNHRC), it has a clear mandate based on constitutional provisions regarding gender equality. It is of great importance that the commission be provided with the necessary resources and political support to efficiently carry out this mandate. The NGEC should work in close cooperation with the government, independent commissions such as the National Cohesion and Integration Commission (NCIC) and civil society, to provide leadership in promoting gender reconciliation strategies.

Towards gender equality and reconciliation in Kenya

The progress achieved in Kenya since the post-election violence provides a firm foundation on which to build as the country continues on the path towards consolidation of democracy – and towards a future characterised by sustainable peace, reconciliation and development. Many are the challenges that Kenya has to overcome, but they are by no means insurmountable.

Debate in Kenya has been predominantly focused on the need for equality in distribution of resources and access to opportunities between the country's different regions and ethnic groups. Historical disparities in the distribution of wealth and access to services have fuelled grievances among the people and in the areas that have been marginalised. A study published by the NCIC indicates that much remains to be done before the public sector of Kenya mirrors the ethnic composition of the country.³³

Compounding these imbalances, as already mentioned, is the low proportion of women in the public sector, particularly in senior positions. At a political level, the extent of discriminatory

attitudes towards women, and unfair practices against them, became apparent, for example, in the political party nominations process prior to the March 2013 general election, in which female candidates faced significant obstacles compared to their male competitors. Most of the disadvantages faced by female candidates could be traced back to patriarchal structures in Kenyan society and the widespread perception that women are unfit for leadership positions. In principle, at least, an interpretation of the Constitution of Kenya requires that women representatives in legislative bodies comprise a third of those bodies.³⁴ The recently elected government needs to counter existing prejudices and clearly show the Kenyan people that it represents the interest of all Kenyans, without fear or favour. Only through strong leadership by political institutions and civil society, and sincere dialogue at national and local levels, can harmful attitudes and discriminatory practices be changed.

Addressing these issues has to be among the highest priorities. Gender-equal representation and gender equality need to permeate all areas of Kenyan government and society. As already indicated, people from historically marginalised communities have suffered in Kenya; and the patriarchal structure of Kenyan society means that women in such communities have been and continue to be affected repeatedly and in multiple ways, standing even less of a chance than other women of active decision-making and influencing their own lives. Therefore, balancing ethnic representation in the public sector needs to be complemented by efforts to increase the percentage of women, including in senior positions, in accordance with constitutional provisions of not more than two-thirds gender representation and with the goal of increasing this figure to 50 per cent within the next ten years.

Kenya also has a large population of unemployed youth, which is seen as a significant impediment to sustainable peace and development. Here too, the problem has a clear gender aspect; unemployment is significantly higher among young women compared to young men. At its highest point, the unemployment rate for young women has been 50 per cent, compared to 30 per cent for young men, according to the United Nations Development Programme (UNDP).³⁵ And unless conditions are created in which all youth can thrive, argues the UNDP, there is a significant risk of this marginalisation from society feeding into increased frustration and manifesting in rising tensions and possible civil unrest. A holistic approach is needed to promoting opportunities for youth to study, find employment and invest in business ventures. Focus must also shift in policy-making on the specific challenges facing young women in terms of structural, political, legal and economic discrimination, as well as addressing discriminatory practices in society such as forced marriage and female genital mutilation.

The relationship between gender equality and reconciliation is an interdependent one. Equal participation in decision-making processes and society is instrumental to achieving harmony, national cohesion and reconciliation. This Policy Brief identifies the following areas as specifically important in this regard.

Education

Obviously, an education system that discriminates against girls, combined with certain discriminatory cultural and health care practices, presents a significant disadvantage to females. By the same token, education is one of the most efficient tools for promoting gender equality, through economic empowerment among other things. Inequality in the education system serves to limit the number of women enrolling in higher education and subsequently climbing to senior positions in society.³⁶ Kenya has significant differences in literacy levels between men and women, with 30 per cent of women illiterate compared to 14 per cent of men.³⁷ While enrolment in primary school is more or less equal for girls and boys thanks to the policy of free primary education, the discrepancies appear later on in the education system. The disparities between the enrolment of girls and boys also tend to differ between counties. The biggest disparities are found in the north, the north-east and the coastal regions of the country.³⁸

Countering the disparities in the education system requires a broad-based approach that includes issues of child health, sexual and reproductive rights, and cultural practices. Promoting

an equal education system is central to dismantling the patriarchal nature of Kenyan society and in the process increasing the chances that women will play a more active and recognised role in Kenyan society.

Access to justice

Gender-based sexual violence is a significant problem in Kenya. As a result, a high proportion of women suffer from trauma and live their lives in constant fear of abuse. According to research by the KNHRC, as many as one in five Kenyan women have experienced sexual violence. The fact that the Kenyan legal system has so far failed to react decisively to crimes against women and to safeguard women's rights, has further undermined confidence in the legal system. Impunity for sexual abuse is rife due to the social stigma imposed on victims. In many cases, there is no justice for the victims of sexual abuse. In other instances, disputes are dealt with outside the formal legal system resulting in many crimes going unpunished and ignored.³⁹

Over the past five years, Kenya has initiated and implemented far-reaching reforms of its judiciary and police service. The reforms address problems of corruption, nepotism, and lack of respect and understanding of the principles of the rule of law and human rights. The reforms have had positive effects on public confidence, especially in the judiciary. Nevertheless, the judiciary – including other, supporting institutions – faces technical and legal challenges and remains unfit to deal appropriately with cases of sexual violence; judges, lawyers and other legal practitioners alike need strengthened capacity in this regard.

The Kenya Police Service has initiated reforms aimed at improving its response to gender-based violence. In order to equip the Police Service to handle such cases, the Government of Kenya has undertaken to set up dedicated gender desks at all Kenyan police stations. The Police Service also seeks to increase its numbers of female police officers and to strengthen capacity among its officers to handle cases of gender-based violence.⁴⁰

Although the reforms that have been initiated are beneficial to women's access to justice, more needs to be done to counter the underlying causes of gender-based violence. A coordinated approach with firm leadership by government is essential. Civic education, complemented by targeted interventions in specifically vulnerable areas, is necessary. Training curricula for police officers need to be revised to include gender perspectives in all areas of work. Furthermore, the suffering inflicted by abuse does not stop at the courts. The health care system needs to be capacitated to handle psychological trauma and other health-related conditions stemming from abuse.

Health

The Constitution of Kenya (2010, article 43) guarantees that every person has the right 'to the highest attainable standard of health, which includes the right to health care services, including reproductive health care'. The right to health, enshrined in the Constitution, is an important area of progress in Kenya, where the health sector has struggled with limited funding⁴¹ and rising demands from a growing population.⁴²

In terms of health indicators, Kenyan society is characterised by low life expectancy, high maternal and infant mortality rates, and mortality from diseases such as malaria and HIV/AIDS. Kenyan women have been particularly affected by the insufficient capacity of the Kenyan health sector, and the life expectancy for women is lower than for men. Maternal and infant mortality rates remain high, especially in rural and marginalised areas. Maternal mortality is the primary cause of premature death and disability among women of reproductive age in Kenya.⁴³

CEDAW (1976), to which Kenya is a State Party, stipulates that states shall ensure equal access to health services for men and women. Furthermore, CEDAW obliges states to provide all necessary maternity-related services. Despite constitutional provisions and international legal obligations, disparities between women and men, and between people living in marginalised areas of the country and those in better-resourced areas, persist with regard to access to and

quality of health services. It is absolutely imperative that the Government of Kenya address these inequalities and injustices and allocate the necessary resources to ensure equal access to services. Efforts should also include civic education on health-related matters, family planning, reproductive rights and HIV/AIDS. Furthermore, it is necessary to build the capacity of health workers to provide the necessary services to women. This includes, apart from the more obvious maternal health care and reproductive rights, providing support and health services for victims of rape and domestic abuse, who suffer both physical and psychological trauma.

Land and economic rights

Women's access to land and access to property other than land are severely restricted by customary law and practice, which essentially prohibits women from owning or inheriting land and other forms of property.⁴⁴ A disproportionately small share of land titles in Kenya are held by women while a large proportion of women in Kenya, especially in rural areas, depend on small-scale farming to survive.⁴⁵ This has played a big part in deepening poverty levels among women.⁴⁶ Implementing comprehensive land reforms needs to be done with due consideration of the right of women to own and inherit land in accordance with constitutional provisions and other national and international legal obligations.

Strengthening property rights for all Kenyans, but especially for women, would improve participation in local decision-making processes and increase the overall sense of responsibility for the welfare of the community. By gaining the legal right to land, title holders (regardless of gender) could more easily access financial markets, using the land as collateral to take up mortgages and develop their small-scale farming into more sustainable and profitable ventures – to the benefit of both their local community and the country's economic well-being as a whole.⁴⁷

Political representation

As already argued, Kenya has very low representation of women in legislative bodies and in senior positions in government and the public sector. And as we have seen, this is both a result of women's structural position in a highly patriarchal society and in turn a reinforcing factor in keeping women marginalised. The widely held perception that women are not fit for public office or leadership positions has slowed the pace of societal change in Kenya.⁴⁸ As the country moves forward towards reconciliation, changing this perception remains crucial if women are to gain control over their own lives and influence developments in the country.

The Constitution of 2010 stipulates that legislative bodies and public offices shall have no more than two-thirds representation of either gender. Thus, the principle recognises that certain groups in Kenya – i.e. historically women – have been marginalised by the political system. In a ruling at the end of 2012, the Supreme Court of Kenya ruled that this constitutional provision has to be implemented progressively until 2015. Its implementation will require that legislation be amended accordingly, to ensure that in particular elected bodies are fulfilling the constitutional requirement. This includes involving political parties and engaging in civic education to change society's perception of women in politics at both national and local levels. Furthermore, senior management in the public sector needs to take firm and swift action to ensure that the constitutional requirement is implemented.

Following the March 2013 general election in Kenya, for the first time 47 women representatives were elected to the National Assembly. Although they will contribute to increasing the representation and influence of women in Kenyan politics, much more needs to be done in order to ensure that these women are not marginalised and discredited by the political establishment. No female candidate was elected as governor in the general election. In total, the National Assembly will have 69 female members out of 290 (i.e. 24 per cent), of which 47 are women representatives elected by special ballot. Twenty women were nominated as senators by their respective political parties, but not one woman was elected to the Senate.⁴⁹ Although these figures represent an improvement compared to the 22 women in the previous National Assembly, the election results indicate that action needs to be taken if the voting patterns of Kenyans are to change and the constitutional requirement of gender representation is to become a reality.

When appointing his cabinet, the President of Kenya has ensured its compliance with the rule on gender representation. This is a good start. The government now needs to take a clear lead in promoting gender equality throughout the public sector and in all other spheres of society.

Conclusion

Despite the progress made in Kenya in implementing reforms and strengthening democracy, insufficient attention is paid to the gender aspects of reconciliation and healing. Kenyans have proven that they are determined to move forward and build a peaceful and prosperous country. However, if the progress being made does not benefit all members at all levels of society it will be undermined and risk collapsing. In the words of Libyan-Irish writer and film-maker Farah Abushwasha: ‘to exclude women is to exclude a vital force for the reconstruction of a stable, representative and democratic [state]’.⁵⁰

Kenya can and will reconcile, but reconciliation can only happen if it involves all victims and perpetrators of past and current abuses, and if all Kenyans can influence and have a stake in the future of their country. For generations, the women of Kenya have been particularly marginalised and their voices silenced. Affirmative action is necessary to ensure that this will not persist in the new Kenya. Government’s prime responsibility is representing the interests of all members of society. Only by government taking firm leadership on issues of gender and working in close collaboration with civil society and the private sector can the considerable obstacles be surmounted.

For its part, the NCIC and its partners, through their ongoing advocacy and efforts, will contribute significantly to mainstreaming a gender perspective on the reform and reconciliation process in Kenya:

- Ensure that gender is mainstreamed in the activities of the NCIC and in its partnerships with other stakeholders. Develop a gender strategy for the NCIC’s work at national and county levels.
- Encourage the involvement of women in the District Peace Committees in the various counties to ensure inclusivity in the promotion of peaceful co-existence.
- Cooperate with various stakeholders, such as the Federation of Women Lawyers (FIDA Kenya), non-profit voluntary women’s organisation Maendeleo ya Wanawake, the Coalition on Violence Against Women, and others, to increase public awareness of and advocacy for women’s issues at national and local levels.
- Partner with the NGEC in implementing programmatic activities in the context of the reconciliation agenda.
- Work with the education sector in terms of promoting equal opportunities for schoolchildren and countering harmful gender roles perpetuated by the education system.
- Promote studies on a gender-sensitive understanding of the history of Kenya through partnerships with actors such as the NGEC, civil society, media and independent artists.
- Work with the National Land Commission on mainstreaming gender in the process of land reforms.

Notes

- 1 TJRC (Truth, Justice and Reconciliation Commission) Kenya. 2013. *Report of the Truth, Justice and Reconciliation Commission, Volume IIC* [online], page iii. Available from: http://www.tjrkenya.org/images/documents/TJRC_report_Volume_2C.pdf [Accessed 10 July 2013].
- 2 Karamé, K. (ed.) 2004. *Gender and peacebuilding in Africa*. Oslo: Training for Peace Institute/Norsk Utenrikspolitisk Institutt.
- 3 See, for example, the article on gains made by women candidates in the March 2013 election: UN Women. 2013. Women elected to one-fifth of seats during Kenyan elections [online]. Available from: <http://www.unwomen.org/2013/03/women-elected-to-one-fifth-of-seats-during-kenyan-elections/> [Accessed 12 June 2013].
- 4 Bii, B. Female candidates claim discrimination in Kenyan elections [online]. Institute for War and Peace Reporting. Available from: <http://iwpr.net/report-news/female-candidates-claim-discrimination-kenyan-elections> [Accessed 12 June 2013]. See Ngari, A. 2012. Reconciling Kenya: Opportunities for constructing a peaceful and socially cohesive nation. *Policy Brief No. 1*, July. FBA, IJR and NCIC.
- 6 See, for example, the definition of gender provided by the World Health Organization: WHO. n.d. Gender [online]. Available from: <http://www.who.int/topics/gender/en/> [Accessed 19 May 2013].
- 7 The Bill is available from: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_173720.pdf [Accessed 19 May 2013].
- 8 Arabi, A. 2011. In power without power: Women in politics and leadership positions in South Sudan. In: F. Bubenzer & O. Stern (eds), *Hope, pain and patience, the lives of women in South Sudan*. Cape Town: Institute for Justice and Reconciliation.
- 9 Huyse, L. 2003. The process of reconciliation. In: D. Bloomfield, T. Barnes & L. Huyse (eds), *Reconciliation after violent conflict: A handbook*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA).
- 10 Mathangani, P. 2011. Kenyan women soldiers at the warfront. *Standard* [online], 25 October 2011. Available from: <http://www.standardmedia.co.ke/?articleID=2000045523&pageNo=1> [Accessed 8 May 2013].
- 11 UN Women. 2012. Kenya moves to increase women in its police force, and improve their work environments [online]. Available from: <http://www.unwomen.org/2012/09/kenya-moves-to-increase-women-in-its-police-force-and-improve-their-work-environments/> [Accessed 8 May 2013].
- 12 See, for example, the following: Galligan, Y. 2006. Women in Northern Ireland's politics: Feminising an 'armed patriarchy'. In: M. Sawer, M. Tremblay & L. Trimble (eds), *Representing women in parliament*. London: Routledge. 204–220.
- 13 Bloomfield, D. 2005. Reconciliation: An introduction. In: D. Bloomfield, T. Barnes & L. Huyse (eds), *Reconciliation after violent conflict: A handbook*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA).
- 14 Ayiera, E. 2010. Sexual violence in conflict: A problematic international discourse. *Feminist Africa: Rethinking Gender and Violence* 14: 7–20.
- 15 Huyse, L. 2003. Victims. In: D. Bloomfield, T. Barnes & L. Huyse, eds, *Reconciliation after violent conflict: A handbook*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA).
- 16 Garasu, L. 2002. Weaving consensus: The Papua New Guinea – Bougainville peace process [online]. Conciliation Resources. Available from: <http://www.c-r.org/accord-article/role-women-promoting-peace-and-reconciliation> [Accessed 19 May 2013].
- 17 Steans, J. 1998. *Gender and international relations: An introduction*. Great Britain: Polity. 100.
- 18 TJRC (Truth, Justice and Reconciliation Commission) Kenya. 2013 *Report of the Truth, Justice and Reconciliation Commission, Volume IIC*, Chapter 2 [online]. Available from: http://marsgroupkenya.org/pdfs/2013/05/TJRC_report_Volume_2C.pdf [Accessed 01 July 2013].
- 19 See, for example, the following report: Internal Displacement Monitoring Centre and Norwegian Refugee Council. 2012. IDPs' significant needs remain as inter-communal violence increases [online]. Internal Displacement Monitoring Centre. Available from: <http://www.internal-displacement.org/countries/kenya>. [Accessed 12 June 2013].
- 20 Steans, J. 1998. *Gender and international relations: An introduction*. Great Britain: Polity. 81.
- 21 Sussman, H. 2012. *Masculine identities: The history and meaning of manliness*. Santa Barbara, CA: Praeger. 16.
- 22 Kennedy-Pipe, C. 2007. Gender and security. In: A. Collins (ed.), *Contemporary security studies*. Oxford: Oxford University Press.
- 23 International Crisis Group. 2006. Beyond victimhood: Women's peacebuilding in Sudan, Congo, and Uganda. *Africa Report No. 112*, 28 June.
- 24 Kenya's reports to CEDAW are available from: <http://www.un.org/womenwatch/daw/cedaw/reports.htm> [Accessed 19 May 2013].
- 25 UN Human Rights Council, *Compilation: [Universal Periodic Review]: Kenya / Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1*, 16 February 2010, A/HRC/WG.6/8/KEN/2 [online]. Available from: <http://www.unhcr.org/refworld/docid/4c6127cc2.html> [Accessed 19 May 2013].
- 26 CEDAW. 2011. *Concluding observations of the Committee on the Elimination of Discrimination Against Women – Kenya*, 5 April 2011, CEDAW/C/KEN/CO/7 [online]. Available from: <http://www.unhcr.org/refworld/docid/4eeb60b12.html> [Accessed 19 May 2013].
- 27 Republic of Kenya Ministry of Gender, Children and Social Development. 2011. *Gender policy* [online]. Available from: <http://www1.uneca.org/Portals/ngm/Documents/GenderPolicy.pdf> [Accessed 19 June 2013].

- 28 Centre for Multiparty Democracy Kenya. n.d. *Kenya's fertile ground for women participation in politics: But are young women responding to these opportunities?* [online]. Available from: <http://www.cmd-kenya.org/index.php/youth-in-politics/latest-news/231-kenyas-fertile-ground-for-women-participation-in-politics-but-are-young-women-responding-to-these-opportunities> [Accessed 19 May 2013].
- 29 F. Bubenzer & O. Stern (eds). 2011. *Hope, pain and patience, the lives of women in South Sudan*. Cape Town: Institute for Justice and Reconciliation.
- 30 Karamé, K. (ed.) 2004. *Gender and peacebuilding in Africa*. Oslo: Training for Peace Institute/Norsk Utenrikspolitisk Institutt.
- 31 International Crisis Group. 2013. Kenya's 2013 elections. *Africa Report No. 197*, 17 January, page 48, supra note 222.
- 32 Scanlon, H. & Muddell, K. 2009. Gender and transitional justice in Africa: Progress and prospects. *African Journal on Conflict Resolution* 9(2): 9–28.
- 33 NCIC. 2011. *Ethnic diversity of the civil service*. Nairobi: NCIC.
- 34 See Article 197, Constitution of Kenya (2010).
- 35 UNDP. 2013. Discussion paper: Kenya's youth employment challenge. UNDP January [online]. Available from: http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/inclusive_development/kenya_s-youth-employment-challenge/ [Accessed 19 May 2013].
- 36 Centre for Rights Education and Awareness. n.d. Status of women & girls in Kenya: Urgent need to uphold human rights. Report by the Centre for Rights, Education and Awareness, with contribution by the Ministry of Health of Kenya [online]. Available from: <http://www.creawkenya.org/creaw-publications/the-status-of-women-and-girls-in-kenya.html> [Accessed 19 May 2013].
- 37 FIDA Kenya (Federation of Women Lawyers). 2010. Towards integrating gender in the transitional justice process in Kenya. Research report. Nairobi: FIDA Kenya, 28.
- 38 Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ). 2011. Progress in gender equality in education: Kenya. *SACMEQ Policy Brief No. 6* [online]. Available from: http://www.sacmeq.org/downloads/Genderpolicybriefs/06_KEN_Policy_brief%20-%20Gender_NewFormat_ver9_Final_111019.pdf [Accessed 19 May 2013].
- 39 See, for example, the following opinion piece by the British High Commissioner to Kenya: Turner, C. 2012. Women bear brunt of sexual violence. *The Star* [online], 10 December 2012. Available from: <http://www.the-star.co.ke/news/article-99027/women-bear-brunt-sexual-violence> [Accessed 8 May 2013].
- 40 Institute of Economic Affairs Kenya. 2009. Status of gender desks at police stations in Kenya: A case study of Nairobi Province [online]. Available from: http://www.ieakenya.or.ke/publications/doc_download/49-status-of-gender-desks-at-police-stations-in-kenya [Accessed 19 May 2013].
- 41 According to the World Health Organisation, health spending in Kenya is 4.6 per cent of gross domestic product.
- 42 From 1948 to 2013, the population of Kenya has increased from 5 million to approximately 42 million.
- 43 Centre for Rights Education and Awareness. n.d. Status of women & girls in Kenya: Urgent need to uphold human rights. Report by the Centre for Rights, Education and Awareness, with contribution by the Ministry of Health of Kenya [online]. Available from: <http://www.creawkenya.org/creaw-publications/the-status-of-women-and-girls-in-kenya.html> [Accessed 19 May 2013].
- 44 UN CEDAW. 2011. Concluding observations of the Committee on the Elimination of Discrimination Against Women – Kenya [online]. CEDAW/C/KEN/CO/7. Available from: <http://www.unhcr.org/refworld/docid/4eeb60b12.html> [Accessed 19 May 2013].
- 45 Land owned by women in Kenya amounted to one per cent according to a World Bank study from 2007. This figure has likely increased slightly, but remains disproportionately low. See Ellis, A. et al. 2007. *Gender and economic growth: Unleashing the power of women*. Washington DC: World Bank.
- 46 World Bank. 2011. Kenya: Poverty assessment [online]. Available from: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20204484~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:430367~isCURL:Y~isCURL:Y,00.html> [Accessed 17 June 2013].
- 47 World Bank. 2011. Kenya: Poverty assessment [online]. Available from: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20204484~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:430367~isCURL:Y~isCURL:Y,00.html> [Accessed 17 June 2013].
- 48 World Bank. 2003. The Kenyan strategic country gender assessment [online], 55. Available from: <http://siteresources.worldbank.org/EXTAFRREGTOPGENDER/Resources/KenyaSCGA.pdf> [Accessed 19 May 2013].
- 49 For a comprehensive list of those elected to public office, see *The Kenya Gazette*, Vol. CXV, No. 45, Nairobi, 13 March 2013.
- 50 Abushwasha, F. 2011. Libya will only become inclusive when women are given a say in its future, *Guardian* [online], 2 September 2011. Available from: <http://www.guardian.co.uk/global-development/poverty-matters/2011/sep/02/libya-inclusive-women-future> [Accessed 19 May 2013].



This Policy Brief is authored by Peter Nordström, Program Officer, Conflict Prevention in Practice Program, Folke Bernadotte Academy (FBA). It is the third in a series of six policy briefs produced as part of the project “Promoting National Cohesion and Reconciliation in Kenya”, a tripartite collaboration between FBA (Sweden), the Institute for Justice and Reconciliation (IJR – South Africa) and the National Cohesion and Integration Commission (NCIC – Kenya).

The policy briefs are available for download on the respective institutions’ websites.

The author would like to thank Allan Ngari, Project Leader, IJR for managing the editing of the brief and the following individuals for their comments and suggestions in the writing of this Policy Brief: Milly Lwanga Odongo, Vice-chairperson, NCIC; Fatuma Mohamed, Commissioner NCIC; Guyo Liban, Assistant Director, NCIC; Munini Mutuku, Senior Programme Officer, NCIC; Elvi Agunda, Project Officer, NCIC; Ann Bernes, Head of Department, FBA; Gabriela Elroy, Head of Department, FBA; Therese Jonsson, Training and Project Leader, FBA; Allan Ngari, Project Leader, IJR; Tim Murithi, Programme Manager, IJR; Friederike Bubenzer, Senior Project Leader, IJR; and Elizabeth Lacey, Intern, IJR.

This document has been produced with financial assistance from the Swedish International Development Cooperation Agency, Sida. The views herein shall not necessarily be taken to reflect the official opinion of Sida.