

The Current Situation Analysis on Gender Equality and Discrimination in Kenya

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Abstract- It is now acceptable globally that gender discrimination and inequality are major stumbling blocks to women's rights advancement. Historical injustices continue in some parts of the world without serious efforts to address them. This paper is a desk review on various articles on the situational analysis of gender inequality and discrimination in Kenya. It is presented in the following format; Introduction; Historical practices that favor inequality and discrimination against women in Kenya; Current practices that favor inequality and discrimination against women; Legislative framework for the protection of women against inequality and discrimination; Achieving gender equality and non-discrimination. The paper concludes that, with substantial progress underway a lot still has to be done. The social and cultural circumstances hinder women's rights advancement, but with legislation, no efforts should be spared in the fight against inequality and discrimination of women

Index Terms- gender, discrimination, inequality, women, rights

I. INTRODUCTION

Gender is the array of socially constructed roles and relationship traits, behaviours, values and society influence and not physical appearance. The concept of feminism was introduced by Francios Marie¹ as a movement to end sexism, sexist exploitations and oppression² with the feminist jurisprudence focusing on the laws and philosophies based on the political, social and economic equality of the sexes.³ In a nutshell, it mainly evolved around human rights, equity, equality, non-discrimination and human dignity.

Equality is the doctrine that all persons, regardless of wealth, social status, or the political power wielded by them, are to be treated the same before the law. It relates to the dignity and value of both men and women.⁴ Jeremy Bentham stated that all men are born equal, an indisputable fact to achieve justice.⁵ It

should be to the benefit and happiness of the greater majority. Fletcher stated that equality under the law is grounded in a holistic view of human dignity applying to every person on the account of them being independent and that all alike things should be treated like; men and women are alike⁶. They should therefore be treated alike.

Gender Equality refers to the practice of fairness and justice in the distribution of benefits, access and control of resources, responsibilities, power, opportunities and services. This is a basic right for all people including women, men, young people and children. It is equal opportunities for groups of men and women to access and control social, economic and political resources including equal protection under the law. Equality between women and men is both a human rights issue and as well as a precondition for, and indicator of, sustainable people-centered development.⁷ Equality involves ensuring that the perceptions, interests, needs and priorities of women and men (which can be very different because of the differing roles and responsibilities of women and men) will be given equal weight in planning and decision-making.⁸ According to the Gender Inequality Index by the United Nations Development Programme which measures gender disparities between men and women, Kenya ranks 126 with a Gender Inequality Index of 0.552⁹. Gender inequalities manifest in almost all aspects of life: social, political & economic.

Gender discrimination is the prejudicial treatment of an individual or group due to their gender. There is positive discrimination and negative discrimination. Physically a female's role is to look after house, children, family, and relatives while on the other hand men are made for bread earners, hardship and for struggle for earning. Both are equal in human right. The distinct roles and behavior may give rise to gender discrimination. There are situations where men are sometimes discriminated upon as seen with the rise of advocacy in girl child

⁶ Fletcher G.P (1999), 'In God's Image: The Religious Imperative of Equality under Law,' Columbia Law Review Vol.99 p.16008

⁷ UN WOMEN; United Nations Entity for Gender Equality and the Empowerment of Women; <<http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>> accessed on 27th June, 2017.

⁸ Kenya at 50: 'What Next for Gender Equality in Kenya', Nancy Baraza.

⁹ The higher the GII value the more disparities between females and males and the more loss to human development. Human Development Report 2015.

¹Journal of the History of Ideas.

²Hooks Bell, 'Ain't I a Woman': Black Women and Feminism (1981).

³<http://www/law.cornell.edu/wex/feminist_jurisprudence> accessed 27th June 2017.

⁴ Western P, 'The Empty idea of Equality, 'Harvard Law Review Vol.95 no. 3 of 1982 p.542

⁵ Bedau H.A 'Anarchical Fallacies: Bentham's Attack on Human Rights Quarterly, Volume 22, number1 February 2000, p261.

education in Kenya and the same can be said when we are discussing employment for women. Although gender discrimination is on both sides, this study mainly focuses on discrimination against women and the inequality they generally face.

Kenya is party to international and regional treaties on gender equality such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which was ratified 09/03/1984, Nairobi Forward Looking Strategies (1985), the Beijing Platform for Action (1995), the African Charter on Human and People's Rights and the Rights of Women in Africa (Maputo Protocol, 2003), the Solemn Declaration on Gender Equality in Africa (2004) and the African Union Gender Policy. These treaties provide that states should develop national legislation that promote gender equality within the state.

The structural outline of the paper is as follows; (i) Introduction which basically gives not only the definition of key terms but introduces the reader to the subject matter and makes them conversant with it. (ii) Aftermath of the 2010 Constitution. (iii) Historical practices that favoured inequality and discrimination against women. (iv) Current practices (v) Legislative framework that fights gender discrimination (vi) Gender Equality with regard to Socio-Economic concerns (vii) The Maputo Protocol provisions (viii) Conclusion

Kenya is a country of diverse communities who practise different customs and practises. Being a patriarchal society, cultural beliefs and stereotypes remain a major hurdle towards the empowerment of women who for the past few decades have been literally fighting to be recognized as equal partners to their male counterparts. This has in return created gender inequality because of the gender based differentiation that exists in our society.¹⁰

Traditionally, many communities in Kenya were ruled by a group of elders, all men except for the exceptional case of Wangu wa Makeri, who made important decisions concerning the communities and resolved disputes. Women were treated like children and therefore lacked a voice in all the decisions made. The progress towards gender equality and women empowerment in Kenya like many African countries, cannot, thus, be examined outside the traditional cultural setting. Though their efforts bore fruits, women still have a long way to go because at the top of both industry and government the faces remain stubbornly male. This is because progress in terms of gender equality is uneven.

The law that is meant to protect women from all the injustices that they have undergone has actually been one that has facilitated all the opportunities that have ensured women are discriminated upon and gender equality is ignored completely. Claire Robertson states that the African governments

have in fact done a little worse than merely paying lip service to the ideal equality of women in the form of laws.¹¹

Women have suffered human rights violations due to a weak legal framework that does not adequately address the inequalities and discriminations suffered in a patriarchal society.¹² The weak legal framework that has been in existence since Kenya got its independence, has further allowed the application of harmful cultural practices such as female genital mutilation, early marriage, widow cleansing, forced evictions, widow inheritance and discriminatory property inheritance practices which prevent women from inheriting property, that in turn increases women's vulnerability to abuse.

The 1963 Independence Constitution of Kenya lacked express protection of the freedom from discrimination. Section 82(3)¹³, defined discrimination as follows:

"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 connection, 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"

Thus, traditional customs backed in some instances by discriminatory colonial laws continued to dominate and govern the various facets of community living.

The application of African customary laws found grounding in the Judicature Act¹⁴ which provided that 'The High Court, the Court of Appeal and all subordinate courts shall be guided by African customary law 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, and shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay'.¹⁵

Although protection against discrimination was eventually introduced into the old repealed Constitution, it was not until the year 1997 that section 82 was amended to specifically outlaw 'sex' as one of the forbidden grounds of discrimination.¹⁶ The section nevertheless retained provisions allowing for enactment of discriminatory laws with respect to adoption, marriage, divorce, burial, distribution of property upon death and other matters of personal law.¹⁷

The New Constitutional Dispensation

¹¹Claire Robertson, 'Developing Economic Awareness: Changing Perspectives in Studies of African Women,' 1976-1985, *Feminist Studies* 13 (Spring 1987).

¹²Federation of Women Lawyers Kenya (FIDA), 'Advancing Women's Rights in Kenya'.

¹³Constitution of Kenya, 1969

¹⁴Chapter 8, Laws of Kenya, section 3 (2)

¹⁵Ibid, see 2 above

¹⁶Amendment brought through the Constitution of Kenya (Amendment) Act No. 9 of 1997, section 9.

¹⁷Section 82 (4) (b) Constitution of 1963

¹⁰Celestine Nyamu 'Achieving Gender Equality in a Plural Legal Context: Custom and Women's Access to and Control of Land in Kenya' [1999] 15(3) *Third World Legal Studies* <<http://scholar.valpo.edu/twls/vol15/iss1/3>> accessed 22nd December 2016

Kenya promulgated a new constitution in 2010. The right to equality and non-discrimination as expressed in Article 27 of the 2010 Constitution represents a substantial improvement on the right as provided in Article 82 of the previous 1969 Constitution. The Article begins with a guarantee of equality before the law and equal protection and benefit of the law,¹⁸ a guarantee which was not present in the previous Constitution. Moreover, equality is defined as including “full and equal enjoyment” of all rights and freedoms.¹⁹ These provisions provide important additional protection which goes beyond the protection from discrimination provided in Article 27 (4). Article 27 (4) prohibits discrimination on an extensive list of specified grounds: “race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”. It is clear that the list of protected grounds provided in the new Constitution is indicative rather than exhaustive, beginning with the phrase “The State shall not discriminate directly or indirectly on any ground, including²⁰...” This creates the possibility of legal challenges by those suffering discrimination on grounds which are not explicitly listed in article 27(4).

Institutions and Policies in place to deal with Gender discrimination

a) Kenya National Human Rights and Equality Commission

This institution was established by the Constitution 2010 under Article 59 and its functions are stipulated²¹ to include, inter alia, promoting respect for human rights and develop a culture of human rights in the Republic, Promoting the protection and observance of human rights in public and private institutions, to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights and to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice.

b) National Gender and Equality Commission

The National Gender and Equality Commission Act 2011²² established the National Gender and Equality Commission (NGEC).²³ The functions of the commission are stipulated in Section 8 of the Act which include, inter alia, promoting gender equality and freedom from discrimination. It inherits the status and powers of its parent Commission (the Kenya National Human Rights and Equality Commission) as outlined in Chapter 15 – Commissions and Independent Offices of the 2010 Constitution, Article 59 of Chapter 4. The NGEC is empowered by Article 252 to initiate investigations based on suspicions or claims of discrimination, and have the authority of a Court to summon a witness in the course of such investigations.

c) Ministries

The Ministry of Public Service, Youth and Gender Affairs was created to provide leadership, coordinate and create enabling environment for transforming public service delivery, empowering youth and women, and promoting gender equity and equality. This has been one of the tools used to fight gender discrimination and inequality in the country.

d) Universities

Gender inequality in enrollment rates is evident in all levels of education in Kenya. Historically, girls’ enrollment in schools during the colonial period has been discouraged through perceptions that deemed education unnecessary. In 1936, girls accounted for only a third of total enrollments. Statistics show that enrolment of girls into primary schools in was 48.7 % in 1990. Admissions figures for universities show a difference between the numbers of women and men admitted. Statistics from the Ministry of Education reveal that female students comprised 30.5 per cent of the total enrolment of 40,613 students at the five public universities in the 1998/99 academic year²⁴. Kenyatta University, with 38.9 per cent, had the highest percentage of female students, while Jomo Kenyatta University had the lowest percentage (20.1 per cent). The Ministry observed that the gender gap in public university student enrolment is an issue that needs urgent attention and over the years, the numbers for female enrollment is increasing.

The University of Nairobi, School of Law recently started offering a unit known as Gender and the Law as an elective for the fourth years. The unit is eye opening to the misconceptions of the society that have fertilized gender discrimination and inequality and is one way to fight this through education. The unit, if offered in all universities, would be a step forward to ensure that gender discrimination is a thing of the past.

e) Vision 2030 Policy

The 2030 vision for gender, youth and vulnerable groups is equity in power and resource distribution between the sexes, improve livelihoods for vulnerable groups and responsible globally competitive and prosperous youth.²⁵ Its flagship projects for 2012 included inter alia to institutionalize the Women Enterprise Fund and increase its overall amounts and efficiency in projects launched by its beneficiaries and establish a consolidated social protection fund. The goals for 2012 were therefore to increase opportunities all round among women, youth and all disadvantaged groups.

Specific strategies will involve increasing the participation of women in all economic, social and political decision-making process (e.g. starting with higher representation of women in Parliament), improve access to all disadvantaged groups (e.g. business opportunities, health and education services, housing and justice) and minimising vulnerabilities through prohibition of retrogressive practices e.g. FGM and child labour.²⁶

¹⁸ The Kenyan Constitution 2010, article 27(1)

¹⁹ Ibid

²⁰ Kenyan Constitution 2010

²¹ Under Article 59 (2)

²² Cap 5C of Kenya Laws

²³ See Section 3(1) of the National Gender and Equality Commission Act 2011.

²⁴ Government of Kenya (2000), Ministry of Education, Science and Technology, Statistics Planning Section, Nairobi: Government Printers

²⁵ Vision 2030 Kenya

²⁶ Ibid, See 23

II. HISTORICAL PRACTISES THAT FAVOUR INEQUALITY AND DISCRIMINATION AGAINST WOMEN

a) Property Ownership and Inheritance

The primary and most widely held justification for the exclusion of women from ownership and control of land is that African customary law of most communities does not permit women to own or have major control over land. In most Kenyan customs, land was communally owned and passed on through the male members of the family line. In matters of inheritance, the same customs did not allow women and girls to inherit property. As such, women and girls were left out in wills and in cases of intestate succession, they were never considered. Married daughters were especially not entitled to inherit the estate of their deceased father. In Divorce, the distribution of property also favoured the husband.

Okoth Ogendo in one of his articles argues that African land tenure relations are more usefully understood as being based on the "production functions... assigned to individual members of society at different points in the social cycle".²⁷ He goes on to argue that access to power to control land is "attached to membership of some unit of production". Therefore, the extent of a person's property in land will be determined by his/her membership status.²⁸

The Law of Succession Act²⁹ has made big strides in the way of eliminating discrimination of female persons in matters of succession³⁰. The Act does not differentiate between the female and male children of the deceased or married and unmarried daughters. The term "dependant" under section 29 was defined to include, 'the children of the deceased whether or not maintained by the deceased immediately prior to his death'.

To cure the injustices regarding the right of women to inherit, courts invoked decisions that were meant to avert discrimination. One such case was in *Mary Rono v Jane Rono & another* in which under Keiyo customs a woman had no right to inherit.³¹ In this matter, the deceased was survived by two wives and nine children (six daughters and three sons), some were unmarried others divorced. One household had daughters only. It was proposed that the household with boys should get the larger share of their deceased's father's property. After all, the girls had an option of getting married and leaving the home, it was argued. On appeal, the court found no reasonable basis for drawing a distinction between the sons and the daughters ordered equal subdivision of property regardless of gender.³²

²⁷Okoth-Ogendo 'Some Issues of Theory in the Study of Tenure Relations in African Agriculture' supranote 10, at 6, 10.

²⁸ Ibid

²⁹Chapter 160 of the Laws of Kenya

³⁰Patricia Kameri Mbote, *Law of Succession in Kenya: Gender Perspectives in Property Management and control, Women and Law in East Africa*, 1995

³¹Civil Appeal No 66 of 2002, (2008) 1 KLR (G&F) 803. In this case, the boys claimed a larger share of their deceased's father's property than their sisters and the father's widow.

³²Section 40(1) of the Law of Succession Act provides for subdivision of deceased's estate in polygamous unions as follows; "Where an intestate has married more than once under

In *Ole Ntutu*³³, it was observed that the Maasai customary law could not apply if the same was discriminatory regardless of whether the area in question was among those gazetted under section 32. This would be against the spirit of section 3(2) of the Judicature Act and the Constitution which curtails application of customary law if, 'repugnant to justice and morality or inconsistent with any written law'³⁴.

Despite its limited gains in engendering gender equality, the Law of Succession Act ironically has also perpetuated inequality. This can be seen in section 35(1) of the Act which partly states; Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:

(i) the personal and household effects of the deceased absolutely; and

(ii) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person. Section 36(1) goes on further to say, where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the intestate estate to:-

(iii) the personal and household effect of the deceased absolutely; and

(iv) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and

(v) a life interest in the whole of the remainder; Provided that if the surviving spouse is a widow. From this section, it is clear that a widow's life interest in the property terminates upon her remarriage but the same case does not apply to the widower. This is one example of discrimination and inequality that the law has actually created.

Despite the presence of laws to curb this particular injustice, Kenyan women are largely excluded from control of land in current times. Statistically, most of the registered land is held in men's names. Although gender disaggregated statistics are difficult to obtain, some studies have established that only 4% of land is registered in women's names.³⁵

The following case scenario is a good example of how land issues have been addressed after the promulgation of the Constitution 2010:

Samson Kiogora Rukunga v Zipporah Gaiti Rukunga 2011 [eKLR]

The deceased, Rukunga Kaimathiri was survived by fourteen children, among them Samson Kiogora and Consolata Ntibuka. He died intestate. Subsequently, Samson filed an

any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children".

³³In *Re Estate of Lerionka Ole Ntutu (Deceased)* [2008] eKLR.

³⁴Article 2 (4) of the Constitution Kenya 2010

³⁵This estimate is given in a study conducted by EarthCare Africa. See *Land Legislation Shuts out Women*, DAILY NATION (Nairobi) August 7, 1997, at page 20.

application for confirmation of grant which made no provision for daughters of the deceased. His application provoked protest from Consolata. Consolata's protest was on the ground that although she was at one time married, she got divorced in 1981 and returned to her deceased father's land. More specifically she stated that she was living on what was her deceased mother's portion of land up to and until the time confirmation of the grant was being sought. She had further stated that she lived in the house that belonged to her late mother and cultivates the rest of her late mother's portions of land.

Kiogora's testimony to the court confirmed that Consolata lived and cultivated a portion of that land. Witnesses to Samson and Consolata stated that although Consolata had once gotten married to a man called Njogu, the two were no longer living together and that Consolata was living on a piece of land that had been earmarked for her late mother. It was further stated that the house in which Consolata lived had been constructed for her mother by one of her step brothers who lived in the US.

The issues for determination were whether Consolata was entitled to inherit her deceased father's estate and the rightful owner the house in which Consolata was living. While holding in favour of Consolata, the court stated that Kiogora was forbidden not only by Article 60 (f) of the Constitution from discriminating against Consolata because of her marital status but was also prohibited by Article 27 of Constitution. Article 27 of the constitution provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.³⁶

b) Distribution of matrimonial property in divorce and separation

A widow was not entitled to any of the matrimonial property. Without title to property, the woman was left vulnerable and at the mercy of in-laws who would evict her from the matrimonial property at which which is a common case that has been experienced by majority of widows all over the country.

Kenya operated on an old English statute of general application in the name of Married Women's Property Act (MWPA) of 1882 prior to the Matrimonial Property Act of 2013. Insistence on direct financial contribution by some judges disadvantaged the female folk whose primary contribution was in other forms such as farm work, domestic chores, looking after children and generally caring for the family which if we go to the discussion of gender roles in the society, will support that a woman's purpose was to fulfil the mentioned activities because of social construction.

Courts tried to intervene and bring justice to an otherwise unfair situation. In *Kivuitu v Kivuitu*³⁷, the Court of appeal put into consideration the wife's indirect contribution and granted her an equal share of the family home.³⁸ The Court of Appeal in

³⁶ Kenyan Constitution 2010

³⁷ [1991] 2 KAR 241.

³⁸ One judge remarked; 'The time when an African woman was presumed to own nothing at all and all that she owned belonged to her husband and was regarded as a chattel to her husband has long gone. Women are now honourably employed and occupy high positions equal to men in the Government and in

*Peter Mburu Echaria v Priscilla Njeri Echaria*³⁹ rejected the indirect contribution of a woman insisting on proof of direct financial contribution, giving a blow to the progress already established. Nevertheless, courts have subsequently distinguished this case in order to take into account a wife's non-monetary contributions.

c) Right to bury Spouse

The case of *Virginia Edith Wambui v Joash Ochieng Ougo and Omolo Siranga*⁴⁰ (commonly referred to as the *S.M. Otieno Case*) showcased the vulnerable position of a widow vis a vis her in-laws even in matters regarding the place of burial of her deceased husband.

When SM Otieno a prominent lawyer died in 1986, a protracted legal battle ensued over his place of burial. This dispute pitted the widow, Wambui Otieno, against the deceased's brother and members of the deceased's clan. Specifically, they objected to her announced intention to bury the remains of her late husband in Nairobi. Efforts to resolve the matter amicably failed after the widow labelled the clan members as thieves merely interested in 'looting' her house. Consequently, she filed suit in the High Court seeking a declaration entitling her to claim her husband's body from the City Mortuary and perform the burial ceremony. She also sought injunctive orders restraining the clan from ever removing or in any way interfering with the remains of the deceased until the dispute was resolved.⁴¹ The clan contested this claim on the grounds that the deceased was a Luo, and thus, needed to be buried in accordance with Luo custom. They indicated that Luo custom demanded that a person of the deceased's stature had to be buried in his ancestral home.⁴²

The protagonists articulated their claims differently. While the widow's claim was based on the English Common law right of a wife to bury her husband, the clan members appealed to the customarian responsibility imparted by the instrumentality of Luo customary law. The case was adjudicated up to the highest court of the land, the Court of Appeal, which decided in favour of Luo customary law. The court argued that when it comes to matters of personal law such as death and burial rites, it is the customary law of the deceased that applies.

The jurisprudence has since then developed asserting the priority of the marriage union in deciding the place of burial.⁴³

the private sector ... The situation has changed and so have customs'.

³⁹ eKLR Nairobi Civil Appeal No. 75 of 2001.

⁴⁰ (1982-88)1 KAR

⁴¹ J Osogo Ambani & Ochieng Ahaya, 'The Wretched African Traditionalists in Kenya: The Challenges and Prospects of Customary Law in the New Constitutional Era' (2015)

⁴² For a detailed analysis of the case, see Juma, 'Reconciling African customary law', 482

⁴³ In *Njoroge v Njoroge & another* [2004] 1 KLR, the court for instance, held that the marriage regime was more important than the succession regime. See also *Lucy Kemboi v Cleti Kurgat & 5 others* [2012] eKLR where the court held, "The Constitution of Kenya (2010) at Article 27 (3) and (4) gives both women and men the right to equal opportunities in cultural and social spheres and also provides that there should be no

d) Employment Opportunities

Gender pay gap, gender wage gap, male-female income difference, and gender earnings gap are various terms used to describe the statistical difference in the average yearly income between males and females. The difference is measured as the ratio of female to male median yearly earnings among full-time, year-round workers. The female-to-male median yearly earnings ratio was 0.77 in 2011, meaning females earned 77 percent of what their male counterparts were paid, a gap of 23 percent.⁴⁴ This ratio is calculated annually and is based on data obtained by the Bureau of Labour Statistics Current Population Survey on the median annual earnings of all men and women classified as full time workers.⁴⁵

Sexist gender stereotypes were well imported by British officials during the colonial rule, who were accustomed to living in a society with a marked gender gap. The gender pay gap has been described as an untrue feminist notion that does not take in account factors other than wage discrimination. According to this theory, women make less money because of the choices they make such as less education, lower-paying occupations, and prioritizing the responsibilities of being a mother.⁴⁶

Consequently, wage labour and economic opportunities were opened up to men, with the expectation that women would stay behind to look after the family and such similar attitudes held back women in a variety of other ways.⁴⁷ Men strove to portray themselves as having absolute power over women and other members of their families. They portrayed gender inequality as 'customary'.⁴⁸

In both formal and informal job sectors, women were discriminated upon and lacked these opportunities that were enjoyed by the men. In case they were employed, they were paid

discrimination directly or indirectly against any person on any ground"

⁴⁴U.S. Census Bureau, 2012. Highlights of women's earnings in 2011: Report 1038. From www.bls.gov/cps/cpswom2011.pdf accessed on 30th June, 2017.

⁴⁵U.S. Census Bureau. (2012). Current population reports. Income, poverty, and health insurance coverage in the United States: 2011. <www.census.gov/prod/2012pubs. Accessed on 30th June, 2017.

⁴⁶Farrell, Warren (2005). 'Why men earn more: The startling truth behind the pay gap and what women can do about it.' New York: AMACON.

⁴⁷[Nic Cheeseman](http://democracyinfrance.org/kenya-needs-reduce-gender-gap/), DEMOCRACY IN AFRICA; The Gender Gap in Kenya – Taking Stock and Moving Forward <http://democracyinfrance.org/kenya-needs-reduce-gender-gap/> accessed on 30th June, 2017.

⁴⁸MARTIN CHANOCK, 'LAW, CUSTOM AND SOCIAL ORDER: THE COLONIAL EXPERIENCE IN MALAWI AND ZAMBIA' 38 (1985). See also T. Nhlapo, Indigenous Law and Gender in South Africa: Taking Human Rights and Cultural Diversity Seriously. 1994-95 THIRD WORLD LEGAL STUDIES 49, 58-60. Nhlapo shows that in fact through 'officialised' customary law in the colonial setting, women were placed outside of the domain of law which, under the influence of Roman-Dutch law, recognized only the 'head of household' as the only true person in law.

less money compared to their male counter parts despite the fact that they were doing the same job. This practise has continued to current times. With the growing economy, many men have been able to secure formal employment. This could be influenced by the fact that previously, it was only the men who would be educated if they were in a family of both boys and girls. Because of this, the informal sector has been filled by women mainly because they lack education qualifications and also they are more prone to discrimination and being taken advantage of.

Due to past injustices, inequalities and discrimination against women, there have been fewer women in the senior ranks of employment.⁴⁹ Senior positions are denied women on the basis that in their reproductive ages will be more absent than their male counterparts in order to devote time to family care and child nurturing.⁵⁰

In many cases, men are paid higher incomes for the same work as their female counterparts with the argument that men are perceived to be breadwinners.⁵¹ Although there are as many females as males, the female share of total wage employment was about 37% of the total wage employment in both 2013 and 2014. The employment to population ratio (EPR) for females is lower than that of males for all age groups above 15 years.⁵² This suggests that females are disadvantaged in accessing employment.

Females and males also differ on the sector of employment. Males tend to outnumber females by between two to five times in the sectors/industries that are deemed to be more lucrative, such as manufacturing and professional, scientific and technical activities.⁵³

Available evidence indicates that the pay gap exists, although Kenya ratified the Equal Remuneration Convention in 2001. Women were likely to earn about 67 to 70 percent of the salary of men in 2005 and 2014. About 70% of managing directors meet the two-thirds gender rule in overall distribution of employment by sex. However, within the upper job groups A to D, cadres of the public service, the constitutional threshold is rarely met.⁵⁴

Women must collectively work together if they want their employers to treat them fairly based on their merit. They have an

⁴⁹Kameri-Mbote P, *Protection Of The Employed Women's Rights In Kenya: A Case-Study Of The Female Academic Staff Members At The University Of Nairobi*, Project paper submitted in partial fulfillment of the requirements for the award of the Diploma in Women's Law (Dip. WL), Faculty of Law, University of Zimbabwe

⁵⁰Kameri-Mbote P, *Protection Of The Employed Women's Rights In Kenya: A Case-Study Of The Female Academic Staff Members At The University Of Nairobi*, Project paper submitted in partial fulfillment of the requirements for the award of the Diploma in Women's Law (Dip. WL), Faculty of Law, University of Zimbabwe

⁵¹Ibid See 31

⁵²Employment under the Official Launch of the Status Report of Equality and Inclusion in Kenya-2017 as seen in the Daily Nation, Wednesday July 5th, 2017.

⁵³Ibid See 47

⁵⁴Ibid See 47

obligation to help the women who come after them. Change will not happen without women persevering in their professional lives to end gender imbalances in the workplace.⁵⁵ Kenya as well has to put emphasis to the employment sector where they should actually implement Article 13 of the Maputo Protocol to the letter since it is one of the conventions that She has ratified and deals with key issues such as equality of access to employment, equal remuneration and to ensure the equal application of taxation laws to women and men inter alia.⁵⁶

III. CURRENT PRACTISES THAT FAVOUR INEQUALITY AND DISCRIMINATION AGAINST WOMEN

a) Women in governance

Representation is a core concept in the study and practice of politics.⁵⁷ It is necessary to consider three facets of representation; who represents, what is represented and how it is represented.⁵⁸

The Constitution of Kenya, 2010 presented various gains towards gender equality as stipulated in Article 27 (3)⁵⁹ and (8)⁶⁰. The preamble to the Constitution recognises the aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law. Right to Participation in the Political and Decision-Making Process has also been emphasized in the Maputo Protocol which Kenya has ratified.⁶¹

Equal participation of the gender in leadership and governance is an important step towards ensuring gender equality in many other facets. It is only by having real power through participation in decision making and policy formulation that sex equality can be achieved.

The participation of women in legislative process shows a slow progress towards equality of the two genders. In fact, there was no Kenyan woman representative in the first Parliament and it was not until the second General election in 1969 that the first woman got elected as a Member of Parliament.⁶² This shows the inherent patriarchal nature of the political system and parties.

⁵⁵Cheryl Lynn Kelsey, 'Gender inequality: Empowering women'

Pg 5

⁵⁶ Protocol to the African charter on Human and People's Rights on the Rights of Women in Africa (MAPUTO Protocol), Article 13

⁵⁷Yvonne Galligan, '*International Political Science Review*', Vol. 28, No. 5 (Nov., 2007) available at

<http://www.jstor.org/stable/20445117>>accessed on 1 November 2016

⁵⁸Ibid

⁵⁹ Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

⁶⁰ In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

⁶¹ Ibid, See 54

⁶² Ms Grace Onyango representing Kisumu Town constituency

The inclusion of women is in reality cooptation of them in a male-centric system.⁶³

As quoted earlier, Article 27(8) places a duty on the State to take legislative (through Parliament) and other measures to implement the two-thirds gender principle⁶⁴. Under Article 81(b) the electoral system is mandatorily directed to comply with the principle that not more than two-thirds of the members of elective public bodies shall be of the same gender. Further, Article 100 mandates Parliament to enact legislation promoting representation in Parliament of women. These provisions should have a substantial positive effect on women's representation and role in the decision-making process at all levels of government.

Notwithstanding the increment of women representation in the country due to affirmative action⁶⁵, the reality is that the numbers still offend the spirit of women representation in the East African region, where statistics show that South Sudan stands at 25%, Burundi at 30%, Uganda at 35%, Tanzania at 38% and Rwanda leading the pack at 56%. This thus erodes the fallacy that Kenya lags behind due to its African culture, seeing that her neighbors have evidently overcome such barriers.⁶⁶

The Gender Bill⁶⁷ that was recently tabled in parliament sought to implement the two-thirds gender principle that is provided for in the constitution.⁶⁸ The Bill allowed nomination of more women to the Senate and National Assembly to meet the constitutional gender representation threshold, since the number of women in the National Assembly has not yet met the threshold of the two-thirds gender principle.

This Bill however, failed to pass as it was viewed as though it geared towards favouring the women only. Gender parity includes even men.

Women currently form 19.7 percent of membership of the National Assembly in the 11th Parliament i.e. (2013-2017, including 47 County Women Representatives. No woman was elected in the 47 Senate seats but sixteen women were nominated from party lists and two more were nominated to represent youth and persons with disability, bringing the number of nominated female senators to 18.⁶⁹

No female candidate was elected Governor in any of the 47 counties. In the 47 county assemblies, women won only 82 out of 1450 elected seats during the 2013 elections. This represented 5% of elected ward representatives. An additional 680 women

⁶³Nyokabi Kamau, 'Women and political leadership in Kenya: 10 Case Studies', (Heinrich Boll Foundation, 2010) available at <https://ke.boell.org/sites/default/files/women_in_leadership_stu_dy.pdf> accessed on 26th June 2017

⁶⁴ Constitution of Kenya 2010, Article 81 (b)

⁶⁵ Constitution of Kenya, 2010, Article 27 (6)

⁶⁶Diana Gichengo, WOMEN IN POLITICS; THE 50 YEAR JOURNEY IN KENYA.

<http://www.academia.edu/24038426/WOMEN_IN_POLITICS_THE_50_YEAR_JOURNEY_IN_KENYA> accessed on 30th June, 2017.

⁶⁷ Constitution of Kenya Amendment Bill No.4 of 2015

⁶⁸The Constitution of Kenya, 2010, Article 27 (8)

⁶⁹ Political representation under the Official Launch of the Status Report of Equality and Inclusion in Kenya-2017 as seen in the Daily Nation, Wednesday July 5th, 2017.

were nominated by political parties that had won seats in the assemblies, in order to meet the two-thirds gender rule as per Article 177 of the Constitution.⁷⁰ As a result, there are 762 women in the county assemblies, forming 34% of membership. Thus, county assemblies do meet the gender quotas set out by Article 27 and 81 of the Constitution.

The Constitution sought to mitigate historical political marginalization and discrimination against women, PWDs, and the minority communities. However, inadequate progress has been made since the Constitution was promulgated. In the current 2017 elections, more women have taken the interest to vie for the county representative, senatorial and gubernatorial seats. We even had a female presidential candidate, one Nazleen Umar who was not cleared to continue with the race.

b) Women in the Judiciary

Women's representation in the Kenyan Judiciary is among the highest in sub-Saharan Africa. In 2012, 40 out of 104 judges were women, and 187 out of 424 magistrates were women.⁷¹ In 2013 the Kenyan Judiciary's website specified that women's representation in senior judicial positions included three women in the Judicial Service Commission, two women in the Supreme Court, eight women in the Court of Appeal and thirty women in the High Court.⁷² For the first time, in 2011, Kenya began to appoint women as judges in the Muslim Kadhi Courts.⁷³

The Constitution 2010 created the Supreme Court at the apex of the Judiciary under Article 163. Among its other roles, giving Advisory Opinion is within its ambit. In Advisory Opinion No. 2 of 2012⁷⁴ brought by Attorney General (AG) regarding Article 81(b) as read with other provisions of the Constitution. The AG sought whether it required a progressive realization of the one-third gender rule or an immediate nature during the 4th March, 2013 general elections. The Supreme Court was presented with a novel opportunity to pronounce itself in advancement of gender equity in the National Assembly and the Senate. It was the argument of the AG that the Constitution was not clear on this and he interpreted it to the effect that it should be progressive.

⁷⁰ Ibid, 59.

⁷¹ Chief Justice of the Republic of Kenya, State of the Judiciary Report 2011-2012, 2012, p. 163.
<<http://www.judiciary.go.ke/portal/chief-justices-state-of-the-judiciary-report-2011-2012.html>> (Accessed 19th July 2017).

⁷² The Republic of Kenya, "The Judiciary".
<<http://www.judiciary.go.ke/portal/judges-of-the-judiciary.html>> (Accessed 19th July 2017).

⁷³ "Shari'ah Female Judges Irk Kenya Muslims", in OnIslam, 5 October 2011 http://www.mwnuk.co.uk/Shari_ah_Female_Judges_Irk_Kenya_Muslims_79_news.php (Accessed 19 July 2017). The Kadhi Courts are religious tribunals that only apply to Muslims. These courts can decide on matters of inheritance, marriage and divorce. The Kadhi is the presiding official, equivalent of a magistrate.

⁷⁴ In The Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR <<http://kenyalaw.org/caselaw/cases/view/85286>> accessed on 30th June, 2017.

The Committee of Experts (CoE) were alive to this fact, that the expedition for the home-grown constitution involved greatly the search for gender equity. Consequently, the Constitution drafters deemed it fit to abandon discriminative laws and gender neutrality nature of laws to outlaw inequality. In its role of constitution interpretation, all the Supreme Court judges found in favor of the AG's argument, with the immediate former Chief Justice dissenting.

Interrogating the Advisory Opinion, the court deviated from international instruments ratified by Kenya. Dint of Article 2(5) and (6) the advisory fatally flawed the Universal Declaration of Human Rights (UDHR) that guarantees a full range of civil political rights. It also went against the provisions of the Convention on Elimination of all forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human Rights of Women in Africa (the Maputo Protocol) as well as the African Charter on Human and People's Rights. These ratified treaties have sufficient provisions on discrimination.

The **International Covenant on Civil and Political Rights** (ICCPR) imposes an obligation of mandatory immediate realization on civil political rights but a progressive realization for socio-economic and cultural rights. The obligation imposed by the ICCPR is unqualified and of an immediate effect and states cannot invoke a lack of resources to justify failure to protect the rights.

The CoE was also alive to this fact. The provisions of Article 21(2) by providing that social economic and cultural rights are progressive, contra differentiates the two categories of these rights, but also directs that the State ought to set standards in such realization.

The court nonetheless went on to set the date for such action by the state to be August 2015. It is my opinion that the court did not enquire what measures the state had put in place geared towards actualizing the gender rule, and in fear of causing a constitutional crisis by declaring the Parliament unconstitutionally constituted, failed to give a progressive opinion. The advisory essentially approved the disenfranchisement of the Kenyan women in political fields and is a form of discrimination dating back to independence.

Of importance, the Supreme Court as constituted lacks the gender threshold, 5 men and 2 women. FIDA lost their petition⁷⁵ challenging the names presented to the President for appointment in the first instance. However, even after opportunity presented itself for three vacancies, the old trend carried the day in spite of the fact that the Judicial Service Commission (JSC) has women seating in the commission and is chaired by a woman!

This investigation concludes that the Supreme Court has failed in fulfilling its role to advance gender equality according to Article 259, which requires that the constitution be interpreted in a way that promotes its purposes, values and principles; and permit the development of the law.

Looking at the position of the Chief Justice and Deputy Chief justice that was created by the Constitution⁷⁶, it is clear to see that women have been discriminated upon. This is because

⁷⁵ Federation of Women Lawyers Kenya (Fida-K) & 5 Others V Attorney General & Another [2011] eKLR.

⁷⁶ Article 161 (2) (a) and (b) respectively

even during applying and appointing the Chief Justice, the trend is only the males are considered and vice versa for the Deputy Chief Justice position. Be that as it may, the number of female judicial officers has increased overtime. However, despite these gains, there are still challenges to achieving women's full and equal representation in Kenya's judiciary. Women lawyers and judges point to the lower numbers of women in higher judicial offices and speak to a "glass ceiling that is preventing women from being able to move into high-ranking offices within the judiciary."⁷⁷ They also note that patriarchal attitudes, such that women are unable to serve in demanding and important offices and that leadership roles are not appropriate for women, still impede the career progression of women lawyers and judicial officers.⁷⁸

c) Domestic Violence Against Women

Domestic violence is another major challenge that negates efforts towards achieving gender equality in Kenya. It is violence between spouses, but can also happen between cohabitants or nuclear family members. Domestic violence in Kenya takes the form of physical assault, emotional abuse, and threats of violence, sexual violence and distress.

Empirical evidence from a study conducted by FIDA in 2007 identifies domination of the male in the society as the main factor as well as socialization that the man has the right to discipline his wife. This has led to widespread violence within families that turn fatal in most cases. Socialization therefore becomes one of the major challenges negating gender equality in Kenya.

There is a general failure in law to recognize offences such as marital rape. The law is there to serve the society therefore lack of recognition of such offences poses a huge challenge towards achievement of gender equality. Further to this, the male dominated parliament has been reluctant or slow to enact laws that would protect women who experience violence at home.

The laxity of law enforcement officers to apprehend perpetrators of domestic violence often dismissing victims to solve their issues within the family set up which never yield much results due to the patriarchal nature of the society.

d) Occupation of Public Office

The trend for who occupies public office in Kenya is the same as explained under women in the judiciary. Women are discriminated upon when it comes to them occupying these positions. It is not that they are less qualified but because they are not given the opportunity.

Even in the cabinet ministries, the number of women appointed to be cabinet secretaries is less and the ministries they are given seem to be very friendly and not challenging as opposed to those ones handed to their male counterparts. This though was challenged by President Uhuru Kenyatta when he appointed Rachael Omamo to be the Cabinet Secretary for Defence.

⁷⁷ "Kenya Women's Groups Want More Female Judges", in Voice of America, 20 March 2011.

<<http://www.voanews.com/content/article/157718.html>>

(Accessed 19th July 2017).

⁷⁸ Ibid

An analysis of some incidences reveal the difficulties faced by women in top positions in Kenya. In the case of an accomplished civil servant lady, nominated by the President for the post of the powerful Cabinet Secretary, parliamentarians conspired and blocked her from being appointed to the top civil service job due to her tough no nonsense style of administration.⁷⁹ This character is what terrified most of the corrupt members of the parliament. It is her tough nature that worked against her, yet it is what she needed for the job. She was a victim of her own success and prospects.⁸⁰ The National Assembly rejected her nomination to be the secretary to the cabinet despite her outstanding academic and professional achievements. A man was appointed instead.

In yet another case, a lady was appointed to the position of the top most female police officer, as the Deputy Inspector General of Police. Allegations that a top official in the office of the president wanted the female officer to influence the tendering process for the purchase of police equipment such as armoured cars and bulletproof vests finally led to her untimely exit from the force.⁸¹ When the female officer declined the proposal, this led to her losing the job. Some people in high government places may have been uncomfortable with the female officer's uncompromising stand on unprofessional conduct. Those involved pressed for a 'more suitable candidate' to take over from her.⁸²

In yet another case, a female judge who held the most powerful docket in the Judiciary as the Deputy Chief Justice was reported to have brandished a gun in the face of, a woman security guard at an elitist shopping centre. The lady security guard had allegedly sought to search the Deputy Chief Justice's bag as part of routine security check of all visitors to the mall. The Deputy Chief Justice is alleged to have refused. This incident was the beginning of a series of events that finally led to the exit of the Deputy Chief Justice from the powerful office. It is worthy to note that like the Cabinet Secretary nominee and the Deputy Inspector of Police, the Deputy Chief Justice was also a strong character, firm and took a no nonsense stand on administrative matters. In contrast to the events that followed the exit of the Deputy Chief Justice, recently, a powerful male Cabinet secretary is reported to have attempted to force his way, together with his team to proceed into the domestic airport without going through a screening point. However, a tough lady security officer insisted that the Cabinet Secretary must be subjected to the security check before they could proceed. As a result, the lady security officer lost her job for humiliating the

⁷⁹ <https://www.standardmedia.co.ke/article/2000165613/why-monica-juma-s-fate-was-sealed-long-before-the-vote> Accessed on 16th July 2017

⁸⁰ Ibid

⁸¹ www.the-star.co.ke/news/2015/09/04/grace-kaindi-forced-out-over-shs12billion-supply-tenders_c1198749 Accessed on 16th July 2017

⁸² Ibid

Cabinet Secretary.⁸³The above two incidents show how the society treats the same situation differently based on gender.

IV. LEGISLATIVE FRAMEWORK FOR THE PROTECTION AGAINST GENDER DISCRIMINATION IN KENYA

Constitution 2010

1. Protection from harmful cultural practices

Article 2 (4)⁸⁴ states that,

'Any law including customary that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.'

This provision protects women from harmful cultural practices such as dispossession of land, going on forward.

2. Citizenship

*A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.*⁸⁵

This provision ensures that a Kenyan woman would be able to pass citizenship to her children regardless of whether she is or is not married to a Kenyan.

3. Women identified as a vulnerable group

*All state organs and all public officers have the duty to address the needs of vulnerable groups in the society, including women, older members of society, Persons with disabilities, children, youth, members of minority or marginalised communities and members of particular ethnic, religious or cultural communities.*⁸⁶

The Constitution has put in place measures to ensure that affirmative action is undertaken to ensure equality and freedom from discrimination.⁸⁷As a marginalized group, under Article 56, women will benefit from the State's obligation to put in place affirmative action programmes that will encourage female participation in governance, provide special opportunities in education and economic fields, access to employment and have reasonable access to water, health services and infrastructure.

4. Equality and freedom from discrimination

Article 10 deals with national values and principles of governance. It goes further to state that national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalized.⁸⁸

This is echoed further in Article 27 which is central to safeguarding women's rights as it provides for equality and freedom from discrimination. Article 27 provides for;

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The Sexual Offences Act⁸⁹

This legislation is an example of how law can be created and implemented while being gender sensitive and supporting gender discrimination. The language used from the definitions given, implies that both sexes can actually be raped⁹⁰ and sexually assaulted.⁹¹The provisions of section 20 shall apply *mutatis mutandis* with respect to any female person who commits an indecent act or act which causes penetration with a male person who is to her knowledge her son, father, grandson, grandfather, brother, nephew or uncle.

The Prohibition of Female Genital Mutilation Act⁹²

This Act makes it illegal to practise female circumcision, procure the services of a circumciser or send somebody out of the country to undergo FGM.⁹³ Offenders under this Act will serve up to seven years in prison and be liable for payment of fines of up to Kshs. 500,000.

Further, a person will be liable to a sentence of life imprisonment for causing a death in the process of carrying out FGM.⁹⁴ In addition, providing premises for the purposes of

⁸³ <https://www.tuko.co.ke/245136-jomo-kenyatta-airport-employee-fired-humiliating-matiangi.html> Accessed on 16th July 2017

⁸⁴ Constitution of Kenya 2010

⁸⁵ Article 14 (1) Constitution of Kenya 2010

⁸⁶ Article 21(3) Constitution of Kenya 2010

⁸⁷ Article 260 of the Constitution defines affirmative action as any measure designed to overcome or ameliorate an equity (unfairness, injustice, inequality or imbalance) or systematic denial or infringement of a right or fundamental freedom.

⁸⁸ Article 10 (2) (b) Constitution of Kenya

⁸⁹ Act No.3 of 2006

⁹⁰ Section 3 (1) of Sexual Offences Act

⁹¹ Section 5 (1) of Sexual Offences Act

⁹² Act No.32 of 2011

⁹³ Section 21 of the Prohibition of Female Genital Mutilation Act

⁹⁴ Section 19 (2) of the Prohibition of Female Genital Mutilation Act

carrying out FGM⁹⁵ or failure to report an incident of FGM knowingly are also punishable by law.⁹⁶

Protection of Victims against Domestic Violence Act⁹⁷

This legislation portrays that a law can be created while being gender sensitive and not support gender discrimination. The language used from the definitions given, implies that both sexes can actually be part of a domestic violence relationship with no description leaning towards the female sex.⁹⁸

Gender Equality With Regard To Socio-Economic Concerns

The economic perspective of gender equality in any jurisdiction should be measured in taking into account the gender gaps between men and women in accessing resources and opportunities⁹⁹. Gender parity in the economic realm in its success should go beyond mere equality slogans and measures to ensure that the most vulnerable are able to access Economic opportunities across the gender divide¹⁰⁰. Women continue to participate in labour markets on an unequal basis compared to men; in 2013, the male employment-to-population ratio was at 72.2 per cent, while the ratio for females was 47.1 per cent¹⁰¹. The rationale of gender policies and the way they are meant to serve the subjects in reshaping the policy priorities has a great significance in requirement of policy development that goes beyond the sphere of formal gender equality¹⁰². The Maputo protocol in elimination of discrimination on the economic and social welfare tasks state parties to take measures that will guarantee equal work and economic opportunities¹⁰³. This shall be inter alia promotion of equal remuneration to men and women for jobs of equal value, promoting equality of access of employment; ensuring transparency in recruitment, promotion and dismissal of women as well as introducing punitive measures for sexual harassment at workplace; guaranteeing women freedom to choose their occupation and from employer

exploitation; promoting the occupations and economic activities of women particularly in the informal sector; taking measures that will ensure the economic value of the work of women at home; to guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors; preventing the exploitation and abuse of women in advertising and pornography¹⁰⁴.

V. ACHIEVING GENDER EQUALITY AND NON-DISCRIMINATION

Whether these measures have materialized to achieve equality and eliminate discrimination or not is a question of fact. Kenya for instance has made strides in promoting the equality in economic and social welfare. With regard to legislative measures, statutes such as the Employment Act 2007 guarantees equal access of employment for both men and women¹⁰⁵, provision of punitive measures on sexual harassment¹⁰⁶ and equal remuneration for work of equal value regardless of the gender affiliations¹⁰⁷. This includes provision of both maternity and paternity leave with pay for both men and women¹⁰⁸. The Matrimonial property Act 2014, in accordance with the Maputo protocol recognizes the contribution of women and puts an economic value and beneficial interest in work done at home with regard to matrimonial property¹⁰⁹. Other quintessential provisions in the Act are the equal status for spouses which gives married women the same rights in acquiring, administering, holding, use and control of property¹¹⁰. This is in accordance with the constitutional right to acquire and own property without any grounds contemplated within article 27(4) of the constitution¹¹¹. However, The Maputo protocol intensifies the skepticism of the equality ideal in the economic realm with provisions of the establishment and protection of women in the informal sector and sensitizing them to adhere to it. Does this provision encourage women to only venture and adhere to the informal sector? This is despite the poverty patterns due to low incomes and inferiority accorded to the informal sector particularly in Africa¹¹². Such provisions have since been transcended by the dynamics and logistics of Economic gains and impact of women with regard to gender discrimination. It is prejudice to encourage one gender to venture in a particular economic activity at the detriment of other lucrative ventures to the opposite gender, such provisions will only perpetuate stereotypical roles of women and further nurture economic dependency.

⁹⁵ Section 22 of the Prohibition of Female Genital Mutilation Act

⁹⁶ Section 24 of the Prohibition of Female Genital Mutilation Act

⁹⁷ Act. No. 2 of 2015

⁹⁸ Section 4 (1) of the Protection of Victims against Domestic Violence Act

⁹⁹ Global Gender Gap Index 2015; see also The World Economic Forum Report 2015 'The Case for Gender Equality'

<<http://reports.weforum.org/global-gender-gap-report-2015/the-case-for-gender-equality/>> accessed on 30th June 2017

¹⁰⁰ Jane Lewis, 'Work/family reconciliation, equal opportunities and social policies: the interpretation of policy trajectories at the EU level and the meaning of gender equality' 13(3) (2007) *Journal of European Public Policy*

¹⁰¹ International Labour Organization Report, 'Global Employment Trends 2014: Risk of a jobless recovery?' <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf> accessed on 15th July 2017

¹⁰² Ibid note 3

¹⁰³ Protocol to the African charter on Human and People's Rights on the Rights of Women in Africa, Art 13

¹⁰⁴ Ibid

¹⁰⁵ Employment Act, 2007 s 5

¹⁰⁶ Ibid s 6

¹⁰⁷ Employment Act, 2007 s 5(5)

¹⁰⁸ Ibid s 28

¹⁰⁹ Matrimonial Property Act, 2013 s 9

¹¹⁰ Ibid s4

¹¹¹ The Constitution of Kenya 2010, Art 40

¹¹² Dan Banik, *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa* (Ashgate Publishing Ltd. Rvsvd Edition, 2013) see also; The African Development Bank, 'Recognizing Africa's Informal Sector' (27th March 2013)

With such progressive legislative measures with regard to the contemplated objectives of the Maputo protocol and CEDAW, there are doubts raised with regard to the institutional strides made. Legislation without institutional frameworks is futile¹¹³. With gender mainstreaming concerns on institutionalized programmes put in place, progress has been majorly accorded the ministry of gender and youth affairs as well as establishment of a gender commission by the National Gender and Equality Act 2011. However, even with such governmental institutional strides, the autonomy of these institutions in promoting gender equality is doubtful. The gender mainstream in various ministries, departments, national and county governments, public and private sectors has been encumbered by patriarchy and male hegemonies. The gender balance in Kenya's cabinet secretaries is a fallacy of the gender equality ideal; with a total number of twenty cabinet secretaries only five are women with only eleven women principal secretaries out of a total of forty one principal secretaries¹¹⁴. The essence of gender mainstreaming in government appointments in Kenya is therefore questionable on the independence of the gender commission and the ministry of gender which has failed to preeminently advocate for gender parity.

There has been monumental progress made as well in the institutional frameworks put in place to ensure social-economic equality in curbing poverty in women. Such programmes include the Women Enterprise Fund and Uwezo funds that provides financial credit to women as start-up capital for businesses¹¹⁵. However even in such economic solace, very few women especially in the rural and slums settlements are aware and able to access such loans let alone the institutional barriers and other frustrations that come along the funds¹¹⁶. Further, there are men who languish in poverty who also need special economic relieve in attaining economic stability¹¹⁷. The gender equality

sense in access to financial services is also discriminatory against men with a prejudicial stereotype and notion that all men are financially stable.

Key economic aspects are education with ictus being accorded to girls' education and its several aspects of development vis-a-vis the impact of gender inequality in education on economic growth. Globally, 781 million still remain illiterate of which two thirds are women. However Education from gender parity stance has been met with remarkable progress in most African countries; in Kenya, measures and programs that are intended to educate the girl child have drastically materialized. Education increases labour force participation rates and earnings as well as foster educational investment¹¹⁸. Therefore, the cost of girls' exclusion or considerable denial of equality from education hinders the productive potential of an economy and its overall development¹¹⁹. Investment of advanced education for girls globally mostly in Africa and Asia, would actually lead to attainment of 68 percent of the annual GDP¹²⁰.

In a continent that barely invests in educating the girl child especially in sub-Saharan Africa, education profoundly opens up opportunities for women to escape agricultural feminization and participate in the formal wage employment which would highly improve economic status of most women¹²¹. Measures put in place to ensure women are in labour markets and not agriculture alone through education are necessary for economic liberation and prosperity on a gender parity ideal¹²². Other than agriculture women are also forced to venture in other low productivity activities in the informal sector. This as a social perception that women can only excel in the informal sector has been an apprehension of the genesis of women as economic dependents and poverty.

The gender gap has narrowed and even worse surpassing the equality ideal in most developing countries like Kenya. With legislative measures in enactment of laws and adherence of international instruments; Kenya has been able to implement instruments such as the Maputo protocol which advocates for elimination of discrimination of women in field through promotion of literacy among women and introduction of curricula aimed at gender sensitization¹²³. This has also seen enactment of laws that ameliorate cultures and customary rules such as female genital mutilation through the Prohibition of Female Genital Mutilation Act 2015, early marriages through the Marriage Act 2014. These have been huge strides made in

¹¹³Daniel J. Curran, *Dead Laws for Dead Men: The Politics of Federal Coal Mine Health and Safety Legislation* (University of Pittsburgh pre, 1st Edn.1993)

¹¹⁴ Standard Reporter, 'List of Principal Secretaries after Cabinet reshuffle' *The Standard Newspaper* (Nairobi, 13th November 2015)

¹¹⁵ Keynote address by Commissioner Winifred Lichuma on the Gender Equality Challenges in Kenya and Africa in the Australian High commission in London on 28th June 2017 <<http://www.ngeckenya.org/downloads/all>> accessed on 30th June 2017

¹¹⁶ Alex Njeru, 'Funds set up to help youth and women are a barrier to progress' *The Daily Nation* (Nairobi, 29th march 2016) ; see also Nancy Mulu Mwoche, 'Barriers Faced by Women Groups in Accessing Uwezo Fund in Kikuyu Constituency, Kiambu County' (MA in Arts in gender and development studies, University of Nairobi 2016)

¹¹⁷Mary Amuyunzu-Nyamongo & Paul Francis, 'Collapsing Livelihoods and the Crisis of Masculinity in Rural Kenya' (Wil source centre) <<https://www.wilsoncenter.org/sites/default/files/Mary.pdf>> accessed on 30th June 2017

¹¹⁸ Global Gender Gap Report 2013.

¹¹⁹ Ibid

¹²⁰Jad Chaaban and Wendy Cunningham, "Measuring the Economic Gain of Investing in Girls: The Girl Effect Dividend", World Bank Policy Research Working Paper, World Bank, August 2011. <<http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-5753>> accessed on 30th June 2017

¹²¹ Christine Dieterich, Anni Huang, and Alun Thomas, 'Women's Opportunities and Challenges in Sub-Saharan African Job Markets' international Monetary Fund Working Paper 2016.

¹²²World Bank, World Development Report 2012

¹²³ Protocol to the African charter on Human and People's Rights on the Rights of Women in Africa, Art 13

promoting Education of the girl child. Gender based curriculum as contemplated in the Maputo protocol¹²⁴ has since partially materialized in higher learning institutions such as University of Nairobi and Riara university with introduction of courses such as Gender and The Law. However, such strides have been at the detriment of the boy child whom has since been left in the shackles of culture, society and unregulated social behaviors.

Cultural practices such as *moranism* among the Maasai community is gradually depriving young Maasai men of education while drastic measures are being taken to salvage the girl from any cultural practices. This has further led to a higher number of enrollment of girls at a 10.2 percent increase compared to boys at 6.5 percent in 2014 at the secondary education level¹²⁵. Further, Nicole (2013) contends that in the modern world, girls do better in school than boys and will get higher grades and are highly likely to complete high school at a higher rate than boys¹²⁶. The fate of recent rise of scholarships meant for women only in Kenya such as the Wangari Maathai foundation scholarship and Maasai Girls Education Fund is skeptical on whether it is a guarantee of ensuring gender equality in education while in essence forms possibilities of cultivating the risk of discriminating against men in quest for education. Such measures should be seen as the paradox of gender equality with regard to education in Kenya: this is irrespective of whether gender equality goes beyond formal equality. With all these factors constructed along the gender equality perspective in the education sector, it is a major stride that has profoundly empowered women towards Economic independence and social status yet potential Kenyan young men languish in poverty, school drop-outs, drugs and alcoholism amidst other cultural norms¹²⁷. It is time to salvage the Kenyan young man as well in the quest of gender equality vis- a-vis education which has since been misrepresented in a cloak sham of power to the woman.

Economic times have changed globally that has been characterized by the dynamism of job ethos. Jobs that have preeminently been meant for men through social construction of roles and gender are being done by women and vice versa. With Economic status analogous to social status¹²⁸, the social status of most women has been redefined on account of change in gender defined jobs. However, it is over-amplification of the gender equality ideal when women venture in the men oriented job groups without reciprocation of the same hype of men who venture in the female societal constructed careers.

¹²⁴ Ibid Art 13(1)(e)

¹²⁵ Kenya Economic Survey 2015

¹²⁶ Nicole M. Fortin , 'Leaving Boys Behind; Gender Disparities in High academic Achievement' (University of British Columbia, 2013)

; see also Julius Sigei, 'New Kenya takes shape as Women win Big in Education' *The Daily Nation* (Nairobi, 19th June 2016)

¹²⁷ Supra note 19

¹²⁸ Heather Wyatt and Warren Waynes, 'Social Class and Socioeconomic Status: Relevance and Inclusion in MPA-MPP programs' *Journal of Public Affairs Education* (17)(2)

Gender disparities in poverty are rooted in inequalities in access to economic resources. Moreover, about one in three married women even from developing countries have no control over household spending on major purchases, and about one in 10 married women is not consulted on how their own cash earnings are spent¹²⁹. In many countries, women continue to be economically dependent on their spouses amidst other financial sources such as property and land ownership where ownership is vested only on men. Only 50 percent of women are in the labour force compared to 77 percent of men around the world¹³⁰. Women are therefore less likely to be employed compared to men.

Globally, despite Men outnumbering women with 62 million in numbers, the population of women increases to 54 percent in old age compared to that of men¹³¹. This denotes that most women are usually widowed at 60 years hence intensifying questions regarding funds and pension programs that are intended to secure a livelihood for such widowed persons. The social security of women in their old age from a gender equality stance is dire globally with notions of constructed stereotypes on how women benefit from their husbands pensions¹³². According to the UN report on Progress of the World's Women 2015 Women are less likely than men to receive a pension and the retirement benefits much lower in most countries hence intensifying the risk of poverty in old age among women. Even in most developed regions like the EU, the retirement pensions for women is 37 percent lower that of men.

In most African countries the pension gap based on gender is worse with differences ranging between 50 percent with countries such as Egypt where 62 percent of men receive pension compared to 8 percent of women who receive pension¹³³. This is despite that women having a higher life expectancy rate than men. In Kenya, the general retirement pension's ideal is alarming with only 14 percent of working Kenyans under pension's schemes with an estimated less than half of the percentage being women in such saving schemes¹³⁴. This therefore has escalated pro-retirement poverty levels among women.

What needs attention is the number of programs for older persons that take into account the ageing number population percentages. This has since raised concerns regarding ageism vis-à-vis gender discrimination; it is gender inequality to allow pensions imbalances through prioritizing the social security of men as compared to that of women. What special programs have been put in place to ensure the higher percentage of women in the old age will be secured? In Kenya for instance, the Social Protection Fund for the elderly has been seen as a strategic move to alleviate old age poverty and greatly improved lives of poor

¹²⁹The World Bank, 2012, World Development Report: Gender Equality and Development

¹³⁰ The UN worlds women Report 2015 on Economic and social affairs

¹³¹ Ibid

¹³² Ibid

¹³³ Ibid

¹³⁴ Retirement Benefits Authority, 'Annual Report & Financial Statements 2015' <<http://www.rba.go.ke/index.php/en/>>

and vulnerable senior citizens¹³⁵. However, the distribution, robustness of the social protection fund is skeptical in ensuring that the poor old age Kenyans can withstand tough economic times and a high cost of living amidst other budgetary constraints¹³⁶.

with gender Equality entailing not just treating both men and women equally, it goes beyond to the rationale behind inequality and taking into account the social outplays that hinder the construction of such gender equality prima facie. Key societal aspects have been historically prudent in hindering economic independence of both men and women. Such have included marriage patterns that vary from one society to another. Worldwide Africa and Asia records unwavering numbers of early marriages for both boys and girls but with 67.5 percent of early marriage of girls¹³⁷. However, this has reduced in modern times which has allowed a greater comprehensive economic independence for women as they are able to access quality education which was a priority to boys mostly for the African communities. With the dynamic trends of marriage patterns, most women still succumb to societal pressures on marriages at 25 years compared to men at 30 years¹³⁸. Is a typical woman able to achieve financial stability at 25 years compared to a man at 30 years? The socially construed perceptions that it is a man's duty to provide is still a setback to Economic stability of women. Africa still lurks at the danger of early childhood marriages with two-fifths of women being married at 18 years¹³⁹. This translates to dire economic and social status of women in Africa regardless of international instruments and recommendations that have been ratified by majority of these states. Certain provisions of international instruments such as CEDAW under article 19 provide for elimination of discrimination in marriage on a basis of equality of men and women. This also translates to equal rights in ownership and beneficial interest in property¹⁴⁰. The Maputo protocol also places in high regard the elimination of forced marriages, equal rights marriage in separation or annulment of marriage and equitable share in matrimonial property¹⁴¹. These regional legal framework has been well embraced in the Kenyan constitution amidst other key statutes such as the Marriage Act 2014 and the Matrimonial Property Act 2013.

What measures, programs and institutions need be in place to ensure financial independence of women in Africa? Has Africa failed in the modern world to achieve gender parity on the Economic realm? Regionally, The African status quo on the rights of women has been everything to go by in defining gross

¹³⁵ Supra note 17: see also Ministry of Public Service, Youth and Gender affairs ;The National Equality Policy 2016

¹³⁶ Oscar KaiKai 'Over 800,000 Kenyans benefit from Sh80bn cash transfer fund for the elderly' *The Daily Nation*(Nairobi 25th November 2016)

¹³⁷ Supra note 32 : see also, The World Report 2016

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰The Convention on the Elimination of All Forms of Discrimination against Women. Art 16(1)(h)

¹⁴¹ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Art 6,7

violation in both the social and economic domains. This is despite the fact that most African countries have ratified key international human rights instruments including The ICCPR¹⁴², ICESCR¹⁴³, CEDAW¹⁴⁴, Bpfa¹⁴⁵ and recently The East African Community Gender and Community Development Framework. Most women in Africa still languish in poverty and suffer from vast consequences of financial instability such as health deficiencies, birth mortalities owing to the fact that most women are unable to afford decent delivery services¹⁴⁶. This further escalates to affordability of quality products with a key focus on cosmetics, sanitation facilities and Birth control products. With the equality ideal dire the impact of health in Economic growth is substantial. Studies have shown that increase in health expectancy could raise GDP by up to 4% with more spending on health capable of significantly improving health outcomes, which in turn can contribute to reducing poverty and improving overall economic status and independence¹⁴⁷.

According to the World Health Organization report 2014, African women suffer from a wide array of health complications ranging from cardiovascular diseases, maternal, cancers and other mortality subjected diseases¹⁴⁸. With mortality of women at 72 years and men at 68 years, both men and women die from different causes; Women and girls will often be subject to constant complications related to pregnancy and childbirths, STI's and HIV¹⁴⁹. Maternal deaths though in a slight decline at 45 percent as at 2013 are still a setback in efforts meant to lower women mortality rates. This is majorly due to underdeveloped health systems, Poor access to information and education, early marriages, and lack of decision-making power among girls who are married or in relationships hence increasing their exposure to sexually transmitted infections, unwanted pregnancies and the risk of unsafe abortions¹⁵⁰. Only half of pregnant women in sub-Saharan Africa receive adequate and affordable health care during childbirth.

The whole gender equality ideal falls into place on the economic plight of women vis-à-vis that of men. Globally, most states have failed to ensure affordability of health care programs that are sui generis to the plight of women and girls. With poverty a huge shortcoming in health care, financial stability is interdependent to quality health care especially for women. It is

¹⁴²International Covenant on Civil and Political Rights

¹⁴³International Covenant on Economic, Social and Cultural Rights

¹⁴⁴The Convention on the Elimination of All Forms of Discrimination against Women

¹⁴⁵Beijing Platform for Action on women

¹⁴⁶ Supra note 32

¹⁴⁷World Health Organization, Impact on Economic Growth of investing in maternal and newborn health" 2006 ; see also, David E Bloom, David Canning and Jaypee Sevilla, "The Effect of Health on Economic Growth: A Production Function Approach", World Development, Vol. 32(1), 2004.

<<http://www.ppge.ufgrs.br/giacomo/arquivos/eco02072/bloom-canning-sevilla-2004.pdf>>

¹⁴⁸World Health statistics 2014

¹⁴⁹ Ibid

¹⁵⁰ Supra note 32

inequality when a jurisdiction fails to put measures in place that are consistent to a particular gender in contrast to the other gender. Measures such as free maternal health care by the Kenyan government have been a major boost in eliminated birth related complications and financial stability to affordable health care.

Violence and prejudice against women in Africa emanates from retrogressive cultures in the name of self-determination. With regard to the 2010 UN report on violence against women in Africa, patriarchy as a result of culture treats women as subordinate to men¹⁵¹. This raises grievous questions about the fate of equality amidst other significant human rights approaches such as the right to be free from violence. This culturally constructed state has in return jeopardized the economic status quo of women with the same notion that women are subjective to men. Even in a post-modern world where most African countries have tried to improve prejudicial customary rules, a majority of women are still considered poor in Africa as opposed to men due to the subjectivity accorded to women¹⁵². This therefore outplays as the plight of women in a social set-up that treats them as secondary earners.

Gender equality in the social and economic realms has been characterized by societal perception and stereotypes in Africa worse in Kenya. In the economic ladder which begets social status, women compared to men are either inactive or circumstantially deprived and forced to take secondary positions. Stereotypes are key whereby the general perception of a woman in the economic realm globally, regionally and nationally is that of substitution of what their male counterparts are¹⁵³. Top posts in the corporate sectors, global and Local governmental and nongovernmental organizations are flanked by men and subsidiary posts accorded to women. The gender parity ideal with regard to social constructions falls into play, is it that women do not apply for the top positions and if they do is it that they are not considered? Most women do not have the incentive to start businesses which will grow into multi-billion companies as compared to their male counterparts¹⁵⁴. The gender construction ideal becomes constructed along stereotypical perceptions of capabilities of men and women.

The general atmosphere of governance and societal stereotypes is to blame for the economic and social status of women in most countries. The economic status quo of women is one that has been characterized by politics of fear and societal inferiority in the name of patriarchy that has been camouflaged as gender. Gender is itself the perpetrator of gender discrimination and a flaw of gender equality in a modern world

¹⁵¹United Nations Economic Commission for Africa, African Centre for Gender and Social Development (ACGSD) 'violence against Women in Africa; a situational analysis' 2010

¹⁵²African Development report 2015.

¹⁵³Jeanette N. Cleveland, Margaret Stockdale, Kevin R. Murphy and Barbara A. Gutek, *Women and Men in Organizations: Sex and Gender Issues at Work* (Psychology Press, 2000 1st Edition)

¹⁵⁴Phylis Makena, Simon Thiaine Kubaison, Charles Ibuathu Njati, 'Challenges facing women entrepreneurs in accessing business finance in Kenya: Case of Ruiru Township, Kiambu County' *Journal of Business and Management* 16(4) 2014

that has carried along the historical dynamics of gender in division of roles and responsibilities. This is by large from a regional perception whereby most African men on gender account are responsible for provision to the family; a perception that has been since carried forth to exacerbate hopes of ameliorating the economic status and women.

Even in a modern society, the social construction of roles and responsibilities as gender continues to greatly impact on the social economic status of women across the globe. Our own perception and construction of gender and roles are indeed an injustice and the perpetrator of discrimination against ourselves against gender equality. In the name of women empowerment, certain television programs such as *Women and Power* from the Nation Media group¹⁵⁵ and *The Strength of a Woman* from Royal Media Services¹⁵⁶ raises questions on the authenticity and purpose of the intended empowerment. While the gist of such programs is to empower women in a male hegemony set-up, further implication would be that if a woman makes it in the society it is worthy applaud and recognition. The stereotypes of the historical inferiority of women in the domains of Development especially social and economic status will remain an obstacle to equality as long as we take as an achievement when a woman breaks from the gender norms to do the undone. Measures have been taken to ameliorate the economic status with regard to gender equality both regionally and nationally. With focus on competition and capital markets, legislative measures have been introduced majorly to ensure that both men and women compete rationally with the non-prejudiced regulatory framework. The Competition Act of Kenya 2010 through its main objectives which includes to promote the competitiveness of national undertakings in world markets¹⁵⁷. The spirit of competition has since been embraced which has cultivated innovation has since seen the rise of women in the corporate and business realm. The Standards Act cap 496 laws of Kenya has also been a great milestone in championing economic empowerment of women and consumer protection rights in Kenya. Other than improving economic status of most women, the competition ambience has created a business market that embraces quality ascertained in manufactured products.

Women in Kenya are now freely able to compete on the same ladder with their male counterparts in the industrial market realm as standards have created a competitive ambience. Incredible examples being the rise of *Keroche Breweries* founder and CEO Tabitha Karanja and the rise of *Rexe Roofing Products* by Ms. Irene Wanjiku; both fields which have been previously male dominated¹⁵⁸. Other than improving the historic economic deprivation and financial instability of women, this in return has also ensured that men do not abuse market dominance through

¹⁵⁵ NTV Kenya , 'Women and Power' <<https://www.youtube.com/channel/UCqBJ47FJcl61fmSbcadAVg>> accessed on 30th June 2017

¹⁵⁶ Citizen TV Kenya, 'Strength of a Woman' <<https://www.youtube.com/watch?v=ViGAZSubuJc>> accessed on 30th June 2017

¹⁵⁷ The Competition Act, s3(h)

¹⁵⁸ Karen Mbugua' A fascinating women, Words and wine' *The Star* (Nairobi, 10th May 2016)

unscrupulous ways of production of fast, unfit and health hazard products.

With the main objective of eliminating the discrimination of women in all spheres, the provisions of the Protocol whether materialized or not were meant to address the historical injustices against women. In combating discrimination state parties are tasked with the onus of including the principle of equality between men and women in the constitutions, prohibition of harmful practices that endanger the health and general well-being of women, integrating a gender perspective to policy decisions, legislation and programmes in all spheres¹⁵⁹. This shall include taking corrective and positive action in those areas where discrimination against women in law and in fact still exists and modification of social and cultural patterns and elimination of ideas based on inferiority or the superiority of either sex or on the stereotyped roles of women and men¹⁶⁰.

VI. CONCLUSION

Gender mainstreaming is a universally conventional strategy for promoting gender equality. Mainstreaming is however not an end in itself but rather a strategy, an approach, and a means to realize the goal of gender equality. It encompasses ensuring that gender perspectives and attention to the goal of gender equality are central to all activities - policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.¹⁶¹

This is to say that although we have legislated on the gender parity rule, formulated policies¹⁶² and programmes on the same, this is only but formal equality. Formal equality cannot give gains to gender equality in politics and leadership but is important for the reason of reference. Of paramount importance however is substantive equality where all key stakeholders embrace the aspect of gender equality. The Executive in all its appointments should observe the two-thirds one-third gender principle at all levels. Parliament should also be keen to legislate laws that are alive to the gender rule and also put the Executive to task in observance of the same. Gender neutral laws should be amended or abolished to be in line with the constitutional provisions of equity.

Last but not least is the Kenyan society. Our socialization passed down to generations as a male-controlled and dominated society is well engrained. However, in light of the acknowledgement of the injustices that inequality brings forth,

there has been an awakening. The authors argue that it is imperative to educate and stress on gender equality on the society for it is from it that our leadership is founded. A mind change on the empowering of women, who as we have established is the oppressed gender, is the cornerstone since men elected and appointed to be gate keepers will in turn support and enhance gender parity.

Being a signatory to voluminous international instruments and having laws and policies to the effect of promoting gender parity would not achieve much unless the same is owned and embraced by the society as a whole. Otherwise, gender equality in Kenyan politics will remain as such, a mirage. The civil society should not relent on their advocacy role; the activists and reformists should raise up to the occasion and push forward for substantive equality complimented by formal equality. It cannot be overemphasized that formal laws without substance in them cannot deal with societal construction and thus it is hard to deal with inequality.

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¹⁵⁹ Protocol to the African charter on Human and People's Rights on the Rights of Women in Africa, Art 2

¹⁶⁰ Ibid

¹⁶¹ UN WOMEN; United Nations Entity for Gender Equality and the Empowerment of Women; <<http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>> accessed on 10th November, 2016.

¹⁶² The recent policy of *National Gender and Equality Policy 2016* under the Ministry of Public Service, Youth and Gender Affairs.

