

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**RESEARCH PROJECT FOR AN M.A IN INTERNATIONAL
STUDIES**

**WOMEN RIGHTS AS HUMAN RIGHTS: A CRITICAL ANALYSIS
OF THE IMPLEMENTATION OF CEDAW IN KENYA 1991-2002**



RESEARCH BY : JACQUELINE A.A. MOGENI

REGISTRATION NUMBER: R50P/8204/02

SUPERVISOR: PROF. MAKUMI MWAGIRU

TABLE OF CONTENTS

TABLE OF CONTENTS.....	I
DECLARATION.....	IV
DEDICATION	V
ACKNOWLEDGEMENTS.....	VI
ABBREVIATIONS AND SYNONYMS	VII
CHAPTER ONE : DEVELOPMENT OF HUMAN RIGHTS	1
INTRODUCTION.	1
A. Research Objectives-----	3
B. Importance of the Study-----	3
C. Literature Review. -----	4
D. Theoretical Framework -----	6
E. Hypothesis -----	7
F. Summary of Chapters-----	9
G. Methodology-----	10
H. Limitation-----	11
CHAPTER TWO: DEFINITION OF CONCEPT OF WOMEN’S RIGHTS.....	11
i) Introduction.....	11
ii) Background-----	18
iii) Paris Conference-----	19
iv) Women’s Rights Concept in United Nations-----	23
v) The Human Rights Covenant-----	26

vi) Subsequent Human Rights Documents-----	26
vii) Organs and Agencies of women’s rights in the United Nations-----	27
viii) Growth of the concept of women’s rights-----	29
ix) Applying the Human Rights Framework to women-----	31
CHAPTER THREE: WOMEN’S RIGHTS AND HUMAN RIGHTS IN KENYA..	33
i) Introduction.....	33
ii) Human Rights in Kenya-----	34
iii) Human Rights in Kenyan Constitution-----	37
iv) Women’s Rights in Kenya-----	42
v) Legislation of Women’s Rights -----	44
CHAPTER FOUR: KENYAN IMPLEMENTATION OF CEDAW.....	47
i) Introduction.....	47
ii) Background-----	48
iii) Equality between men and women-----	50
iv) De jure discrimination against women-----	52
v) Educational and Employment Opportunity-----	53
vi) Women’s Land and Property Rights-----	54
vii) Political Representation-----	58
viii) Legal Protection of Women Rights-----	60

CHAPTER FIVE: CRITICAL ANALYSIS OF IMPLEMENTATION OF

CEDAW.....62

i) Introduction.....62

ii) Kenya’s Reporting History-----63

iii) Themes in CEDAW Reports-----65

iv) Kenya’s 1st and 2nd National Reports (1990) Themes-----66

v) Law of Succession-----67

vi) Land Ownership-----68

vii) Analysis of government’s effort in implementing CEDAW-----69

viii) Definition and application of the principle of Discrimination Against Women----69

ix) Critique of Kenya’s effort at implementation of CEDAW-----72

CONCLUSION AND RECOMMENDATIONS.....75

BIBLIOGRAPHY.....

DECLARATION

I, **JACQUELINE AKHALEMESI MOGENI**, do hereby declare that this dissertation is my own original work and that it has not been submitted for examination for the award of a degree at any other university.

Signed :.....*Akhalemesi*.....

JACQUELINE AKHALEMESI MOGENI
(MA CANDIDATE)

Signed :.....*Mwagiru*.....

PROFESSOR MAKUMI MWAGIRU
SUPERVISOR

DATE : 23OCTOBER 2009

DEDICATION

This work is dedicated to my mother Mrs. Norah Aliaro Anam and my husband Okong'o Omogeni, two people who have always rejoiced when I excel.

AND

To my children Kami and Gekara for being so patient when mummy went to school and to Okong'o Jnr and Aliaro for "accompanying mummy" through her last year in school.

AND

To all the women of Kenya. Watching you everyday, busy as bees, trying to make ends meet for you and everybody else, confirmed my conviction that much more still needs to be done for Kenyan women.

ACKNOWLEDGEMENT

Behind all my success God's grace is there. This dissertation would not have been a reality without His help.

Without the constructive comments of my supervisor Professor Makumi Mwangi, the dissertation would not have been possible. My sincere gratitude goes to you.

My gratitude goes to my group of study mates who were there for me even at the oddest of hours for group work (at midnight) to thrush out the edges as we prepared for International Law paper. These were, Mercy Atieno, Rose Makini, Lydia Kiburu and Ann Monene whose contact and encouragement on a daily basis meant a lot during the whole period of study. I am glad to have you as my friends.

Last but not least is my then director at SNV, Jessie Bokhoven who always saw the best in all her employees she helped me to dare dream even when I was carried my twins to term in my last year of study.

Thank you all.

LIST OF ABBREVIATIONS

AU African Union

BPFA Beijing Declaration and Platform for Action

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CERD International Convention on the Elimination of All Forms of Racial
Discrimination

CSW Commission on the Status of Women

CRC Convention on the Rights of the Child

DAW Division for the Advancement of Women

ECWD Education Centre for Women in Democracy in Kenya

ECOSOC Economic and Social Council of the United Nations

ICESCR International Covenant on Economic, Social and Cultural Rights

ICCPR International Covenant on Civil and Political Rights

ICW International Council of Women

ILO International Labour Organisation

NFLS Nairobi Forward Looking Strategies

UDHR Universal Declaration of Human Rights

UN United Nations

CHAPTER ONE

DEVELOPMENT OF HUMAN RIGHTS

Introduction to the Study

In June 1993, at the Vienna World Conference on Human Rights the international community openly acknowledged that the body of international law and mechanisms established to promote and protect human rights has not properly taken into account the concerns of over half the world's population. States formally recognized the human rights of women as "inalienable integral and indivisible part of human rights" and expanded the international human rights agenda to include gender specific violations.¹ Human rights are universal legal guarantees protecting individuals and groups against actions and omissions (failures) that affect their freedoms and human dignity. The core documents making up the International Bill of Rights are: Universal Declaration of Human Rights (1948); The International Covenant on Economic, Social and Cultural Rights (1966) and The International Covenant on Civil and Political Rights (1966).

These core documents are supplemented by a range of other conventions and declarations on specific issues such as torture (CAT), racial discrimination (CERD), and discrimination against women (CEDAW). There are also regional documents on human rights in Africa and Europe such as the Convention for the Protection of Human Rights and Fundamental Freedoms (Europe) and the African Charter on Human and Peoples Rights (Africa). Through ratification and domestication, international human rights law and standards become part and parcel of domestic law. International and Regional Human Rights Instruments have been widely ratified and accepted. Whether a state automatically acknowledges international law, entrenches human rights in its constitution

¹ Vienna Declaration and Programme of Action, adopted by the World Conference of Human Rights, June 1993, UN Doc A/CONF.157/24, at 33, para 18 (1993), 32 ILM 1661

or incorporates them through judicial interpretation rules, human rights are an important feature of almost every jurisdiction in one way or another.

This study will examine efforts that have been made so far in recognising and implementing women's rights as human rights in Kenya. Of necessity, the research will entail a critical analysis of how Kenya has fared in implementation of CEDAW since early 90s to the turn of the century. The research will examine efforts that have been made by Kenya as a country to incorporate these rights into local laws and how these have been implemented.

Recognition has been made, though belatedly, of the important connection there is between development and the promotion, protection and fulfillment of international human rights and in particular, economic, social and cultural rights. This recognition has led to the propagation of the idea of a human rights approach to development. African scholars have argued that economic, social and cultural rights should take priority over civil and political rights. According to the late President Julius Nyerere, "poor people find civil and political rights a luxury and until their bellies are full they are more interested in economic rights"² and this study will however not examine the relevance, relationship and impact of the processes of development on the implementation of economic, social and cultural rights in Kenya.

The study will examine the general human rights standards frequently described as the "mainstream" human rights standards and their relevance to women. Further, it will point to a number of problems which have been identified as presenting obstacles so far as the application of the general human rights standards to women is concerned. These

² Nyerere J.K, (1969), Suitability and Change in Africa, in Colin Legume d. Africa Contemporary Record Vol. 2. P.3

obstacles, which are evident at the international level, do recur at the domestic application of the general standards of human rights for the benefit of women.

Research Objectives

The broad objective of this research will be to critically examine the implementation and protection of women's rights in Kenya in the context of human rights discourse at the international level for the period 1991 to 2002.

The specific objectives of the research will be:

1. To outline the history and development of women's rights at the international level and regional level
2. To critically examine the implementation of the Convention on Elimination of All Forms of Discrimination (CEDAW) by Kenya
3. To examine the impact, opportunities and obstacles presented by CEDAW on the promotion, protection and fulfillment of women's rights in Kenya.
4. To suggest ways in which the efforts can be harnessed for the purpose of implementing CEDAW to protect women's rights in Kenya.

Importance of the Study (Justification)

There is a strong rationale for focusing on women's rights in broader context of human rights because of the international human rights and the legal instruments that protect them were developed primarily by men in a male-oriented world. They have not been interpreted in a gender-sensitive way that is responsive to women's experiences of injustice. Critical recharacterization of international human rights is needed in order that women's distinctive human rights will not be marginal, and implementation of such rights becomes part of the central agenda of human rights work.

What constitutes discrimination against women is not a point on which states readily agree. Nonetheless, the legal obligation to eliminate all forms of discrimination

against women is a fundamental tenet of international human rights law. Therefore this study will fully analyse CEDAW and show how as opposed to the other human rights instruments, it develops the legal norm on non discrimination from a women's perspective. It moves from a sex-neutral norm that requires equal treatment of men and women, usually measured by how men are treated, to recognize that the particular nature of women does merit a response from the state.

A good case study to consider here will be Kenya, and how it has performed in the implementation of CEDAW with regard to enhancing women's rights. This approach is novel in both intent and scope; it deserves study particularly because it argues that in the area of women's rights as human rights there is the least amount of resonance, especially in a country like Kenya where this lack of resonance has prevented the effective implementation of the rights of women.

Lastly, given the number of international conferences on women, the intense lobbying of Kenyan government for ratification of the African Protocol on Women's rights and statements from the United Nations General Assembly concerning the protection of Women's Rights this study would not have come at a better time than now. This study will therefore help to highlight some of the areas that the women's rights discourse may be experiencing difficulties in translating the international treaties to national laws in a country like Kenya

Literature Review

The literature on women's rights espouses different ideological viewpoints on the fact of women rights being human rights. The factors that are barriers to the consideration of women's rights as human rights are rooted in ideological aspects especially as they relate to the tension between the law and the human rights discourse at the international level as well as within the legal system.

Feminist scholars have argued, in the context of national laws that campaigns for women's legal rights are at best a waste of energy and at worst positively detrimental to women. The critique, developed also by the Critical Legal Studies movement, has several aspects. One that recourse to the language of rights may give a rhetoric flourish to an argument, but provides only an ephemeral polemic advantage, often obscuring the need for political and social change.³ To assert a legal right, critical scholars argue, is to mischaracterize the social experiences of women and to assume the inevitability of social antagonism by affirming that social power rests in the state and not the people who compose it.

Noreen Burrows⁴ on her part sees the definition of women's rights as the means to move beyond the limitations of the nondiscrimination focus on women's international human rights. The disadvantage however would be that the formulation of women-specific rights could lead to their marginalization within the human rights system. Laura Reanda however points out that the creation of separate institutional mechanism for women within the United National system has typically been the creation of a "women's ghetto", given less power, fewer resources, and lower priority than mainstream human rights bodies.⁵

Successful negotiation among South/North and East/West feminists is perhaps most visible in the "women's rights are human rights" campaign leading up to, and at, the Beijing conference. The impetus seems to have been feminist transnational networking in preparation for the UN Conference on Human Rights, held in Vienna in 1993.

³ Mark Tushnet, "An Essay on Rights," *Tex. L.Rev.* 62(1984): 1363, 1371-72

⁴ Noreen Burrows, "International Law and Human Rights: The Case of Women's Rights" in *Human Rights: From Rhetoric to Reality*, ed. T. Campbell et al. (New York: Basil Blackwell, 1968,

⁵ Laura Reanda, "The Commission on the Status of Women" in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (Oxford: Oxford University Press, 1992),

Understanding that this conference would be an occasion for reinterpreting and broadening the scope of the Universal Declaration of Human Rights (adopted in the United Nations in 1948), feminists were spurred to have women's interests included. Thus, Women's Human Rights was a global campaign from the start.⁶

Concepts of human rights, however, are not static. Feminists have successfully challenged the perception that family, civil society, and the state are separated and nearly everywhere have legitimated women's participation in civil society and the state. It is for this reason that feminists have felt emboldened to challenge violations taking place in the name of cultures, religions and national sovereignty, basing their claims on women's human rights.

In feminist practice, as Bunch and Fried⁷ have pointed out, "Women's human rights claims represent a shift in analysis that moves beyond single-issue politics or identity-based organizing and enhances women's capacity to build global alliances based on collective political goals and a common agenda." However, claims based on women's human rights are not without risk to the larger feminist agenda. Because the claim of women's human rights seemingly presumes women's commonality all around the world, some feminists expressed concern that this rights-based politics will lead us to ignore the diverse and different situations between South and North or between developed and developing countries. For example, Inderpal Grewal⁸ points out, "the struggle to keep various kinds of differences alive in the women's human rights arena is a difficult one"⁹

⁶ Andrew Byrnes, "Women, Feminism and International Human Rights Law" *Australian Yearbook of International Law* 205 at 211.

⁷ Bunch, Charlotte and Susana Fried. 1996. "Beijing '95: Moving Women's Human Rights from Margin to Center." *Signs*. Vol. 22, No.1.

⁸ Jyoti, Sanghera. 1998. "Is Sisterhood Global?" *Peace and Freedom*. Vol. 58, No. 2.

⁹ *Ibid*

This needs to be kept in mind if the concept of women's rights as human rights has to take effect.

Theoretical Framework

In the fifty years following the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948, anthropology as a discipline has embraced a predominantly ethical relativist stance toward the idea of human rights as a legitimate universal concern for all cultures. In the past decade, however, the rising prominence of women's rights as human rights has challenged this point of view. Within the context of the global women's human rights movement, feminist anthropologists are in the forefront of this challenge, striving to uphold anthropology's important focus on cultural context, while at the same time exhibiting a deep concern for practices which harm women, including female genital mutilation and incest, both of which may be argued to be morally objectionable outside of any given culture. Feminist anthropological theory and feminist legal scholarship have questioned the desirability of objective ethnographic reporting of such practices, claiming that to remain aloof from statements of value implies complicity through silence¹⁰.

In view, to analyze the barriers posed by culture, custom, and personal laws with regard to women's rights as human rights, it is important to also analyse the underlying assumption about the female personality that accompanies any discourse of women's rights especially as presented in the Convention on the Elimination of All Forms of

¹⁰ Cook, Rebecca J. "Women's International Human Rights Law: The Way Forward," in Cook, Rebecca J., *Human Rights of Women: National and International Perspectives*. University of Pennsylvania Press, 1994.

Discrimination Against Women¹¹. The personality presented in CEDAW is one of a privileged personality, free, independent, enlightened woman endowed with rights and rational agency. Though the enlightenment view of the human personality is not wrong altogether, but it would be wrong to assume that the values contained in the Universal Declaration of Human Rights (UDHR) are truly universal. At the same time, it is important to expose the ideologies of power that sustain counter-ideologies which view women as inferior.

The feminist anthropological position on human rights does not only undermine the validity of ethical relativism, but also emphatically argues that the western liberal tradition, which informs the bulk of the contemporary human rights movement, represents a fragmentary discourse on human rights, and so cannot currently make claims for universality. In addition, human rights are not yet recognized as universally valid, and the dominant focus is still on political and civil rights, or first generation rights, as compared to the weaker emphasis on important economic, social, and cultural rights.

Feminist anthropologists who support women's human rights must face the same conundrum that feminist legal scholars, such as Rebecca Cook, have articulated, namely, "how can universal human rights be legitimized in radically different societies without succumbing to either homogenizing universalism or the paralysis of ... relativism?"¹² This study argues that a defensible way in which this challenge may be met is to acknowledge that universality and specificity are not necessarily intrinsically

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N.GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979), adopted 3 September 1981. (CEDAW).

¹² Ibid

oppositional forces, or, they are not mutually exclusive, either conceptually or practically.¹³

The topic of women's human rights encapsulates many of the contentious issues swirling around international human rights, prominently among them, the relationship between the individual and society. Therefore an adequate account of women's rights as human rights must reveal women's oppression as culturally, socially, and historically situated; that is, it must pay attention to the particular kind of oppression that women suffer in situation. It is in this sense that Simone de Beauvoir and Jean Paul Sartre have emphasized that women and men are "singular-universals." That is, they are understood in virtue of their particular situation which is lived by them singularly, but their situation--as situation--has a universal dimension to the extent that all situations are lived and experienced in a particular way by everyone. Thus we might offer a defense of women's rights as human rights in light of the fact that their situation--as situation--has a universal dimension in so far as it is one aspect of the human condition which, as situation, all persons share¹⁴.

Hypothesis

The study will test the following hypotheses:

1. The provisions of CEDAW are not enough to protect the women rights of women as human rights in Kenya.

¹³ Fox, Diana J. and Naima Hasci, eds., *Women's Rights*. Lewiston, NY: Edwin Mellen Press, 1999.

¹⁴ Linsenbard, Gail, "Women's Rights as Human Rights: An Ontological Grounding," in Diana J. Fox and Naima Hasci, eds., *Women's Rights as Human Rights: Activism and Social Change in Africa*, Lewiston, NY: Edwin Mellen Press, forthcoming. 1999.

2. Women rights are intricately linked to many other factors making it difficult to extract and enjoy their rights.

3. Experiences of other universal bodies can be a useful reference in improving the rights of women

Summary Of Chapters

The study is divided into five chapters; the first will be an introductory chapter on women's rights and their incorporation in various international, regional instruments and national constitutions. The second chapter will examine the development of women's rights in the context of international human rights and the implication of this development to the whole discourse of human rights. Of particular concern will be those mechanisms that are provided for in the CEDAW. The third chapter will examine nexus of women rights and human rights, looking at how Kenya has made progress in, domesticating the various human rights instruments it has ratified. The fourth chapter will consider efforts that have been to make women's rights justiciable in Kenya from 1992-2002.

This chapter will present a contemporary picture of women's rights in Kenya. The fifth and last chapter will critically analyse case law in which justiciability of these rights has been examined in Kenya using this as a case study. Lastly the study will make some conclusions and recommendations drawing from the experiences encapsulated in the foregoing chapters with regard to how implementation of women's rights in Kenya can be enhanced.

Methodology

The study will mainly be a library and internet-based research. There will be extensive use of the University of Nairobi-Jomo Kenyatta Library and a variety of electronic resources including online databases dealing with women's rights issues.

There will be a review and analysis of existing written material collected from civil society organizations, relevant government departments, newspapers and other local and international human rights groups. Materials from both selected academic sources which are an important process especially the reviewing of academic reports and documents prepared by relevant agencies will be examined. In studying the material certain pragmatic selectivity will be applied while keeping the overall goal of the study in mind.

Limitation Of The Study

The study deals with an ongoing and developing process which poses a challenge due to unpredictability of outcomes making it difficult to draw strait jacketed conclusions.

CHAPTER TWO

THE EVOLUTION OF THE CONCEPT: WOMEN'S RIGHTS AS HUMAN RIGHTS

Introduction

The concept of human rights and human rights law is dynamic in nature. Although a range of fundamental human rights has already been legally recognized in the Bill of Rights, existing rights are being more broadly interpreted and additional rights are being proposed and accepted by the United Nations. It is this dynamism that makes human rights a potentially powerful tool for promoting social justice and the dignity of all people. Human rights thus acquires new meaning and dimension at different points in history as oppressed groups demand recognition of their rights and new conditions give rise to the need for new protections. It is on the basis of this that women all over the world launched an unprecedented international movement for the recognition of women's human rights as an integral part of human rights...

They mobilised and organised themselves to call for recognition of their rights. Several meetings and consultations were held around the world to chart a course for what came to be known as the women's liberation movement. The International Council of Women was set up towards the end of the nineteenth century. 66 American and 8 European women attended its first and founding convention, held in Washington in 1888 where participants decided to implement a plan to put an end to the oppression of women. Some 5000 women participated in the second meeting, which took place in London in 1899. Women workers were beginning to organise movements demanding better working conditions. Other social movements followed.

Political rights for women especially the right to vote was a major issue. In the

United Kingdom and United States, two organisations; the National Woman Suffrage Association and the American Woman Suffrage Association were founded to work towards attaining this right for women. The women followed this up with an intense and aggressive campaign for equal participation of women in politics. Nevertheless, it was in New Zealand that women were first granted the right to vote, in 1893, followed by Australia in 1902, Finland in 1906 and Norway in 1913. Kenyan women gained the right to vote in 1963, this was the first date women were allowed to participate (by voting) in elections, not the date that women were granted universal suffrage without restrictions. When the United Nations was founded in 1945, only 30 of its 51 Member States accorded women the same voting rights as men.

The League of Nations which was founded in 1919 and officially dissolved in 1946 did not really function after 1939. It however, adopted some instruments dealing with the protection of women such as the International Convention for the Suppression of the Traffic in Women and Children of 1921.¹⁵ The first international convention relating to the protection of women was adopted at the beginning of the twentieth century: the International Convention for the Suppression of the White Slave Trade of May 4, 1910. As a result of the dynamic activities of women, the United Nations and its specialised agencies engaged from inception, in the promotion and protection of the rights of women. The Charter of the United Nations, which reaffirms "... faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and

¹⁵ Bromley, Pamela. "Human Rights and the League of Nations: How Ideas about Human Rights came to be Included in the Charter and Work of the League of Nations" Paper presented at the annual meeting of the Western Political Science Association, Manchester Hyatt, San Diego, California, Mar 20, 2001 (<http://www.allacademic.com/meta/p237945>

women ...” was the first international instrument to define equal rights for men and women in precise terms.¹⁶

At its first session in 1946, the General Assembly adopted resolution 56(1) recommending that all Member States which had not already accorded women voting rights adopt measures to grant women those rights. The same year, the Economic and Social Council set up the Commission on the Status of Women to report and make recommendations on the promotion of the human rights of women and to recommend measures to achieve equal rights for men and women. That same year, the United Nations created in its secretariat the Division for the Advancement of Women (DAW), the main objectives of which are to improve the status of women worldwide and ensure the effective achievement of equality between men and women.¹⁷

The Universal Declaration of Human Rights (UDHR) adopted in 1948, enshrines the principle of equality between women and men and prohibits discrimination against women. Other United Nations (UN) standard setting instruments which prohibit discrimination against women are Convention on the Political Rights of Women 1952 which ensures equality of political rights between women and men; Declaration on the Elimination of all forms of Discrimination against Women 1967 which provides that discrimination against women “is fundamentally unjust and constitutes an offence against human dignity”; Convention on the Elimination of all forms of Discrimination against Women 1979 (CEDAW) which represents a progressive development in human rights, prohibits discrimination against women because it not only reaffirms standards already embodied in other conventions and declarations, it adds dimensions and principles that

¹⁶ Florence Butegwa (2005), “International Human Rights Law and Practice: Implications for Women”, in *From Basic Needs to Basic Rights: Women’s Claim to Human Rights* by Women, Law and Development International. Article also available from: <http://www.cwgl.rutgers.edu/globalcenter/butegwa.html>

¹⁷ Ibid

are both significant and new; and the Declaration on the Elimination of Violence against Women which identifies violence against women as an obstacle to the achievement of equality, development and peace, a violation of the rights and fundamental freedoms of women, and a manifestation of historically unequal power relations between men and women, which have led to domination over women.

To raise public awareness and to encourage actions designed to eliminate discrimination against women, the UN, in 1972, proclaimed 1975 the International Women's Year with a Policy of promoting equality, development and peace in the world. The World Conference of the International Women's Year held that year in Mexico City adopted the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace and the World Plan of Action for the Implementation of the Objectives of the International Women's Year. The Plan recommended that Governments ensure the equality of women and men before the law, and also equality of opportunities in education, training and employment. Thereafter the period 1975 1985 was declared United Nations Decade for women in recognition of the fact that women comprising approximately 50% of the world's population have been marginalized and has not participated in social, political and economic development to an optimal level. The decade was to be used to remedy the wrongs and injustice of the past and concrete steps taken to bring women into the mainstream of development.

Ten years later, the World Conference charged to examine and evaluate the results of the UN Decade for Women: Equality, Development and Peace, held in Nairobi, Kenya and brought the decade to a close. The conference adopted the Nairobi Forward Looking Strategies (NFLS) for the Advancement of Women, a basic tenet of which was that the elimination of all forms of inequality between men and women would be an essential contribution to strengthening peace and security.

The UN Fourth World Conference on Women was held in Beijing China in 1995 and adopted the Beijing Declaration and Platform for Action reaffirming the determination of participating governments to advance the goals of equality, development and peace for women in the interest of all humanity, accelerate the implementation of the NPLS and eliminate any obstacles to the active and equal participation of women in the decision making process in all spheres of life. In 1990, the World Summit for Children was held in New York. The Conference issued the World Declaration on the Survival, Protection and Development of Children, which states that “strengthening the role of women in general and ensuring their equal rights will be to the advantage of the world's children” and stresses that “girls must be given equal treatment and opportunities from the very beginning...”

The UN Conference on Environment and Development in Rio de Janeiro, 1992 recognised women's multiple role in development and environmental protection. This was followed by the World Conference on Human Rights in Vienna Austria in 1993. The Conference reaffirmed that all human rights are universal, indivisible, interdependent and interrelated and that the human rights of women are an inalienable, integral, and indivisible part of universal human rights. It called for the elimination of all forms of discrimination against women and the eradication of all forms of violence against women.

The International Conference on Population and Development in Cairo in 1994 stressed that reinforcing the capacity for action and the autonomy of women was a prerequisite for sustainable development and reaffirmed the right of women to control their own fertility. In 1995, the World Summit on Social Development Copenhagen drew attention to the central role of women in development, women's social issues and the discriminatory practices that prevented their full participation in society. The second UN

Conference on Human Settlements (Habitat 11) in Istanbul in 1996 adopted the Istanbul Declaration on Human Settlements, in which governments pledged to redouble their efforts to eradicate poverty and discrimination and to ensure the participation on the basis of equality of women and men in all spheres of society. The Oslo conference on Child Labour in Oslo in 1997 recalled the role played by women in the eradication of child labour and deplored the continuing discrimination against girls.

The beginning of the 20th Century began with review meetings to appraise and assess the level of implementation of some of these documents by participating governments. The Beijing +5 and Beijing +10 meetings organised by the Commission on the Status of Women held in 2000 and 2005 are cases in point. During this same period many feminist social and political theorists have been very critical of the concept of “universal human rights”, and of the deployment of the concept of “women”.¹⁸ The concept of women's human rights stems from the long-evolving field of human rights but emerged as a distinct aspect of human rights during the international women's movements of the 1980s. The human rights framework provided a universal legal context within which women activists and academics from around the world could promote and protect women's rights.

At the 1919 meeting ideas and power played a role each at different stages of the policymaking process in including or excluding ideas from international treaties. Diplomats considered a wide range of ideas prior to the negotiation, but they proposed only the ideas that resonated strongly with their existing interests. Once the negotiation was underway, powerful states then played a key role in determining which ideas were

¹⁸ “Women’s rights are human rights”: campaigns and concepts’, in L. Morris (ed) *Rights: Sociological Perspectives*, Routledge, 2006 pg. 96 - 98

included in the charter. As the organization began to operate, the activities in its charter acted to confine its work to those areas. The League thus pursued its women's and labor rights mandates and took no action to promote religious or minority rights.

This chapter will at the same time trace the evolution of thought and activism over the centuries aimed at defining women's human rights and implementing the idea that women and men are equal members of society. There are three standpoints that have been articulated. First, because women's history has been deliberately ignored over the centuries as a means of keeping women subordinate, and is only now beginning to be recaptured, this is primarily based on literature that is largely written from the perspective of the west and other writers from other regions only emerge in the twentieth century. Second, because of this ignorance, any argument that the struggle to attain rights for women is only a northern or western effort is uninformed. Simply not enough available records exist detailing women's struggles or achievements in the southern or eastern sections of the world. The few records available to northern writers attest that women in other parts of the world were not content with their status. Third, the oft-heard argument that feminism (the struggle for women's equality) is a struggle pursued primarily by elite women is simply another example of the traditional demeaning of women.

Background

Across cultures, women's human rights have been not just violated but also unrecognized because the dominant local meaning of what it means to be a human differs with gender. Women's human rights activists and scholars have dealt with intra-cultural and cross-cultural variety in the development and use of the concept of human rights to promote the rights and development of women. They have used the examples of women's human rights violations to demonstrate the inseparability of political, civil, social,

economic, and cultural rights, and they have challenged the dominant nondiscrimination human rights paradigm. This study will assess the effectiveness of their approaches for dealing with the problems of women's human rights recognition thus the chapter will offer an account of the implicit theory of women's human rights activism.

Historical accounts of the interwar period focus on the campaign led by women's groups to mobilize the League of Nations to promote the issue of women status.

Economic rights, nationality and suffrage were the issues most frequently discussed in this context. However, the League did not respond to demands to adopt an equal rights treaty nor to enact the principle of equality between the sexes in nationality laws. Despite this the League did engage in a whole array of activities that dealt with women though not with their status and rights.¹⁹

There was a project developed under the auspices of the League, which was designed mainly to rescue women in various distressing situations and to fight against trafficking in women. The fact that the League concerned itself with this kind of activity and at the same time refrained from anything that had to do with 'women rights' per se indicate the nature of the world polity at the time as well as the gender that underlined its actions or lack thereof.

The Paris Conference

The Peace Conference in Paris in 1919 served as setting the stage for the creation of the first official global organizations, namely the League of Nations and the International Labour Organization but also for the consolidation of the Women's Movement. Representatives of many women's movements came to Paris to try to mobilize the newly created organizations for their cause and to carve out a space for

¹⁹ Gary S. Becker (1981, 1991, Enlarged ed.). *A Treatise on the Family*. Cambridge, MA, Harvard University Press

themselves within the emerging agenda. Women sought to constitute themselves as a group with distinct interests that should be represented in the new world arena.

Women groups mainly the International Women Suffrage Alliance (IWSA) and the International Council of Women (ICW) lobbied heads of states and the organizers of the Peace Conference via official and unofficial channels. President Wilson of the United States approved the “representation of women’s interests” at the Peace Conference. The French representative, Clemenceau, thought that women could best represent “women’s interests” and therefore women themselves should be included in the Commission of the Peace Conference. Wilson, on the other hand meant to appoint a special commission (of men) who could hear suggestions from women’s organizations about “questions of interest to women which were of international importance”.

The International Council of Women was founded was founded to gain for women cultural, economic and political rights, meaning the right to education, work and profession, the right to vote or to be elected; to spread this action in as many countries as possible and coordinate it. In 1899 ICW presented a supporting motion in favour of peace presented to the First International Peace Conference, held in the Hague in 1899. Eight years later ICW delegates (only two private international organizations admitted, the other being that of the Churches) participated in the Second International Peace Conference, held in the Hague in 1907. At the League of Nations meeting, one of the Vice-Presidents of ICW was chosen to represent the most important international organizations on the Committee of the League of Nations for the prevention of trafficking in Women and Children.

The Supreme War Council of Allies ruled that neither was necessary, instead, all commissions relevant to women’s issues could receive delegations from women’s organizations. The women’s delegation to the Commission on the League of Nations

presented seven resolutions covering the moral, political and educational domains. The resolutions presented were not radical and were done with caution. For example the political resolution on suffrage stated in part “The principle of woman suffrage should be proclaimed by the Peace conference and the League of Nations so that it may be applied all over the world as soon as...”²⁰

No resolution however was adopted. Instead, there were three references made to women in the league’s charter. The first concerned women’s representation: “all positions under or in connection with the league, including the secretariat shall be open equally to men and women.”²¹ Nevertheless the representation of women was minuscule in most of the league’s institutions except the ones that dealt with humanitarian affairs. This underrepresentation of women served as a rallying point for women’s organization throughout the interwar period²². The second reference concerned working conditions: “fair and human conditions of labor for men, women and children”²³

The third reference dealt with traffic in women and children and was very mildly put: “supervision over the execution of agreement with regard to the traffic in women and children.” One of the “moral” resolutions that the women presented to the commission involved the same matter. This became a major preoccupation of the league. Women who worked abroad as prostitutes and women who were dislocated by various military and

²⁰ Arnold Whittick, *Woman into Citizen: The Progress of Women Towards Emancipation During the 20th. Century*, Athenaeum / Frederick Muller, London, 1st. Edition 1979

²¹ Article 7

²² Miller, John and Carolyn Miller. 1991. "Thematic continuity and development in Coastal Kadazan narratives." In Stephen H. Levinsohn (ed.), *Thematic continuity and development in languages of Sabah*, pp 105-35. Pacific Linguistics C, 118. Canberra: Australian National University.

²³ Article 23

political circumstances (always classified with children) were the only categories of women with which the league of nations dealt extensively.

Women's effort resulted in the inclusion of a reference to fair and humane conditions of labour for men, women and children as already mentioned.²⁴ After the founding of the League of Nations and the ILO, representatives of women's organizations began to regularly observe the proceedings and work of the inter-governmental organizations and give their own proposals to government representatives. They founded the Liaison Committee of Women's International Organizations, which became the "the voice of women" in Geneva. Women's organizations campaigned throughout the 1920s and 1930s to ensure, among other things, that women and their rights would not be neglected.

To summarize the relationship between women's organizations and the League of Nations, Carol Miller, researcher on gender issues, refers to two ground-breaking achievements. First, women created a model for cooperation and interaction between non-governmental organizations and inter-governmental organizations. Formerly only Heads of State, foreign ministers and diplomats were entitled to participate in inter-governmental conferences. Women, however, demanded the right of access to meetings in the conference hall and to official documents, and the right to distribute their statements in the hall and interact with official delegates—literally to lobby. They were first granted these rights at the League of Nations World Disarmament Conference in 1932, and later at other meetings.

Second, through their well-prepared proposals and what were perceived as credible actions, women's international organizations were able to establish so-called

²⁴ Galey, Margaret E. (1995). "Forerunners in Women's Quest for partnership". In *Women, Politics and the United Nations*, edited by Anne Winslow. Greenwood Press: Westport, Connecticut.

women's issues on the agenda of international cooperation. In other words, issues related to the status of women became international issues, not purely domestic concerns. This principle was established at the League of Nations at a time when women in many Member States did not even enjoy political rights, and when women were not accepted as diplomats.²⁵

Women's Rights Concept in the UN System

The existence of the League of Nations ended with the onset of the Second World War. In retrospect, however, the work carried out during its existence was not in vain. History shows that the basis and models for inter-governmental cooperation created by the League of Nations formed a firm base on which to build a new inter-governmental peace organization, which was already being planned by the Allied Nations during the war. During the time of the League of Nations, models of cooperation between international NGOs and inter-governmental organizations were also created. Furthermore, so-called women's issues had gained visibility and began to appear more often on the international community's agenda.

Due to women's actions in the 1920s and 1930s, a substantial number gained experience and expertise in the international arena and networking. Women in official government delegations, representatives of women's organizations and women in significant positions in the League of Nations kept in touch with each other and acted in consort to further their common objectives. Women's experience was also an indispensable asset when the founding conference of the United Nations was held in 1945 in San Francisco. Consequently, women were appointed to several of the government delegations participating in the conference. There were four Latin American women

²⁵ Miller, Carol (1995). "Women on the UN Agenda: The Role of NGOs." Speech at the UN/NGLS Panel. NGO Forum: Huairou, China.

-serving as delegates in addition to two women in the Venezuelan delegation who served as advisors. Other women delegates were in the Canadian, Australian and Chinese government delegations. The United States delegation had five women, one was a delegate and the others served as advisors. Four of the women delegates were among the 160 signatories of the UN Charter as representatives of their governments.

Many of these women had several overlapping mandates, which added weight to their contributions. The chair of the Inter-American Commission on Women with support of other women were instrumental in the movement that demanded the Preamble to the UN Charter reaffirm not only nations' "faith in fundamental human rights" and "the dignity and worth of the human person," but in "the equal rights of men and women." Consequently, this wording was incorporated into the Charter; later generations have regarded it to be of crucial importance since the Charter legitimized from the beginning demands for full equality and equal rights for women and men alike. The fact that four²⁶ different articles in the Charter affirm that human rights and fundamental freedoms belong to all "without distinction as to race, sex, language or religion" gave strength to the initial wording.

The women also pushed for inclusion of an article in the Charter that corresponded to the stipulation in the Covenant of the League of Nations, which makes all positions in the United Nations equally open to men and women. The proposal was widely supported and was formulated as; "The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."²⁷ Article 8 was incorporated into the final text of the Charter, although an attempt was made to remove it by those opposed to

²⁶ Articles 1(3), 55, 68 and 76

²⁷ Article 8

any special endorsement of women's eligibility. Women activists in those days regarded this Article as another highly significant achievement for the advancement of women of women's rights. In the years thereafter, however, they must have felt disappointed when observing how the Article was ignored. Only during the past decade has it been given appropriate recognition, and the number of women in high positions in the UN system has been increasing rapidly²⁸.

The actual work of the United Nations began with an inaugural session of the General Assembly in London in early 1946. The issue of women's rights reappeared in the session as a prominent item on the international agenda for the first time since the beginning of the Second World War. Seventeen women participated in the session as delegates or advisers to delegations. They prepared a document entitled "An Open Letter to the Women of the World,"²⁹ from the women delegates and advisers at the first Assembly of the United Nations.

The letter introduced the UN to women as "the second attempt of the peoples of the world to live peacefully in a democratic world community." It called on women to take "an important opportunity and responsibility" in promoting these goals in the United Nations and their respective countries. This letter was the first formal articulation of women's voices in the UN and an outline of the role for women to play in a new arena of international politics and cooperation. The letter was neither discussed, nor formally adopted. However, several delegates spoke about it or gave statements supporting it. The

²⁸United Nations, (1999a). Improvement of the Status of Women in the Secretariat. Report of the Secretary General. (UN document A/54/403, 27 September 1999.) United Nations: New York.

²⁹ See www.un-ngls.org

letter and the statements were recorded, with the hope expressed by the President of the session that the issue “will be taken into very serious consideration”³⁰

The Human Rights Covenants

With the goal of establishing mechanisms for enforcing the UDHR, the UN Commission on Human Rights proceeded to draft two treaties: the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. The ICCPR focuses on such issues as the right to life, freedom of speech, religion, and voting. The ICESCR focuses on such issues as food, education, health, and shelter. Both covenants trumpet the extension of rights to all persons and prohibit discrimination. As of 1997, over 130 nations had ratified these covenants. The United States, however, has ratified only the ICCPR, and even that with many reservations, or formal exceptions, to its full compliance.

Subsequent Human Rights Documents

In addition to the covenants in the International Bill of Human Rights, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights

³⁰ United Nations (1995b) United Nations and the Advancement of Women 1945-1995. The United Nations Blue Book Series, Volume VI. First Edition. United Nations: New York

of the Child, 1989). As of 1997 the United States has ratified only these conventions: The Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Prevention and Punishment of the Crime of Genocide; The Convention on the Political Rights of Women; The Slavery Convention of 1926 and The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In Europe, the Americas, and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights. For example, African states have created their own Charter of Human and People's Rights (1981), and Muslim states have created the Cairo Declaration on Human Rights in Islam (1990). The dramatic changes in Eastern Europe, Africa, and Latin America since 1989 have powerfully demonstrated a surge in demand for respect of human rights. Popular movements in China, Korea, and other Asian nations reveal a similar commitment to these principles.

Organs and Agencies for women's rights in the United Nations

The UN Charter established three new substantive elements of crucial importance for women, which had not been features of the League of Nations. In addition to political tasks, the UN was given the mandate "to promote economic and social progress and development." One of the five principal organs, the Economic and Social Council (ECOSOC), was established to be in charge of these operations. It was also mandated to establish subsidiary bodies (Articles 55-60 of the Charter), such as the United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA) and the United Nations Development Programme (UNDP). And through ECOSOC, specialized agencies such as the ILO, United Nations Food and Agriculture Organization (FAO), United

Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization (WHO) were linked with the UN system.

Concerning human rights, Article 55c said that “the UN shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” Concerning legitimization of the collaborative relationship between non-governmental organizations and the UN, Article 71 provides the framework within which NGOs can acquire consultative status with ECOSOC. This opportunity was utilized by, among others, all of the women’s international organizations that had been collaborating actively with the League of Nations.

The creation of the Commission on the Status of Women (CSW) under ECOSOC was another area requiring considerable struggle. Although, as previously mentioned, the CSW had a precedent in the League of Nations, contrary to wishes of women participating in the UN founding conference it was initially set up as a sub-commission of the Commission on Human Rights. However, the first chair of the Sub-Commission on the Status of Women was a former delegate to the League of Nations and at the second session of ECOSOC she managed to push through a resolution establishing the CSW as an autonomous entity.

Why was it that women, right from the very beginning, persistently demanded a special Commission on the Status of Women instead of pursuing their cause through a sub-commission of the Commission on Human Rights? Women believed that through a commission of their own they could proceed more quickly than in the Commission of Human Rights, where their proposals would end up “in the queue” with many other human rights issues. In fact, time has shown that in the independent Commission on the Status of Women, the proposals by women have gained a totally different weight and

significance than would have been the case in the Commission on Human Rights. As an independent commission, CSW was entitled to set its own agenda, decide its priorities, and report and make proposals directly to ECOSOC.³¹ Though the Commission was established, it is only the commitment made by states to the various treaties that safeguard human rights. For example CEDAW committee does not have original jurisdiction it derives its existence from the CEDAW treaty where state parties have ratified and signed the treaty.

Concerning the significance of the UN Charter to women, it “gave them slim, formal recognition, but the human rights provisions gave women constitutional-legal leverage to renew their quest for improvement of their status, achieve full citizenship with men, and enter the world’s political stage”³².

Growth of the Concept of women’s rights

Given historical development, the concept of women's human rights stems from the long-evolving field of human rights but emerged as a distinct aspect of human rights during the international women's movements of the 1980s. The human rights field in itself provided a universal legal context within which women activists and academics from around the world could promote and protect women's rights. Therefore “women’s rights as human rights” strategy has a long and distinguished history as one of great importance to its practitioners.

The growth of the concept has been crystallized through the UN system. For example, from the inception of the UN Commission on the Status of Women in 1946, there was rapid establishment of women’s rights groups which followed its proceedings

³¹ Morsink, Johannes (1991). “Women’s Rights in the Universal Declaration”. In *Human Rights Quarterly* 13(2).

³² Galey, Margaret E. (1995). “Forerunners in Women’s Quest for Partnership”. In *Women, Politics, and the United Nations*, edited by Anne Winslow. Greenwood Press: Westport, Connecticut.

as official observers lobbied for women's political rights and the legal rights of married women.³³

The three World Conferences (Vienna, Nairobi and Beijing) allowed an ever-growing mass of activist women to exchange experiences across national boundaries and form new international networks around common interests. The electronic and print media as well as governments responded. Women gradually became a new political constituency. Initial skepticism from activists in the developing world about women rights has waned and the skepticism has not taken the form of any concerted organization against the agenda. This is in marked contrast to the bruising conflicts among "first" and "third world" feminists in the 1970s and 1980s over the direction of the global women's movement³⁴.

Human Rights Watch, for example, notes that governments, donors and NGOs now at least must nominally recognize that women's rights issues fall within the purview of human rights³⁵. Human Rights Watch notes that "one concrete example of this rhetorical success is the inclusion of rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as war crimes and crimes against humanity" in the 1998 Treaty of Rome for the creation of an International Criminal Court new world criminal court. This is often illustrated with reference to the language of the documents negotiated at recent UN world conferences, including especially the World Conference on Human Rights held in Vienna in 1993 and the UN Fourth World Conference on

³³ Galey, Margaret E. (1995), 'Women Find a Place,' in Anne Winslow (ed.), *Women, Politics and the United Nations* (Westport, CT: Greenwood Press) pp 25.

³⁴ Keck, Margaret E. and Sikkink Kathryn (1998), *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press) quote activist Charlotte Bunch as explaining that violence as a human rights issue was selected largely to overcome North-South divisions in the global women's movement.

³⁵ Human Rights Watch, 1999.

Women³⁶. The BFA explicitly refers to women's human rights several times (e.g. paragraphs 8 and 9) and also directly asserts that "Women's rights are human rights" (paragraph 14).

Though the agreements that are produced by such conferences are not legally binding; they do have ethical and political weight and can be used to pursue regional, national, or local objectives. Conference documents can also be used to reinforce and interpret international treaties such as the ICCPR, or the ICSECR. These covenants, when signed by a country, do have the status of international law and have been used in courts by lawyers seeking redress for human rights violations. The most important international treaty specifically addressing women's human rights is CEDAW which was initiated during the UN Decade for Women and has been ratified by over 130 countries.³⁷

Applying the Human Rights Framework to Women

With the global campaign "Women's rights are human rights" in the early 1990s, and especially in the run-up to the World Conference on Human Rights in Vienna in 1993, the international women's movement instrumentalised the catalogue of human rights for its own purposes both politically and legally. Gender-specific forms of discrimination that became thematic issues during the UN Decade for Women (1976–1985)³⁸ were now addressed in the context of universal human rights. Women began to now assert their own rights while redefining common human rights concepts based on their experiences of injustice. In its outcome document at the Vienna World Conference

³⁷ Cook, R. & Dickens, B., "Human Rights Dynamics of Abortion Law Reform", *Human Rights Quarterly* 25, pp. 1- 59, 2003

³⁸ The decision regarding the UN Decade for Women was taken at the first World Women's Conference held in Mexico in 1975. In the course of the decade, the second World Women's Conference took place in Copenhagen in 1980 and the third in Nairobi in 1985.

on Human Rights, the community of states, under pressure from the women's movement, officially recognised women's human rights as "an inalienable, integral and indivisible part of universal human rights".³⁹

The Universal Declaration of Human Rights defines human rights as universal, inalienable, and indivisible. In unison, these defining characteristics are tremendously important for women's human rights. The universality of human rights means that human rights apply to every single person by virtue of their humanity; this also means that human rights apply to everyone equally, for everyone is equal in simply being human. By invoking the universality of human rights, women have demanded that their very humanity be acknowledged. That acknowledgement and the concomitant recognition of women as bearers of human rights-mandates the incorporation of women and gender perspectives into all of the ideas and institutions that are already committed to the promotion and protection of human rights. The idea that human rights are universal also challenges the contention that the human rights of women can be limited by culturally specific definitions of what count as human rights and of women's role in society.

For decades, work to transform practices which are physically or psychologically damaging to women and that have often been "protected" under the rubric of religion, tradition or culture has been particularly difficult, given both the integrity of culture guaranteed by the Universal Declaration and the history of Northern domination in much of the world⁴⁰. Thus it was important that both the Vienna Declaration and Programs of Action from the World Conference on Human Rights held in Vienna in 1993, and the United Nations Declaration Against Violence Against Women passed by the General

³⁹ Vienna Declaration and Programme of Action 1994: I Section 18

⁴⁰ Charlotte Bunch and Samantha Frost; Women's Human Rights: An Introduction (Published in Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge, Routledge, 2000.) pp.200

Assembly the same year, affirmed that in cases of conflict between women's human rights and cultural or religious practices, the human rights of women must prevail.

At the same time women have charged that political stability cannot be realized unless women's social and economic rights are also addressed; that sustainable development is impossible without the simultaneous respect for, and incorporation into the policy process of women's cultural and social roles in the daily reproduction of life; and that social equity cannot be generated without economic justice and women's participation in all levels of political decision-making.⁴¹

The human rights framework creates a space in which the possibility for a different account of women's lives can be developed. It provides women with principles by which to develop alternative visions of their lives without suggesting the substance of those visions. The fundamental principles of human rights that accord to each and every person the entitlement to human dignity give women a vocabulary for describing both violations and impediments to the exercise of their human rights. The large body of international covenants, agreements and commitments about human rights gives women political leverage and a tenable point of reference. And finally, the idea of women's human rights enables women to define and articulate the specificity of the experiences in their lives at the same time that it provides a vocabulary for women to share the experiences of other women around the world and work collaboratively for change.

⁴¹ Florence Butegwa, *International Human Rights and Practice: Implications for Women*, Article originally appeared in a publication by Women, Law and Development International entitled, "From Basic Needs to Basic Rights: Women's Claim to Human Rights", edited by Margaret Schuler pp. 185

CHAPTER THREE

WOMEN'S RIGHTS AND HUMAN RIGHTS IN KENYA.

Introduction

The constitution of Kenya includes a Bill of Rights which guarantees complete equality in the protection of human rights and fundamental freedoms⁴². In November 1997, the definition of discrimination in the Kenyan constitution was amended to include discrimination on the basis of sex. However, due to the complex and varied nature of customary practices, the constitution reserves the right to discriminate in matters of adoption, marriage, divorce, burial, devolution of property on death, customary and personal law. Thus legislative protection and recourse is restricted in this familial and domestic sphere in which women's subordination is primarily located. Furthermore, the identification of such exceptions on the basis of 'culture' serves to entrench and reify cultural difference as something which is out of the reach of state intervention. This is a fundamental challenge in promotion of women's rights as human rights in Kenya.

There is a common assumption that international human rights standards are neutral, applying to all people without distinction of any kind. Practice clearly shows, however, that equal realization of rights is no more a reality for women based on sex and gender, than it is for persons of a race, ethnicity, religion or language that society in general does not perceive as the norm.⁴³ Reference made above to Section 82 of the Kenyan constitution clearly shows that the claim in the UDHR that article 1 which declares that "All human beings are born free and equal in dignity and rights" refers to

⁴² GoK, 2000, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women. Third and Fourth Periodic Reports of States Parties. Kenya. New York: United Nations. <http://ods-dds.ny.un.org/doc/UNDOC/GEN/N00/342/51/IMG/N0034251.pdf>

⁴³ Jan Bauer, Essays on Human Rights and Democratic Development Paper No. 6, Montreal 1996

both men and women. Further, what this claim ignores is the exhortation in the UDHR, also contained in article 1, to all human beings to “act towards one another in a spirit of brotherhood”(fraternity). Similarly, claims that many national constitutions including the Kenyan one automatically include the guarantee and protection of equal rights for women do not stand up to scrutiny.

Human Rights in Kenya

The dictionary definition of human rights is that they are the basic rights and freedoms to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law⁴⁴. The term came into wide use after World War II, replacing the earlier phrase "natural rights," which had been associated with the Greco-Roman concept of natural law since the end of the Middle Ages. As understood today, human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as universal, applying to all human beings everywhere, and as fundamental, referring to essential or basic human needs.

Since its creation by the British in 1895, the Kenyan State has largely been predator and illiberal, defined by its proclivity for the commission of gross and massive human rights violations.⁴⁵ The colonial State was arbitrary, brutal and obsessed with calculus for power. To maintain power, it committed a catalogue of atrocities some which have been documented by the KHRC and Leigh Day and Company Solicitors. These include claims of torture, cruel and degrading treatment of detainees during the State of Emergency (1952 -60) despite the applicability of the UDHR in Kenya.

⁴⁴ The American Heritage Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

⁴⁵ Republic of Kenya, Report of the Task Force on the Establishment of a Truth Justice and Reconciliation Commission, 26th August, 2003.

Despite ratifying the ICCPR, ICESCR and CEDAW the state has not taken any deliberate steps to wholly domesticate its obligations under the various treaties.⁴⁶ Socio-economic rights in Kenya are neither contained in the Constitution nor in a separate Bill of Rights.⁴⁷ Moreover, judicial tribunals have not played a critical role in the enforcement of International Conventions ratified by Kenya. Instead, courts of law have ruled on various occasions that international obligations incorporated into municipal law have no legal force, implying that almost the entire corpus of ICCPR, ICESCR, CEDAW *inter alia* has no relevance in the State's jurisprudence. In the case of *Okunda v. Republic*⁴⁸, a superior court of record held that international law is not a source of law in Kenya. This position is still being upheld by courts of law, as demonstrated in a fairly recent jurisprudence, *Patni & Another v Republic*,⁴⁹ where the High Court again established that international norms, much as they could be of persuasive value, are not binding in Kenya save for where they are incorporated into the Constitution or other written laws.

Consequently, the provisions of ICESCR and most other international human rights instruments cannot be invoked directly before courts of law as they have yet to be transformed into internal laws or administrative regulations to have a binding effect. At best, what the courts do is to make reference to these international instruments and standards. In *Amanya Wafula, Ndungi Githuku & Others v Republic*,⁵⁰ one of the few cases where a court of law has made reference to the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights, the judicial tribunal still gave credence to the claw back clause in section 80 of

⁴⁶ Concluding observations of the Committee on Economic, Social and Cultural Rights: Kenya 03/06/93 E/C. 12/1993/6 Para 10

⁴⁷ *Ibid*

⁴⁸ [1970] EA 512

⁴⁹ [2001] Kenya Law Reports (KLR) 262

⁵⁰ High Court Misc. Application No. 343 of 2000

the Constitution which requires domestication of international human rights instruments and standards before their municipal application.

Further, despite the Republic of Kenya having ratified the International Covenant on Economic Social and Cultural Rights on 1 May 1972, thereby voluntarily undertaking to implement the norms, principles and obligations enshrined therein.⁵¹ This commitment enjoined Kenya to submit reports on the measures taken and progress made in realizing the rights contained in the Treaty. By 2002 about three decades since the instruments' entry into force, Kenya has not submitted any substantive periodic report as required by articles 16 and 17 of ICESCR.

Human Rights in the Kenyan Constitution

While Chapter V of the Constitution contains provisions relating to the protection of fundamental human rights and freedoms and circumstances for derogation, these entitlements are limited to civil and political rights and do not expressly encompass socio-economic rights, women rights, children rights, rights of persons with disabilities or even nascent concerns such as discrimination of persons living with HIV/AIDS as well as sexual orientation. This situation has been lamented by M Hansungule:⁵²

The current Constitution is not exactly "human rights friendly". Since 1963, Kenya has ratified or acceded to a number of international and regional human rights instruments which have increased the range of human rights standards designed to benefit the people. For example, there are now specific protections of women's rights as well as those of children in international conventions and declarations, which are not captured in the post colonial constitution of Kenya. In theory, at least, Kenya has a bill of rights just

⁵¹ ICESCR was adopted by the UN General Assembly on 16 December 1966. The treaty entered into force on 3rd January 1976

⁵² M Hansungule "Kenya's unsteady march towards the lane of constitutionalism", University of Nairobi Law Journal, Vol. 1, 2003, 43

like any other country with a written constitution. However, in practice, the bill, far from reflecting the interests of the ordinary Kenyans, represent the parochial interests of the ruling class”

Kenya’s constitutional dispensation also falls far below the ‘equal protection’ threshold in at least three cardinal respects. First, although Kenya’s Constitution prohibits discrimination on a number of grounds, differentiation (especially on the basis of sex) is permitted in matters of personal law such as adoption, marriage, divorce, burial and devolution of property on death.⁵³ Second, the Constitution does not list exhaustively the grounds upon which one may not be discriminated upon. Glaringly omitted from the Constitution are exclusions on the grounds of disability, health status and sexual orientation. It is instructive that a number of ‘sectoral’ legislations have already been enacted to cater for the other categories of people who are not sufficiently protected constitutionally. These sectoral approaches to equality and human rights have hardly borne the desired fruit and hence the need for a comprehensive equality and non discrimination law. Third, affirmative action, as a principle, does not find constitutional expression in Kenya.

Despite the establishment of the Kenya National Commission on Human Rights (KNCHR),⁵⁴ human rights remain illusory to many citizens. A majority of Kenyans can hardly litigate their rights under the Constitution because of ignorance of the said rights and procedures for their enforcement. The adversarial system of litigation in Kenya requires that, for an issue to be adjudicated upon by the courts, it has to be raised by the parties. Courts will, therefore, be reluctant to grant orders on a human rights issue in a

⁵³ Section 82(4)(b) of the Constitution

⁵⁴ The KNCHR is established by the Kenya National Commission on Human Rights Act, 2002.

given case, unless the parties thereto have specifically canvassed it in their pleadings or arguments.

Even though, in some instances the courts of law have been quite progressive and liberal in their approach to constitutional interpretation, where human rights are implicated, the High Court has in numerous instances adopted a narrow and restrictive approach where technicalities outweigh the substantive arguments and prayers. In one instance, the High Court dismissed the applicants' pleadings on the ground simply that he did not identify which constitutional provision had been contravened.⁵⁵ In *Koigi Wa Wamwere v Attorney General*,⁵⁶ the court held that section 72 of the Constitution protects the fundamental right to liberty, but does not specify the manner in which arrests can be made, or where such arrests can be effected. The Court declined to concern itself with extradition or the manner in which police officers carry out their duties. Recently however, progressive decisions have been made by courts of law although it is still difficult to establish a trend. For instance in *Roy Richard Elirema and Another v Republic*,⁵⁷ a superior court of record held, inter alia, that the right to fair trial entails that one must be prosecuted by a competent person. In *George Ngothe Juma and two others v Attorney General*,⁵⁸ the High Court held that an accused person has the right to access prosecution's information relating to the charge in advance, especially witness statements to be able to adequately prepare his/her defence.

Chapter V of the Constitution is littered with claw-back clauses which often defeat the goal of protecting human rights. Hiding behind the internal limitation as well as the general limitation clauses entailing that rights may be restricted in the interests of

⁵⁵ *Kenneth Njindo Matiba v The Attorney General*, HCCC Misc. Application No. 666 of 1990.

⁵⁶ Misc. Application N.C. No. 574/90

⁵⁷ Nairobi Criminal Appeal No. 67 of 2002

⁵⁸ Nairobi High Court Misc. Application No. 34 of 2001

public safety, preservation of security, public health among others. State authorities have however tended to limit rather than guarantee human rights in their fullness. This problem has, in the past, been lamented thus: 'Even though the Constitution guaranteed a raft of rights, claw back clauses ensured a rather fluid interpretation of rights'⁵⁹

Human Rights Situation in Kenya under the Leadership of Moi 1980s – 1990s.

In Kenya, when Daniel arap Moi took over the helm of the presidency in Kenya in 1978, there was widespread expectation among the public that a democratic and human rights oriented political space would be put in place by his administration. This general perception by Kenyans of Moi's potential operational code was reinforced by the decisions and promises he made immediately he took over the presidency. Moi released all 26 political detainees most of whom had been languishing in jails for years.⁶⁰ He also reassured Kenyans that his administration could not condone, drunkenness, tribalism, corruption and smuggling.⁶¹

These problems were already deeply entrenched in Kenya's socio-economic and political milieu. His administration took quick action against top civil servants accused of corruption, culminating into the resignation of officials including the police commissioner at the time. These actions were interpreted by Kenyans as the beginning of establishment of a conducive environment for the adherence of democracy and human rights practice by his administration. However over the years and until the end of 24 year rule, he was more concerned about neutralizing those perceived to be against his leadership. The issue of corruption, tribalism and human rights remained distant concern

⁵⁹ W. Mitullah et al (Eds): Kenya's Democratization: Gains or Losses. Claripress

⁶⁰ Leonard, David. 1991, African Successes: Four Public Managers of Kenyan Rural Development. Berkeley: University of California Press. Pp. 169

⁶¹ Moi Daniel T Arap. 1986, Kenya African Nationalism :Nyayo Philosophy and Principles. London Macmillian.

Moi's style of centralization and personalization of power and the state apparatus gradually laid the foundation for dictatorship authoritarianism and human rights violations. Yet this persistent trend of human rights violation at home was inconsistent with Moi's concerns to uphold the same rights abroad. For example during Moi's reign Kenya took part in many continental and global peacekeeping missions established to protect human rights principles. The violation of human rights at home during Moi's regime was inconsistent the protection of the same principles abroad. It can therefore be argued that this was mainly carried out to enhance Moi's image internationally and to legitimize his grip on power.

Detentions and political trails, tortures, arbitrary arrests and police brutality reminiscent of the colonial era were common during Moi's tenure. He perceive human rights generally as alien and Eurocentric conceptions inconsistent with African values, norms and socio-cultural modus operandi. This became the guiding principle of Moi's era which consequently influenced the president's behavioural patterns internally vis-à-vis democracy and human rights movement. Human rights advocates were viewed in this era as unpatriotic, disloyal and ungrateful individuals influenced by what the president called 'foreign masters'⁶². A few years after taking over the presidency, the President (Moi) in exercising his style of authoritarianism detained many people he perceived to be critical of his rule. This included among others, Willy Mutunga and Katama Mkangi for what he called 'overindulgence in politics'⁶³.

During Moi's era at the forefront against human rights violations was civil society and the Law Society of Kenya (LSK). However since the 1980s the church remained the

⁶² Adar K.G., A Human Rights and Academic Freedom in Kenya's Public Universities: The case of the Universities Academic Staff Union. Human Rights Quarterly 21 (1) (February 1999): 187

⁶³ Ibid p.187

central locus for discussions and condemnations of human rights abuses. Human rights activists and pro-democracy groups held their meetings in churches to draw up their action plans. But even here they were hounded and beaten and arrested by the Moi administration. In one of his sermons, Bishop Muge emphasized that the church as a moral obligation 'to protest when God given rights and liberties are violated' and to 'give voices to the voiceless'⁶⁴. Even though some politicians and the Office of the President condemned his criticism of queue voting system, Bishop Muge maintained that 'I shall not protest against violations of human rights in South Africa if I am not allowed to protest the violations of human rights in my own country'.⁶⁵

The 1992 ethnic conflict which pitted the Kalenjins in the Rift Valley and other ethnic groups, the Kikuyus, Luos and Luhyas and claimed more than 1000 lives and over 260,000 refugees was reportedly instigated by the state⁶⁶. As ethnic conflict and other forms of human rights violations intensified, in the early 1990s, the church issued many pastoral letters protesting against the government's actions. Whereas during Moi's era Kenya participated in many UN-mandated peace keeping operations established to protect and promote human rights, Moi persistently demonstrated unwillingness to uphold the sanctity of human rights at home. His administration showed ambivalence in dealing with violations of human rights which persisted through ethnic conflicts in the Rift Valley and the Coast Provinces.

Women's Rights in Kenya

The fundamental idea in human rights is the equality of all people. It follows that each person's human rights must be respected, protected and promoted by all people and

⁶⁴ Sabar- Freidman, *A Church and State in Kenya, 1986 – 1992*, p. 32

⁶⁵ *Weekly Review*, 24 April 1987

⁶⁶ *Weekly Review* (Nairobi) 15 May 1992, *Weekly Review* (Nairobi) 19 June 1992 and *Church of the Province of Kenya. CPK Pastoral Letter*, 26 April 1992.

the state. In Kenya, women continue to endure discrimination on the simple basis of their gender. This situation is best exemplified by the low level of women's representation and participation in all spheres of society resulting in an unacceptable degree of exclusion from leadership positions, in particular, national leadership.

Despite the traditionally low status of women in Kenyan society, and the governance problems under President Arap Moi, the Government of Kenya (GoK) is one of the African governments which has gone the furthest in addressing issues around gender inequality⁶⁷. In the past two decades, legislation has been passed which outlaws discrimination on the basis of sex and many policies which perpetuate inequalities have been amended. In law, women and men in Kenya have equal access to political participation, health and education services, employment and property ownership. Key legislative changes have been made which have the potential to greatly improve the situation of women. The 1981 Law of Succession Act gave women and men equal rights to inherit, own and dispose of property. Discriminatory social policies which deal with housing, contracts and conditions of employment and tax relief have also been modified.

However, many inequalities remain, including those which continue to be enshrined in national legislation. In the case of citizenship rights, it is the father who determines citizenship of the child at birth; women are not able to bequeath citizenship to children born outside Kenya or to spouses who are not Kenyan nationals. Moreover, in order to apply for a passport, women must obtain permission from their father if single or their husband if married. Greater discrimination is evident under customary law, particularly in laws around property ownership. Such laws dictate that a woman cannot inherit land, and lives on the land as a guest of her husband or male family members.

⁶⁷ AFROL, undated, Kenya Gender Profile,
http://www.afrol.com/Categories/Women/profiles/kenya_women.htm

Customary law also states that a widow cannot be sole administrator of her husband's estate without the consent of her children.⁶⁸

Women's organizing in Kenya has been going on for decades, since long before the country's independence from colonial rule. The oldest women's organization, the Maendeleo ya Wanawake⁶⁹ Organization (MYWO) was started in 1952. Although it was started by a group of white settler women, the organization has the widest grassroots penetration in the country, with over three million members at present. For a long time, MYWO's main focus was economic. It aimed to build women's capacity to generate income and manage their households as a means of alleviating poverty.⁷⁰ This approach, whether or not influenced by MYWO remains pervasive and is reflected in the numerous small scale women's savings and credit groups and investment clubs or, as they are commonly called, 'merry-go-rounds.' These groups pool members' contributions to provide credit to their own members or make investments. The potential for using these groups as catalysts for women's rights activism has not been fully explored.

The Third UN Conference on Women was held in Nairobi in 1985. This marked the beginning of rights centred activism. A number of women's organizations were born, right after the conference including the Federation of Women Lawyers, Kenya (FIDA) which gained prominence for its women's rights advocacy. Today, there are numerous women's rights NGOs, many of which advocate for the rights of women in Kenya.

⁶⁸ Ibid

⁶⁹ Swahili for 'women's development.'

⁷⁰ Kiragu, Jane 'Is there a Women's Movement?' in Muteshi, Jacinta (2006) Mapping Best Practices: Promoting Gender Equality and the advancement of Kenyan women. Nairobi, Heinrich Boll Foundation

Legislation on women's rights

Kenya's legal system contains a mix of statutory and customary law that has resulted in conflicts between overall guarantees of human rights and their extension to women and girls. Within Kenya's legal hierarchy, the Constitution supersedes any other law.⁷¹ Section 83 (rev. 2001) provides "This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void." The role of customary law within the Kenyan legal system is spelled out in section 3(2) of the Judicature Act, stating that "African customary law" shall govern in "civil cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law...."⁷² In practice, however, the "repugnancy" exception to the application of customary law has rarely been invoked successfully in cases dealing with women's equal rights. Statutory and constitutional deference to customary law harms the rights of women under the CEDAW and other international human rights instruments and thus must be immediately amended.

a) Kenya's Property Laws Discriminate Against Women

Kenya's land statutes discriminate against women by vesting in men absolute sole ownership rights to registered land; invoking customary law which generally confers exclusive control of land to men to govern land rights, and which is insulated from appeal and judicial scrutiny. Kenya has over 75 land laws, which create a confusing and

⁷¹ CONSTITUTION, Art. 83 (rev. 2001) (Kenya)

⁷² The Judicature Act, (1967) Cap. 8 section 3(2) (Kenya)

anachronistic legal framework that fails to recognize women's land rights.⁷³ in the draft National Land Policy, the government acknowledged the injustices this framework has caused, in particular to women.⁷⁴

The bodies that govern land lack adequate procedural safeguards to protect the rights of women because: women are nearly absent from land bodies; the land disputes procedures remain biased against women; and husbands may sell matrimonial land without their wife's consent.⁷⁵ Under the Registered Land Act, the first person to register title to a portion of land retains "absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto,"⁷⁶ free from any other interest or claim.⁷⁷ As men inherit first, they register the land before women have a chance to register with the men. This negates any ability by a woman who has worked the land beside her husband, brother, or father to make any claim to the land on which she lives and labors. In fact, women provide the vast majority of agricultural labor including 89 percent of the subsistence farming labor force⁷⁸ and over 70 percent of labor in cash-crop production⁷⁹ yet, they only hold 1% of the registered land titles and only 5-6% of the land titles jointly.⁸⁰

⁷³ [http://www.kenyalandalliance.or.ke/women percent20policy percent20brief.pdf](http://www.kenyalandalliance.or.ke/women%20percent20policy%20percent20brief.pdf) [hereinafter KLA, Women, Land and Property Rights].

⁷⁴ See Ministry of Lands, National Land Policy §§ 3.6.2, 3.6.6, 3.6.10.3 (2007) [hereinafter National Land Policy].

⁷⁵ KLA, Women, Land and Property Rights, supra note 32

⁷⁶ The Registered Land Act, (2006) Cap.300 S 27(a).

⁷⁷ Ibid S. 28

⁷⁸ Kenya National Commission on Human Rights, From Despair to Hope: Women's Right to Own and Inherit Property 3 (2005) [hereinafter From Despair to Hope 2005].

⁷⁹ CEDAW Report 2006, supra note 3; Kenya Land Alliance, The National Land Policy in Kenya: Critical Gender Issues and Policy Statements 6 (2004), available at <http://www.kenyalandalliance.or.ke/Issues%20Paper%20gender%20.pdf> [hereinafter KLA, Critical Gender Issues].

⁸⁰ Supra Note 32

b) Political Participation

Women in Kenya make up slightly more than half (50.1%) of the population.⁸¹

The Human Development Report for Kenya 2001 estimates the Gender Empowerment Measure – the measure for political and economic empowerment – for Kenya at 0.414⁸².

Women are involved in all political parties in Kenya. However, in the 1997 elections, although women made up 51.1% of voters, they comprised only 5.7% of electoral candidates and 3.6% of the National Assembly. In 2002 this made Kenya one of the countries with the lowest level of achievement in gender equality and women's empowerment in terms of parliamentary seats in Progress of the Worlds Women 2002.⁸³

In 2001, only two out of 70 District Commissioners were women and women held between 7 and 10% of elective positions in local authorities.⁸⁴ Since 1991, the Permanent Secretary in the Ministry of Foreign Affairs which is the highest post in the Civil Service was a woman. However, in 1998 women made up only 26% of employees in the Foreign Services and 6.1% of ambassadors.

In the past women candidates have suffered violence and intimidation from communities and families, as well as marginalisation and lack of financial support in the political arena. There is also little media attention given to women's participation in the political process⁸⁵.

⁸¹ Were, Maureen and Kiringai, Jane, 2003, 'Gender Mainstreaming in Macroeconomic Policies and Poverty Reduction Strategy in Kenya'. Kenya Institute for Public Policy Research and Analysis. A Research Report for African Women's Development and Communication Network (FEMNET), Nairobi: FEMNET

⁸² UNDP, 2002, Kenya Human Development Report 2001: Addressing Social and Economic Disparities for Human Development. Nairobi: United Nations

⁸³ UNIFEM, 2002, Progress of the World's Women 2002, New York: United Nations

⁸⁴ GTG, 2001, 'Gender Dynamics of Poverty in Kenya: Strategies for Alleviation Through The PRSP and MTEF Processes'. Memorandum, March 2001.

www.gtz.de/povertyConference/dokumente/Kenya.pdf

⁸⁵ AfricaOnline, 2002, 'Kenya: Women in Politics – the Stakes are Higher', AfricaOnline, 23 September 2002, <http://www.africaonline.com/site/Articles>

CHAPTER FOUR

KENYA'S IMPLEMENTATION OF CEDAW.

Introduction

This chapter will follow up on the issues raised in chapter three. It will elaborate on Kenya's effort to incorporate and implement the Convention on Elimination of All Forms of Discrimination (CEDAW) at the domestic front. The chapter will also present a critical review and appraisal of the implementation of CEDAW among other human rights and women's rights instruments such as the Beijing Declaration and Platform for Action (BPFA) in Kenya during the period 1991-2002. It evaluates the implementation measures taken within the context of further actions recommended by the UN Committee on CEDAW following Kenya's report(s) to the committee. During this period, in February 2000 the combined third and fourth periodic report from Kenya was issued to be considered by the CEDAW committee. Therefore the critical review spurns over a period of two different regimes, the Moi era of whose ten years will be reviewed, 1991 to 2002 and the National Rainbow Coalition (NARC) regime, following the general elections held in December 2002 up till 2007.

The chapter will also audit Kenya's compliance with the principles contained in CEDAW and human rights universal principles that seek to promote and protect the women human rights. These principles are have been discussed in chapter three and so as part of the audit of the chapter will analyse Kenya's State Party reports to assess whether Kenya has complied with CEDAW guidelines. It is through the reporting process that a state has an opportunity to evaluate its implementation of the Convention. In this regard, the analysis will other than assessing compliance to reporting guidelines, also assesses

the implementation record. The implementation involves taking policy, legal, judicial and administrative measures to meet obligations under the Convention.

Background

Kenya became a State Party to the UN Convention on the Elimination of All Forms of Discrimination against Women on 9 March 1984. When becoming a party to this Convention, Kenya made no reservations to the Convention. At the international level, Kenya is also a State Party to other international instruments relating to human rights which implicitly prohibit discrimination, unequal treatment and violence against women, inter alia: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of which article 2 prohibits discrimination on the basis of sex, article 3 guarantees “the equal right of men and women to the enjoyment of all rights set forth in the Covenant”, article 6(1) protects the right to life, article 7 prohibits torture and other cruel, inhuman or degrading treatment or punishment, article 9(1) protects the right to liberty and security of persons, and article 24 promises children protection by the state without any discrimination on the basis of, inter alia, sex.

The UN Convention against Torture provides protection against violence in a more detailed manner; and the UN Convention on the Rights of the Child, which constantly uses both feminine and masculine pronouns in its provisions, makes it explicit that the rights apply equally to female and male children. At the regional level, Kenya is a State party to the African Charter on Human and Peoples’ Rights, of which Article 3 provides that “each person is equal before the law and must be protected equally by the law.” Article 5 guarantees to every individual “the right to the respect of the dignity inherent in a human being” and prohibits torture, cruel, inhuman or

degrading punishment or treatment. Despite these international commitments to protect, promote and enhance women's rights there have been many disturbing incidences documenting violations of the human rights of women in Kenya.

Equality between women and men

The goal of achieving gender equality and women's empowerment represents commitments made by the 180 Member States that have ratified the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW). The plans of action that all regions and the majority of countries have to achieve gender equality or confront specific gender discrimination ground these commitments in local realities. Yet progress has been uneven.

In Kenya, it was only in 1997 that the Constitution was amended to include a specific prohibition of discrimination on the grounds of gender.⁸⁶ However, the Constitution still contains discriminatory provisions, such as the denial to women to pass on citizenship to their foreign husbands or children from these marriages.⁸⁷ In 1999, the Ministry of Home Affairs together with representatives of the civil society drafted the Equality Bill. Its aim was to make provisions for equal treatment of all citizens irrespective of their gender and end all forms of discrimination. The draft never made it to legislation as then President Moi withdrew his support arguing that the Kenyan Constitution already provided for equality between men and women. The Muslim community in Kenya also voiced strong opposition against the draft bill saying that it violated religious values.

This involved mainly the issues of equal rights to inheritance and traditions regarding marriage such as choosing a spouse. International agreements, such as the

⁸⁶ Article 70 Kenyan Constitution

⁸⁷ Article 87 (1) Kenyan Constitution.

Convention on the Elimination of All Forms of Discrimination against Women, are therefore not directly applicable in Kenya. The obligations have to be transformed into domestic law. Some important obligations such as the prohibition of gender-based violence remain largely unregulated in Kenyan law. The Domestic Violence (Family Protection) Bill and the Equality Bill, for example, have never seen the light of day in parliament. Even where de jure progress has been made in achieving equality, women continue to be discriminated against as a result of conflict between the laws in Kenya and customary practices and the economic situation. Women experience a wide range of discriminatory practices, limiting their political and economic rights. They are, de facto, second-class citizens. Most customary law disadvantages women, particularly in property rights and inheritance.

Under the customary law of most ethnic groups, a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage. The traditional inferior status of women is reinforced by the predominance of marriages under some form of customary law that limit women's rights. There are several laws, governing marriage and divorce based on the different religions in the country. The Marriage Bill has, to date, not yet gone into force. The Kenyan society is a patriarchal society with widespread discrimination against women and a virtual absence of women in positions of power in the socio-economic and political spheres. Poverty and traditionalism remain two serious obstacles to women's equal rights in Kenya.

The UN Economic and Social Council noted that poverty in general inhibited the full enjoyment of human rights and that the situation where women had unequal access to

resources ensured continuing discrimination.⁸⁸ Women's organisations set their hopes on the Draft Constitution that was to be adopted by parliament after the 2002 elections. The Draft Constitution provided, *inter alia*, for the right to equal treatment with men including the right to equal opportunities in political, economic and social activities and the equal right to inherit, have access to land and control property. The draft prohibited any law, culture, custom or tradition that would undermine the dignity, welfare, interest or status of women.

De jure discrimination against women

A Task Force was established in 1993, *inter alia*, to review the national laws to ensure non-discrimination against women and to initiate statutory reforms with regard to gender discrimination.⁸⁹ The UN Committee on the Rights of the Child discussed, during its 28th session from September 24 to October 12, 2001, the initial report on the implementation of the Convention on the Rights of the Child by the Republic of Kenya. An international organization The World Organisation Against Torture (OMCT), based in Geneva raised the issue of gender discrimination regarding citizenship in its alternative report to the Committee on the Rights of the Child.⁹⁰ As the OMCT report pointed out, the Constitution of Kenya and the Kenya Citizenship Act⁹¹ discriminate against children born to Kenyan mothers abroad but do not discriminate against children born to Kenyan fathers born abroad. Children born to Kenyan mothers abroad have to apply for citizenship and are given entry permits for a limited duration upon entry into Kenya, while similar treatment is not accorded to children of Kenyan fathers born to non-Kenyan mothers.

⁸⁸ UN doc. E/CN.4/1998/22

⁸⁹ UN Doc. CEDAW/C/KEN3-4, p. 3.

⁹⁰ Rights of the Child in Kenya, Report on the Implementation of the Convention on the Rights of the Child by the Republic of Kenya, OMCT report.

⁹¹ Chapter 170 Laws of Kenya

The law on domicile, the Domicile Act⁹², gives credence to and perpetuates the practice of discrimination against children born out of wedlock. In Kenya, residence is different from domicile and domicile or origin refers to the home of the parents at the time of birth. This is often equated to the ancestral home that every person born within lawful wedlock is presumed to have. Children born out of wedlock are accorded the domicile of their mothers whereas those born within lawful wedlock acquire that of their fathers. Domicile determines other rights such as voting rights. In many cultures, children born out of wedlock do not belong in the mother's home (domicile) and have no rights to inherit property. As a result, many are often rendered without domicile.

The UN Committee on the Rights of the Child stated, *inter alia*, in its concluding observations⁹³, after consideration of the Government's report: "the Committee notes that the State party established a Task Force in 1993 to undertake review of the law to ensure non-discrimination against women and initiate statutory reforms with regard to gender discrimination. The Committee is concerned, however, that the principle of non-discrimination is not adequately implemented with respect to certain vulnerable groups of children, especially girls... Finally, the Committee is concerned that the constitutional guarantee of equal treatment does not cover various tribal, traditional customs and practices associated with, for example, fostering, marriage and divorce that constitute major challenge for the full realization of children rights in the State party".

In the same breath the Government was asked to adopt an official policy to end the practice of early marriages and include a minimum age which is the same for boys and girls. Further that the Kenyan government to enact specific legislation ensuring the

⁹² Chapter 37 Laws of Kenya

⁹³ UN Doc. CRC/C/15/Add.160.

rights of girls to inherit property, particularly in those cultures that have traditionally denied this right to girls.

Educational and employment opportunities

Levels of education and literacy for men and women differ widely. Although the number of boys and girls in school is roughly equal at the primary level, men substantially outnumber women in higher education. Especially in rural areas families are more reluctant to invest in educating girls than in educating boys. Hence, seventy percent of the illiterate persons in the country are female. Women make up about seventy-five percent of the agricultural work force, and have become active in urban small businesses. Nonetheless, the average monthly income of women is about two-thirds that of men and they hold only about 5 percent of land titles. Women have difficulty moving into non-traditional fields and are promoted more slowly than men.⁹⁴

The bad economic situation in Kenya and the corresponding marginalisation of women in the workforce means that women are frequently financially dependent upon husbands and partners thereby making it extremely difficult for them to leave situations of domestic.

Women's Land and Property Rights

A complex combination of legal, economic, social and cultural factors affect the right of Kenyan women to own, use or manage property. As it is now, only five percent of registered landowners in Kenya are women. This is due to existing discriminatory laws, customs, ineffective institutions, ignorance and negative attitude towards equality and the human rights of women. Until 1997, Section 82 of the Constitution of Kenya was silent on discrimination on the basis of sex, with regards to land ownership. Although this

⁹⁴ Gender profile Kenya, www.afrol.com.

was amended (Constitution of Kenya Amendment Act 1997), the constitution today essentially remains the same.⁹⁵

According to the Kenya Land Alliance, there are laws that deny women equality with men in their right to own property, borrow money and enter into contracts. In treating equal persons unequally, the current laws reinforce existing conditions and promote inequality.⁹⁶ Some of the key contemporary land issues in Kenya include issues of **Land Tenure**. Currently the land tenure system provides for the registration of family land or land owned by a group of people. The title deeds for the former is given in the name of the head of the family, who often is the man. In the latter, the representatives in group ownership of land are usually male. Land therefore is transferred from one male to the next—from great grandfather to father to son to grandson to great grandson. Land, food and income: It is estimated that between 80 and 90 per cent of labour in agricultural land is provided by women. They are the main producers of food through subsistence farming. In addition to that, women provide 70 per cent of labour in cash crop farming.⁹⁷ Nevertheless, these women have no control over the produce or the income they work so hard for.

Other than the legal system, which might change, there are other reasons for this discrimination against women with regards to land and other property ownership. Issues of inheritance of land and property by women and the security thereof are at the core of women and property rights. In most parts of Kenya, customary laws⁹⁸, which exist side by side with formal laws, dictate that sons have exclusive rights to inherit family property. Wives and unmarried daughters have the right to be maintained while married

⁹⁵ Gender Aspects of Land Reform, Kenya Land Alliance, Land Reforms Volume 4, 2002

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Janet Kabeberi-Macharia, Women, Laws, Customs and Practices in East Africa: Laying the Foundation (Nairobi: Women and Law in East Africa, 1995), pp. 83-84.

daughters have no right to their family property. A widow's maintenance right is lost if she marries a relative of the deceased husband or returns to her home.⁹⁹ Recent statistics show that eighty per cent of female-headed households are either poor or very poor, in part due to their limited ownership of land.¹⁰⁰ For women, the problem is intertwined in both the conventional laws and customary laws that keep them out of the land ownership equation. At the family and community levels, women are at the periphery of land matters. They hardly ever represented in village courts of elders or any other decision-making bodies at all levels.

Land tenure policies do not only continue to restrict women's access to and ownership of land but it also other factors of agricultural production such as technology, credit, capital, subsidies and inputs. These are always directed to the male landowner, who have the title deed and can acquire loans and other financial support. The four decades of independence from colonial rule have brought little change to the Kenyan woman; they are still subsistence farmers with no rights to the land they till or crops they produce. Consequently, they feel the pinch of poverty more than anyone else. They are only in control of the 'kitchen gardening' in the land they till. According to a report by the Human Rights Watch, women's rights to property are unequal to those of men in Kenya. Their rights to own, inherit manage and dispose off property are under constant attack from customs, laws and individuals who believe that women cannot be trusted with or do not deserve property¹⁰¹.

⁹⁹ Doris M. Martin, Fatuma Omar Hashi. 1992, "Women in Development: the Legal Issues in Sub-Saharan Africa today"

¹⁰⁰ Gita Gopal, Maryam Salim, Gender and Law: Eastern Africa Speaks (the World Bank, Washington DC, 1998)

¹⁰¹ Human Rights Watch: Double Standards: Women's Property Rights Violations in Kenya, 2003

There are instances where women have been abused by their husbands, who own everything in the family, or have been denied access of use of that family property. At another level women have been left with no alternatives but to remain in abusive relationships. They have had to live with abusive husbands or relatives who in essence own everything they need to survive. With respect to inheritance, many women are dispossessed twice: where they were born and where they are married. Most cultures in Kenya see family land and assets as belonging only to male members of the family.

The fundamental importance of women's property rights has been repeatedly underscored in international agreements, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which refers to the right of rural women to equal treatment in land and agrarian reform processes. Customarily women in Kenya do not own property or the land on which they work, which causes them economic hardship and places them in positions of dependence. Yet Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires state parties to give women equal rights to administer property.

Though women have been able to organise at the community level and despite the fact that they are the major economic contributors at all levels, they have limited economic control at the household level. At the national level, their access to and control over resources is virtually non-existent. Women as at 1997 only owned 1% of the registered¹⁰² land, yet they formed 75% of the agricultural labour force. Women's ability to organise at the community level has also not translated into political clout. They only

¹⁰² The statistic on women's ownership of land is derived from, Republic of Kenya, National Development Plan, 1994 to 1996 (Nairobi: Government Printer, 1994). Whereas that on the agricultural labour force is drawn from Ministry of Agriculture, Gender Agricultural Sector Investment Program Study, 1998

constituted 8.1% of the leadership in the local authorities after the 1997 elections.¹⁰³

Local authority reform and community access to and control over resources are important factors in ensuring realization of human rights and thus women's rights.

Women's limited ability to own, acquire, and control property in Kenya is the product of historical, political, legal, and social developments in a society that has only haltingly addressed its extreme gender¹⁰⁴ inequalities. After decades of authoritarian rule under President Daniel arap Moi, Kenya emerged with a new government, an initiative for a new constitution, and a citizenry electrified by the possibility of real social change.

In this context, it was critical for women's property rights to be high on Kenya's legislative and policy agendas. Some efforts were made to institutionalize the rights of women and gender parity through the change made at the national gender machinery, the Women's Bureau, by elevating it from a division within a department to a full department and the Minister for Gender, Sports, Culture and Social Services committed to establishing a gender commission. Parliament also established a National Gender Commission and this was in keeping with the commitments made by the Government when it presented its Third and Fourth reports to the UN's Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in New ¹⁰⁵York in January 2003.

¹⁰³ Electoral Commission of Kenya, 1998

¹⁰⁴ Kivutha Kibwana and Lawrence Mute, *Law and the Quest for Gender Equality in Kenya* (Nairobi: Clairpress Limited, 2000);

¹⁰⁵ The National Commission on Gender and Development is one of the proposals that emanated from the Taskforce on Laws Relating to Women and was further suggested in the proposed National Gender and Development Policy. See also Kenya's Introductory Statement During the Presentation of Its Third and Fourth Periodic Reports to the 28 Session of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Political representation

Seven years after the Fourth World Conference on Women in Beijing, the fact remains that women world-wide are under-represented, if not invisible, in decision-making at the highest levels of national and international positions mainly due to economic difficulties, the existing structures and frameworks within the environment and the gender-biased portrayal of women by the media. Based on the data from the Inter-Parliamentary Union, women's representation in legislative bodies globally increases annually by a mere 0.5%, the percentage of women in ministerial levels remains at 14%, 9.4% are in the judiciary, and a miniscule of less than 5% occupy economic, political and executive positions.

Women in Kenya also have achieved little progress since the Beijing Platform for Action was adopted. There were only eight women in Kenya 210-seat 8th parliament, and only one woman was appointed an assistant minister in President Moi's cabinet. Yet women are said to account for 52 percent of the country's adult population and 60 percent of the voting population. As a result of poor representation, women in Kenya feel they lack a sufficient voice to push the enactment of laws that could enhance respect for women's rights and fight against their economic marginalisation.

According to the Kenya Human Rights Commission, a local nongovernmental human rights organisation, Kenya has suffered recurring waves of politically sponsored violence since 1991 when the campaign for multiparty politics and democratisation peaked.¹⁰⁶ The Kenyan government has often explained the violence as ethnic or land clashes and has failed to conduct useful investigations into the causes of the violence and prosecute the perpetrators in spite of overwhelming information gathered by various

¹⁰⁶ "Campaign against Impunity", Kenya Human Rights Commission, August 2001.

actors. Reports of various civil society groups, religious organisations and the media have all pointed fingers at the involvement of senior government officials in the violence.

Given this context, the position of women in Kenya is particularly vulnerable. Traditionally as well as legally, their rights are restricted whilst they can be subjected to various forms of harassment and brutality at all levels of society, with no guarantee of protection, either by traditional institutions or the Law. As was the case for men, women who were involved in opposition politics or members of an ethnic group not known to be supportive of the KANU ruling party were potential victims of police torture and other political forms of persecution, including sexual assault. Moreover women could not rely on the Law or law enforcement agents to protect their rights to freedom of expression, association or their right to be free from persecution either by state agents or family members.

For example during Moi's regime he created a new district called Makueni in the Eastern Province. Ms Agnes Mutindi Ndeti vied for the post of chairperson of the Kenya African National Union, then the ruling party for the district. She was accused of violating her community's (the Akamba) tradition that bars a woman from being the first to occupy a new home-the new district!¹⁰⁷ This was happening to her as a leader despite the fact that Kenya has ratified CEDAW which recognizes that many women's rights abuses emanate from society and culture, and compels governments to take appropriate measures to correct these abuses. CEDAW requires governments: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the

¹⁰⁷ The Weekly Review, March 13, 1992:25

idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹⁰⁸

Legal Protection of Women's Rights

Finally, states must not only facilitate women's exercise of their human rights by ensuring that the conditions for such exercise are free of coercion, discrimination, and violence,¹⁰⁹ but they must also provide an effective remedy if human rights are violated and enforce such remedies.¹¹⁰ The Kenyan government has done almost nothing to create conditions conducive to women's exercise of their rights, as evidenced by the coercive wife inheritance and cleansing practices, discriminatory laws and customs, and the violence women face if they try to assert their rights. Moreover, the fact that judges, magistrates, police officials, and local authorities outright admit that they do not apply legislation and case law on inheritance and division of property demonstrates that Kenya is violating its obligation to provide an effective remedy to women's rights violations.

Discrimination and abuses inflicted on women in Kenya should be recognized as gross violations of women's human rights. Discriminatory property laws and practices impoverish women and their dependents, put their lives at risk by increasing their vulnerability to HIV/AIDS and other diseases, drive them into abhorrent living conditions, subject them to violence, and relegate them to dependence on men and social inequality.

Despite the slow recognition that women's rights violations harm not just women and their dependents but the larger Kenyan populace as a whole, little has been done to prevent and redress these violations. Averting these abuses though a complex exercise it

¹⁰⁸ CEDAW, Article 5(a)

¹⁰⁹ United Nations, Programme of Action of the United Nations International Conference on Population & Development, para.7.3.

¹¹⁰ ICCPR, article 2(3)

is important that processes are put in place to guarantee women their human rights. A concerted effort is needed not just to improve legal protections, but to modify customary laws and practices and ultimately to change people's minds. Eliminating discrimination against women is an important step that the government should focus on with earnest.

CHAPTER FIVE

CRITICAL ANALYSIS OF KENYA'S IMPLEMENTATION OF CEDAW: A CASE STUDY

Introduction

This chapter will briefly consider the history of implementation of CEDAW in Kenya starting with the process of ratification, effort made by Kenya to incorporate CEDAW in the legal and policy framework and the country's accountability to CEDAW committee through the periodical reports. The Kenyan government ratified CEDAW in March 1984 and submitted its 1st State report on the implementation of CEDAW in 1999 and its second report in 2002. From the time of the first report the government, commenced talks on the implementation of policies and laws for the advancement of women, to date these talks have translated into limited and slow paced tangible change.¹¹¹

Although the government ratified CEDAW in 1984, no steps have been made to incorporate/domesticate the same into national legislation. A few programs/policies have been initiated to address discrimination against women but these are quite minimal. This chapter will highlight several areas of concern related to the status of rights of women and girls in Kenya. Specifically on; Discrimination Against Women, Legislative measures to Guarantee Basic Human Rights and Fundamental Freedoms, Suppression of Exploitation of Women, Political and Public Life, Participation at the international level, Nationality, Equal rights in Education, Health Care and Family Planning, Economic and Social Benefit, Rural Women, Equality before the Law and Marriage and Family Law. For purposes of a thorough discussion on the themes in CEDAW, the chapter will only

¹¹¹ A shadow report to the 5th and 6th combined report of the government of the Republic of Kenya, on the international Convention on the Elimination of all forms of Discrimination against

Women (CEDAW). Presented by FIDA Kenya to the 39th session of the United Nations Committee on the Elimination of all forms of Discrimination against Women, 23 July - 10 August 2007, New York USA.

discuss in detail two areas of concern and these are the area of domestic violence and women in leadership.

Kenya's Reporting History

The Kenyan legal system is primarily based upon the English common law with customary law, Hindu Law and Islamic Law being applicable in certain disputes. There is no jury system. Kenya has a dualist legal system and therefore, national legislation is required in order for international and regional treaties to become part of national law. Kenya became a State Party to the UN Convention on the Elimination of All Forms of Discrimination against Women on 9 March 1984. When becoming a party to this Convention, Kenya made no reservations to the Convention. The reporting procedure under CEDAW provides a unique momentum in a country to take stock of *de jure* and *de facto*¹¹² gender equality.

The initial and second periodic reports were examined by the Committee at the same time in 1993. The initial report was due in 1985 but was only submitted in 1990 and the second periodic report was due in 1989 but was only received in 1990. Both reports (initial and second periodic) examined in 1990. The third period report was due in 1993 but was only received in 2000 and the fourth periodic report was due in 1997 but was only received by the Committee in January 2000 necessitating the Committee to examine the two periodic reports (3rd and 4th) together. The fifth periodic report was due in 2001 but it was submitted in January 2006 but was examined by the Committee in 2007. The sixth periodic report was due in 2005 but was only submitted in 2006 to the Committee which examined the fifth and sixth periodic report in 2007. Given this trend it is highly unlikely that Kenya will submit its next periodic report on time in April 2009 for its seventh periodic report. Though the timing is really not the most important milestone of

¹¹² These terms are explained in Chapter 3

adherence but the effort made to incorporate CEDAW provisions in national legislation testify to the government's seriousness about legislating CEDAW at national level. The successful submission of these reports, although not timely, is attributable to the vigilance of women's organizations in ensuring the government does its reporting.¹¹³

In preparation of its reports the Kenyan government has involved both governmental and non-governmental stakeholders through workshops. These efforts to involve and engage civil society can be attributed to the government's follow up to the concluding comments made by the CEDAW committee after consideration of Kenya's combined third and fourth periodic report in 2003. The Committee had made observations urging greater involvement of non-governmental actors in preparation of the Country's fifth and sixth periodic report.¹¹⁴ The Federation of Women Lawyer (FIDA) has over the years participated actively in government processes leading to development of periodic reports.

Where FIDA feels that the government has left out crucial information, FIDA has prepared supplementary reports and submitted to the Committee. Throughout the years, FIDA Kenya has been instrumental towards the implementation of CEDAW. The organization's activities include among others: Compiling shadow reports and statements to the CEDAW Committee and to the Committee on the Status of Women (CSW), monitoring government's implementation of CEDAW and other international and regional conventions and treaties relating to women's rights, monitoring and advocating against violations of women's human rights in Kenya, Increasing awareness and understanding of gender issues and women's rights in order to influence positive

¹¹³ FIDA Kenya works towards improving the legislative and policy framework for women's rights

¹¹⁴ CEDAW/C/SR.593

behavior change in various local and national institutions, sensitizing of parliamentarians and members of the judiciary on international human rights instruments.¹¹⁵

Themes in the CEDAW Reports

In accordance with Committee decisions, the lists of issues and questions to be discussed at the presentation of country reports usually focus on themes addressed by the Convention. The themes include issues on the constitutional and legislative framework and national machinery for the advancement of women; participation in decision-making; education and training; gender stereotypes; poverty and employment; violence against women, including domestic violence; trafficking in women and exploitation of prostitution; health, including sexual and reproductive health; equality before the law, marriage and family relations; and the situation of vulnerable groups of women, such as older women, rural women, women belonging to ethnic minorities, refugee and migrant women. Subsequent country reports of necessity adopt their themes from the concluding remarks of the previous reports made by the committee.

Kenya's 1st and 2nd National Reports (1990) Themes

The 1st and 2nd National Report to the Committee¹¹⁶ highlighted at its core the societal and cultural attitudes which remained major obstacles to the achievement of full de facto equality between men and women. This was the prevailing situation despite the measures that had been taken by the Government to implement the Convention in the light of the situation of women in the country and the country's culture and values. Even with progress made in the country in achieving de jure equality, women continued to be discriminated against because of their economic situation and lower standard of

¹¹⁵ Survey by: Federation of Women Lawyers – FIDA Kenya 2006

¹¹⁶ see CEDAW/C/SR.217, 218

education, the various laws governing marriage and divorce, and the fact that women workers were concentrated in the private sector. Discrimination did manifest itself also at the level of decision-making, where women were few.

In its combined initial and second periodic reports, the government had indicated that certain measures had been taken to improve farmer's accessibility to agricultural credit and loans and that the Law of Succession Act gave both men and women the equal right to inherit, own and dispose of property. The Committee on CEDAW, reacting to the 1st and 2nd Kenya Government Report (1990) on Article 14 of the Convention which states; "States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetary sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas," wished to know whether rural women were aware of their rights and whether there were measures taken for them to access credit and loans. The government report did not articulate clearly the necessary measures taken to improve the lives of rural women.

Other issues raised by the Committee were based on the following:

Law of Succession Act

The Act which governs matters of inheritance in Kenya is discriminatory in that it provides that a widow loses her life interest upon her re-marriage to any person¹¹⁷. The Committee expressed the need of interrogating amending cultural attitudes in order to realize the spirit of the Law of Succession Act. As it was, women were being disinherited of their land and property once their spouses passed away.

¹¹⁷ Chapter 160 Section 35

As mentioned earlier, Kenyan property laws and legal or customary provisions relating to inheritance laws discriminate against women. For a long time, the trend in jurisprudence was in considering the value of marital property, non-financial contributions of women to acquisition of marital property were not accorded the same weight as men's financial contribution. However, the trend is changing in that financial and non-financial contribution of women to acquisition of marital property is being accorded the same weight.

Land ownership

The Committee raised concerns that there was scarce information on land ownership. Land ownership in Kenya is governed by the Registered Land Act Cap 300 of the Laws of Kenya among other lease hold land registration processes. While most land in the rural areas is not registered, the husband has the right to ownership whether this resource is registered or not. Even if the family decides to register, such registration is usually in the name of the husband alone, however, as more women became aware of the benefits of owning land, more of them were insisting on the joint registration of family property. Customary law bestows on men the right to ownership while women only derive their rights of access and use by virtue of their relationship to the men. This means that rural women who are the majority in rural Kenya have no secure land ownership rights yet they are the main producers of food, and play a significant role in the economic survival of their families. In addition, the Ministry of Lands and Housing was not concerned about whether women owned land or not, yet it has been a practice in most Land Control Boards country wide that, in all transactions, the consent of the wife or wives is necessary before issuing a consent to transfer land.

The Committee in its concluding remarks recommended speedy enactment of, the Domestic Violence (Family Protection) Bill of 2002, the Equality Bill of 2001, the

National Commission on Gender and Development Bill of 2002, the Criminal Law (Miscellaneous Amendment) Bill of 2002, the HIV/AIDS Prevention and Control Bill of 2002 and the Public Officers Code of Ethics Bill of 2002.

Analysis of government's effort in implementing CEDAW

This part will focus on what the government's effort has been in implementing CEDAW in two areas. The two areas have been selected to highlight government's commitment to protecting and promoting women's rights. This section will also capture the concerns of non-governmental organizations which will be summarized from the numerous reports made on what they see as gaps on government's part in committing to protect and promote women's rights. Following recommendations and observations made by the Committee after presentation of the 1st and 2nd report by government, the committee urged that the relevant government ministries to continue working with civil society, including non-governmental organizations, in order to create an enabling environment for legal reform, effective law enforcement and legal literacy. The Committee was concerned about the persistence of cultural practices and stereotypical attitudes with respect to the role and responsibilities of women that undermine their rights. It urged that awareness programmes be put into place to address the issue. Despite this call, the report has no information on the measures taken.

Definition and Application of the Principle of Discrimination Against Women

Definition of discrimination: Kenyan law does not provide a definition of discrimination against women that is consistent with the CEDAW. Many of CEDAW's provisions have not yet been directly incorporated into Kenyan laws. Sections 82(1 & 2) of the Constitution of Kenya prohibit discrimination in law or by persons holding public office. Section 82(1) states that "no law shall make any provision that is discriminatory either of itself or in its effect". While section 82(2) states that: "...no person shall be

treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.

Section 82 (3) defines discrimination to include: ‘...affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, or residence or other local connections, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

The prohibition on discrimination is subject to a range of exemptions. Since in Kenya, laws are not discriminatory under the Constitution if they relate to the status of non-citizens¹¹⁸, concern matters of personal law and customary law, are on the issues of adoption, burial, divorce, marriage and succession. Consequentially sections 82 (4 (b &c)) of the Constitution allow discrimination against women on matters of personal law.

Personal law is the area of law where women most experience discrimination. Customary practices and the economic situation bring about incidences of discrimination. Women experience a wide range of discriminatory practices, limiting their political and economic rights. The area in which most customary laws disadvantage women is in respect of property rights and inheritance. Under the customary law of most ethnic groups in Kenya, a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage.

The Law of Succession Act (Cap. 160, Laws of Kenya) has tried to redress these imbalances and the statute provides that both girls and boys share equal rights in succession. However this law is subject to several qualifications for example it does not

¹¹⁸ Constitution of Kenya, Section 82 (4a)

apply to agricultural property in areas gazetted by the Minister, specifically communally owned land in pastoral areas. This is the form of property that most Kenyans own. The result is that if an individual dies intestate i.e. without having written a will their customary law prevails and as has been pointed out most customary laws in Kenya do not allow girls and women to inherit property.¹¹⁹

Persons professing the Muslim faith are exempted from the Succession Act. They can however apply the Islamic law which does not apportion equal shares in the estate to daughters and wives. This is based on the principals in Islamic law that require a man to take care of his sister and on this basis awarding men twice the portions of property inherited from the father and widows an eighth. Widows do not enjoy the same rights as widowers under the Succession Act: for example widows only have a life interest in their husband's property which is extinguished by re-marriage whereas widowers continue to enjoy their rights over their deceased spouse's property regardless of whether or not they remarry. Where an unmarried adult without offspring dies intestate the Succession Act provides that land is first and foremost inherited by the deceased's father, then mother, then siblings. This hierarchical order clearly privileges the father over the mother.

The judiciary has applied the principle of equality in succession as provided for under the Succession Act and in division of matrimonial property in a number of cases. Recent court decisions illustrate the way in which the Kenyan legal system is interpreting equality and discrimination. In *Kivuitu –v– Kivuitu*¹²⁰ the Court of Appeal set out the categories of contribution that a woman claiming property registered in the name of the husband could be shown to have made.

¹¹⁹ FIDA Kenya. The NGO Commentary and Shadow Report to the 3 and 4 Kenya National Report to the Committee on Elimination of all Forms of Discrimination Against Women. 2003

¹²⁰ (1992) Kenya Appeal Reports: 241

Recognised forms of contribution include: financial contribution that can be in direct or indirect forms as well as non financial contribution which can take such forms as taking care of the family on the home front or tilling rural agricultural land as the husband acquires property in the urban centres (this is a common pattern in Kenya). In *Muthembwa –v– Muthembwa*,¹²¹ the Kenyan Court of Appeal took the issue of determination of matrimonial properties to another level by providing that a wife would be entitled to share of gifted and or inherited property if she contributed towards developing it. The principles established in these cases have been further expounded on in cases recent cases reported on under Articles 15 and 16 of CEDAW.

However, though the constitution bars discrimination on the basis of sex, generally it has been difficult to get women’s rights oriented legislation passed by the male dominated Kenyan Parliament. Their patriarchal attitudes were reflected during the battle to have a Sexual Offences Act passed.¹²² A number of other pieces of proposed legislation introduced to Parliament have failed to go through including the Affirmative Action Bill and the Domestic Violence Bill. Organizations within the women’s movement have been behind most of the attempts at legislative reform.

Critique of Kenya’s Effort at Implementation of CEDAW

Despite all the effort Kenya had not domesticated the same. Kenyans especially Kenyan women can therefore not rely on the provisions of the Convention for redress in cases of violations of their rights as set out under CEDAW. The Draft Constitution had laudable provisions in relation to women. It had entrenched the principles of equality and non-discrimination, which were to protect women. Though it still allowed for the

¹²¹ Civil appeal No. 74 of 2001.

¹²² See ‘Legislating against sexual violence: the Kenyan experience.’ An interview with Njoki Ndung’u. <http://www.awid.org/eng/Issues-and-Analysis/Library/Legislating-against-sexual-violence-the-Kenyan-experience>

application of personal law in matters of marriage divorce and succession, it expressly stated that these laws had to be consistent with the Constitution.

The Task Force on Laws affecting Women that was set up in to look into laws affecting women and did make relevant recommendations in its report of 1998. The report proposed revision of certain laws within certain periods, but most of its recommendations have not been implemented. The Government has time and again stated that it is concerned about the welfare and the special needs of the women. There have been efforts on its part to integrate the needs of women in various governmental plans and strategies such as the National Development Plans, Sessional Papers, The Poverty Reduction Strategy Paper (PRSP) (2001-2004) and a number of Parliamentary Motions. The setting up of the National Commission on Gender and Development¹²³ does testify to the government efforts. The Commission needs adequate budgetary allocations in order to perform its tasks. There is a Family Division of the High Court, established in 2002, which currently sits, only in Nairobi. It was set up to speed up the hearing of family law cases.

Although the Court has specifically addressed family law issues and cases, there are still some shortcomings. The goal of setting up family division in every province hasn't been realized, some advocates are critical of the Family Division as they feel that it has not done enough to streamline procedures owing to the fact that the Rules Committee hasn't simplified the Rules for the Family Court. Whereas, advocates acknowledged that it was a positive move to have the Division headed by a woman, it also made up of male judges from the Court of the Appeal who at times fail to appreciate the urgency of the

¹²³ Set up under the National Commission on Gender and Development Act of 2002

matters or gender concerns in certain cases. In as much some succession rules have been revised, they are still complex.¹²⁴

There are still a few women in Parliament compared to the men. This is also the situation in the Judiciary and the Executive. Though there has been a marked improvement in the numbers here in the regime that took power in 2002 as compared to former regimes, the numbers are still low. Women are still marginalized in the economic, social and political spheres of the country's development. Laws, customs, policies and practices perpetuate this.

The enactment of the Sexual Offences Act has not been matched with adequate training and dissemination of the Act to law-enforcement officers and relevant justice system agents. Most of the awareness that has been created on the Act has been conducted by Civil Society Organizations yet it is the government's role to ensure that its citizens are made aware of any new laws. Furthermore poor investigation of cases results in the lack of conviction of offenders thus denying justice to survivors of violence. The Act does not criminalize FGM for women above the age of 18 years thus rendering them vulnerable to negative cultural practices.

There is still no law to address domestic violence despite the fact that the Domestic Violence (Family Protection) Bill was drafted 8 years ago.¹²⁵

Discrimination against women is most evident upon dissolution of a marriage when the women are kicked out of their matrimonial home. This discriminative effect has been reinforced by the Kenyan Court of Appeal in the case of Peter Mburu Echaria Vs

¹²⁴ See www.hrw.org/report/2003/Kenya

¹²⁵ FIDA Kenya's Statement to the CEDAW Committee on the 5th and 6th Country Report by Kenya during the 39th CEDAW Session 23rd July -10th August 2007.

Priscilla Njeri Echaria¹²⁶. In this particular case the court held that neither the status of marriage nor the performance of domestic duties would entitle women to a beneficial interest in matrimonial property upon dissolution of marriage. This is a departure from previous case law from the same court which was to the effect that matrimonial property ought to be divided equally between the spouses upon dissolution of the marriage. This situation has been aggravated by the lack of Kenyan legislation on this issue.¹²⁷

¹²⁶ Nairobi Civil Appeal No. 75 of 2001

¹²⁷ Supra Note 22

CONCLUSION AND RECOMMENDATIONS

The concept of women's human rights owes its success and the proliferation of its use to the fact that it is simultaneously prosaic and revolutionary. On the one hand, the idea of women's human rights makes common sense. It declares, quite simply, that as human beings women have human rights. Anyone would find her or himself hard-pressed to publicly make and defend the contrary argument that women are not human. So in many ways, the claim that women have human rights seems quite ordinary. On the other hand, "women's human rights" is a revolutionary notion.

This radical reclamation of humanity and the corollary insistence that acceptance women's rights as human rights have profound transformative potential. The incorporation of women's perspectives and lives into human rights standards and practice forces recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve—simply as human beings. A woman's human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality. Finally, and very importantly, the idea of women's human rights provides a common framework for developing a vast array of visions and concrete strategies for change.

Inequality in the enjoyment of human rights by women throughout the world is often deeply embedded in tradition, history and culture, including religious attitudes. While respect for diversity and for diverse forms of social and cultural expression and identity must guide all human rights principles, equally important is the recognition of the dignity and worth of women as full human beings. International human rights law has repeatedly stressed that women's human rights cannot be violated on the grounds of cultural or religious norms. The Convention on the Elimination of All Forms of

Discrimination Against Women requests states to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹²⁸

Considering the case for Kenya what has emerged is that the international regime reflects state interests, and women are not sufficiently valued by states. Although the Women's Convention was ratified by an overwhelming majority of states, it is also subject to a disproportionately high number of reservations which serve to dilute a given states' legal obligations to women living within their jurisdiction¹²⁹. Second, the United Nation's system puts women's issues in a ghetto while failing to give women positions of influence in bodies that contribute to international standard setting. The Women's Convention is now considered by some feminists to be largely responsible for the marginalization of women's human rights.

They point out that mainstream human rights bodies ignore or downplay the human rights of women by referring "women's issues" to the Women's Convention. These critics also stress that institutions created to draft and monitor women's rights continue to be notoriously underfunded. In addition, the implementation procedures and obligations in the Women's Convention are much weaker than those in other human rights instruments. Third, the enforcement mechanisms available at the international level are often even more removed than the domestic protections.

The study, in the chapter four and five has shown that although the protection and promotion of the rights of women showed some progress in a positive direction during

¹²⁸ <http://www.amnestyusa.org/women/economicrights.html> (accessed Nov. 2004.)

¹²⁹ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, 30 VA. J. INT'L L. 643 (1990)

the review period in Kenya, adequate political will and commitment was shown by government to be lacking. There was general lack of demand from the general public for the protection and enjoyment of the women's rights as provided for under CEDAW. Most of the cases cited in this study involve issues of discrimination under the application of national laws. The more subtle and complex issue courts must now address is whether Kenya as a country has discriminated against women through implementation of apparently non-discriminatory legislation. It would not be wise for Kenya to wait for legislation to be challenged before international regional or national tribunals before implementing change. The country must begin changing those laws that are similar to the legislation challenged in cases contained in this study. The challenge facing the advancement of women's rights is to build on these cases and expand the use of international, regional, and domestic fora to ensure that the conception of human rights, as developed in the Universal Declaration of Human Rights and CEDAW, and women's exercise of these rights, does not vary according to latitude and circumstance.

This study opens up avenues for further research into the limits of the human rights, women's rights discourse, and the role of Kenyan government in creating a supportive environment for women's rights and also into the efficacy of legislation on improving women's daily live experiences. It appears that to the extent that human rights documents attempt to protect communal rights, they do so at the expense of women's rights. For example, the African Charter on Human and People's Rights states that, "the state shall have the duty to assist the family which is the custodian of moral and traditional values recognized by the community."¹³⁰ As the previous chapters have shown, it is these same cultural values and practices that make possible and justify the trampling

¹³⁰ ACHPR 18(2).

on women's rights. This provision is actually a claw back it gives women rights in one article and takes it away in the next. This situation is similar to the provisions in the Kenya constitution discussed in chapters four and five.

Women in Kenya continue to be treated differently from men through perpetuation of their discrimination vide laws, policies, social and cultural attitudes and lack of political will to address their plight. However, there are many ways in which CEDAW can be called on by those seeking to advance the enjoyment of equality by women. Whether, as an international treaty utilized at the international level, or in domestic courts and legislatures, or as a tool for lobbying education and activism, an imaginative and informed use of the Convention tailored to the national and local circumstances and combined with other relevant strategies can contribute in meaningful ways to enhancement and protection of women's rights.

It is notably that women in particular and the society at large lack information on women's rights and entitlements and therefore in many cases are not aware of the violations of their rights. There have been commendable achievements for women's rights in Kenya, but there have also been setbacks. More needs to be done if women are to achieve equality and equity and live free of discrimination. The efforts to achieve these goals should be undertaken in a holistic and participatory manner with both government and non-governmental organizations.

BIBLIOGRAPHY

Books

A.H. Robertson and J.G. Merrills 'Human Rights in the World' An introduction to the study of the international protection of human rights 4th ed., 1996.

Amnesty International, 'Rape – the invisible crime', March 8, 2001

Arnold Whittick, *Woman into Citizen: The Progress of Women Towards Emancipation During the 20th. Century*, Athenaeum / Frederick Muller, London, 1st. Edition 1979

Charlotte Bunch and Samantha Frost; *Women's Human Rights: An Introduction* (Published in *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge*, Routledge, 2000.)

Eugene Cotran, "Casebook on Kenya Customary Law," Nairobi: Professional Books Limited, 1987

Federation of Women Lawyers; 'A Kenya Women's Guide to the Law', a FIDA (Kenya) Publication

Galey, Margaret E. (1995). "Forerunners in Women's Quest for Partnership". In *Women, Politics, and the United Nations*, edited by Anne Winslow. Greenwood Press: Westport, Connecticut.

Galey, Margaret E. (1995), 'Women Find a Place,' in Anne Winslow (ed.), *Women, Politics and the United Nations* (Westport, CT: Greenwood Press)

Janet Kabeberi-Macharia, "Women, Laws, Customs and Practices in East Africa: Laying the Foundation" Nairobi: Women and Law in East Africa, 1995

Kenya Human Rights Commission, "Women and Land Rights in Kenya", Nairobi: Kenya Human Rights Commission, 2000

Kiragu, Jane 'Is there a Women's Movement?' in Muteshi, Jacinta (2006) *Mapping Best Practices: Promoting Gender Equality and the advancement of Kenyan women*. Nairobi, Heinrich Boll Foundation.

Kivutha Kibwana and Lawrence Mute, "Law and the Quest for Gender Equality in Kenya" Nairobi: Clairpress Limited, 2000

L. Morris "Women's rights are human rights": campaigns and concepts', (ed) *Rights: Sociological Perspectives*

Leonard, David. 1991, *African Successes: Four Public Managers of Kenyan Rural Development*. Berkeley: University of California Press.

Moi Daniel T Arap. 1986, *Kenya African Nationalism :Nyayo Philosophy and Principles*. London Macmillian

Nyerere J.K (1969); 'Stability and Change in Africa' in Colin Legum ed. African Contemporary Record, Vol. 2.

P Baer et al (eds.), Human Rights in Developing Countries: Yearbook 1996 (1996).

Rebecca Cook (ed.), Human Rights of Women: National and International Perspectives (1994).

Sabar- Freidman, A Church and State in Kenya, 1986 – 1992.

Smokin C. Wanjala, "Essays on Land Law: The Reform Debate in Kenya", Nairobi: Faculty of Law, University of Nairobi, 2000

The American Heritage Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

W. Mitullah et al (Eds): Kenya's Democratization: Gains or Losses. Claripress

Yash Ghai & Jill Cottrell (ed.), 'Economic, Social & Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights.' Interights 2004

Electronic Journals

Journal Articles

Adar K.G., A Human Rights and Academic Freedom in Kenya's Public Universities: The case of the Universities Academic Staff Union. Human Rights Quarterly 21 (1) (February 1999): 187

Cook, R. & Dickens, B., "Human Rights Dynamics of Abortion Law Reform", Human Rights Quarterly 25,

Hansungule "Kenya's unsteady march towards the lane of Constitutionalism", University of Nairobi Law Journal, Vol. 1, 2003, 43

Morsink, Johannes (1991). "Women's Rights in the Universal Declaration". In Human Rights Quarterly 13(2).

Quarterly Human Rights Report, Kenya Human Rights Commission (KHRC), Vol. 2, No. 3, 2000.

"Burden of proof in sexual offence", Gender violence workshop, FIDA (K), 18-19 April 1994.

Papers and Reports

Amnesty International "Broken bodies, shattered minds", AI Index: ACT 40/001/2001.

Andrew Byrnes, Jane Connors, Lum Bik; Advancing The Human Rights of Women: Using International Human Rights Standards in Domestic Litigation; Papers and statements from the Asia/South Pacific Regional Judicial Colloquium, Hong Kong, 20-22 May 1996

Bunch, C 'Organizing for women's human rights globally' (A short paper on file with this researcher)

Florence Butegwa, International Human Rights and Practice: Implications for Women, Article originally appeared in a publication by Women, Law and Development International entitled, "From Basic Needs to Basic Rights: Women's Claim to Human Rights", edited by Margaret Schuler

GoK, 2000, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women.

GTG, 2001, 'Gender Dynamics of Poverty in Kenya: Strategies for Alleviation Through The PRSP and MTEF Processes'. Memorandum, March 2001.
www.gtz.de/povertyConference/dokumente/Kenya.pdf

Isaiah Kipyegon Toroitich and African Women and Child Information Network, Women Rights as Human Rights: A Contradiction between Policy and Practice in Kenya, Norwegian Church Aid, Occasional Paper Series No. 1/2004

Jan Bauer, Essays on Human Rights and Democratic Development Paper No. 6, Montreal 1996

Karani, S 'Towards strengthening the regional protection of women's rights in Africa: an analysis of the proposed "Draft Protocol to the African Charter on the Rights of Women in Africa" and the "Draft OAU Convention on the Elimination of All Forms of Harmful Practices Affecting the Fundamental Human Rights of Women and Girls"' (LLM dissertation 2000 UP/UWC).

Keynote address by the Special Rapporteur on Violence Against Women, its Causes and Consequences at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. A/CONF.189/PC.3/5 of 27 July 2001 at <http://www.unhch.ch/Huridocda/Huridocdq.nsf/xenophobia>(accessed on 2 October 2003).

Medina, C 'Do international human rights laws protect women?' (A short paper on file with this researcher).

Nyamu-Musembi, C., October 2002, "Towards an Actor-Oriented Perspective on Human Rights. IDS Working Paper No 169

Nyamu-Musembi, C., October 2002, "Towards an Actor-Oriented Perspective on Human Rights. IDS Working Paper No 169

Patricia Kameri-Mbote “Violence against women in Kenya: an analysis of law, policy and institutions,” IELRC Working paper No. 2000-1.

Republic of Kenya, Report of the Task Force on the Establishment of a Truth Justice and Reconciliation Commission, 26th August, 2003.

Task Force for the Review of Laws Relating to Women, “Women’s Status and Rights in Kenya: Report of the Task Force for the Review of Laws Relating to Women”, Nairobi, 1998).

UNDP, 2002, Kenya Human Development Report 2001: Addressing Social and Economic Disparities for Human Development. Nairobi: United Nations

UNIFEM, 2002, Progress of the World’s Women 2002, New York: United Nations

Were, Maureen and Kiringai, Jane, 2003, ‘Gender Mainstreaming in Macroeconomic Policies and Poverty Reduction Strategy in Kenya’. Kenya Institute for Public Policy Research and Analysis. A Research Report for African Women’s Development and Communication Network (FEMNET), Nairobi: FEMNET

Internet Articles.

AfricaOnline, 2002, ‘Kenya: Women in Politics – the Stakes are Higher’, AfricaOnline, 23 September 2002, <http://www.africaonline.com/site/Articles>

AFROL, undated, Kenya Gender Profile, http://www.afrol.com/Categories/Women/profiles/kenya_women.htm

Double Standards: Women’s Property Rights Violations in Kenya, Human Rights Watch Report, Vol. 15, No. 5 (A) – March 2003. <http://www.cdc.gov/nchstp/od/gap/countries/kenya>

Zachary Ochieng, ‘Kenya - Relegated to second class citizens’, www.peacelink.it/afrinews

Legal Instruments, Conventions, Declarations And Resolutions

African Charter on Human and Peoples’ Rights, adopted 27 June 1981, O.A.U. Doc.CAB/LEG/67/3 Rev. 5 (entered into force 21 Oct. 1986), reprinted in 21 I.L.M. 58 (1982).

Kenyan Constitution

Kenya National Commission on Human Rights Act, 2002.

National Land Policy Sec.6.2, 3.6.6, 3.6.10.3 (2007) [hereinafter National Land Policy].

Registered Land Act, (2006) Cap.300.

Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. On Hum. Rts., 48th Sess., 22d plen. mtg., part I, 4, U. N. Doc. A/CONF. 157/23 (1993) reprinted in 32 I.L.M. 1661 (1993).

Cases

[1970] EA 512

[2001] Kenya Law Reports (KLR) 262

High Court Misc. Application No. 343 of 2000

Kenneth Njindo Matiba v The Attorney General, HCCC Misc. Application No. 666 of 1990

Misc. Application N.C. No. 574/90

Nairobi Criminal Appeal No. 67 of 2002

Nairobi High Court Misc. Application No. 34 of 2001

Media

Weekly Review, 24 April 1987

Weekly Review (Nairobi) 15 May 1992, Weekly Review (Nairobi) 19 June 1992 and Church of the Province of Kenya. CPK Pastoral Letter, 26 April 1992.