

Actualising the National Policy on Gender and Development in Kenya

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Abstract

Kenya and the African continent have for a long time struggled with the issue of gender equality and equity across societies especially with regard to economic, social and political spheres, with the women sometimes bearing the biggest brunt of this inequality and equity and occasionally men in some areas. The global community has always come up with international and regional legal instruments meant to offer guidelines to countries on the measures to be taken to streamline gender issues in all areas of their people's lives and development agenda. It is in line with this that Kenya, in order to show its commitment not only to the international and regional instruments but also the Constitution of Kenya, has already come up with National Policy on Gender and Development. This is a commendable step towards addressing the gender concerns at play. As a result, this paper offers brief review of the Gender Policy with the aim of identifying any gaps therein as well as the opportunities that the Policy presents in making gender equality and equity a reality in Kenya.

1. Introduction

This paper offers a critical review of the gender issues in development agenda and specifically looks at the 2019 National Policy on Gender and Development¹ with the aim of highlighting its strengths and

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¹ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2020 < <http://psyg.go.ke/wp->

weaknesses, if any. The paper offers a brief background on the gender debates in Kenya, identifying the current challenges as well as the looking at the plausible solutions offered by the National Policy, and their possibility to address these issues once and for all.

The author also offers a general overview of current legal and institutional framework meant to streamline gender concerns in the national development agenda and all other areas of the Kenyan communities. The *National Gender and Equality Commission Act, 2011*² defines “gender” to mean the social definition of women and men among different communities and cultures, classes, ages and during different periods in history.³

Gender mainstreaming has been defined as: “...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality and equity.”⁴ On the other hand, the Act defines “gender mainstreaming” to mean ensuring that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures including budgeting and budget implementation, and the monitoring and evaluation of programmes implementing such policies, laws and administrative procedures in all political, economic and

content/uploads/2019/12/NATIONAL-POLICY-ON-GENDER-AND-DEVELOPMENT.pdf > Accessed 9 October 2020.

² National Gender and Equality Commission Act, No.15 of 2011, Laws of Kenya.

³ National Gender and Equality Commission Act, sec. 2.

⁴ United Nations. *Gender Mainstreaming an Overview*. Office of the Special Adviser on Gender Issues, 2002 < <https://www.un.org/womenwatch/osagi/pdf/e65237.pdf>> Accessed 9 October 2020.

societal spheres; so as to ensure that women and men benefit equally, and that inequality is not perpetuated.⁵

Indeed, it has been observed that while mainstreaming is clearly essential for securing human rights and social justice for women as well as men, it also increasingly recognized that incorporating gender perspectives in different areas of development ensures the effective achievement of other social and economic goals.⁶ Past studies have revealed that most Kenyans are still lagging behind as far as understanding of their human rights is concerned. Many still think that different rights apply to men and women. For instance, in 2018, a survey carried out by IPSOS revealed that about 53 per cent of Kenyans were unable identify any human rights violations in their home areas.⁷

The 2019 National Policy on Gender and Development which is seen as a step towards mainstreaming of gender issues in Kenya was recently drafted in an effort to offer the guidelines on drafting of a national gender law. It is therefore imperative to review the Policy in order to identify any prospects as well as weakness of the Policy.

The United Nations 2030 Agenda for Sustainable Development Goals (SDGs)⁸ recognises the place of gender equality and equity in development. SDG Target 20 states that: “Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one

⁵ National Gender and Equality Commission Act, sec. 2.

⁶ United Nations. *Gender Mainstreaming an Overview*. Office of the Special Adviser on Gender Issues, 2002.

⁷ Hillary Orinde, ‘Survey Reveals How Kenyans Are Ignorant of Their Human Rights’ (*The Standard*)

<<https://www.standardmedia.co.ke/kenya/article/2001276119/kenyans-in-the-dark-about-their-rights>> accessed 14 October 2020.

⁸ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels”.

Goal 5 of the SDGs seeks to achieve gender equality and empower all women and girls. UN Women acts to empower women and girls across all its programmes and advocacy.⁹

2. The Policy, Legal and Institutional Framework on Gender Issues in Kenya

2.1 International and Regional Legal Instruments Relating to Gender Equality and Mainstreaming

Article 2(5) and (6) of the Constitution of Kenya 2010 provides that ‘the general rules of international law shall form part of the law of Kenya’ and that ‘any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution’ respectively.¹⁰ In *Re The Matter of Zipporah Wambui Mathara [2010] eKLR* the High Court held that by virtue of the provisions of Section 2 (6) of the Constitution of Kenya 2010, International Treaties, and Conventions that Kenya has ratified, were imported as part of the sources of the Kenyan Law and thus the provisions of the International Covenant on Civil and Political Rights (ICCPR) which Kenya ratified on 1st May 1972 were part of the Kenyan law. The court went on to hold that the provisions of the ICCPR superseded those contained in the Banking Act.¹¹

⁹ ‘Sustainable Development Goal 5: Gender Equality’ (*UN Women*)

<<https://www.unwomen.org/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>> accessed 15 October 2020.

¹⁰ See also Treaty-Making and Ratification Act, No. 45 of 2012, Laws of Kenya.

¹¹ See also *David Njoroge Macharia v Republic [2011] eKLR*, Criminal Appeal 497 of 2007; see also *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others Sup. Ct. Application No. 2 of 2011; [2012] eKLR*.

It is in line with the country's international obligations on human rights and gender issues that Article 59 (2) (g) of the Constitution of Kenya provides that one of the functions of the Kenya National Human Rights and Equality Commission is to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights. It is however noteworthy that the National Gender and Equality Commission Act, 2011 has since established the National Gender and Equality Commission as the successor in title to the Kenya National Human Rights and Equality Commission established by Article 59 of the Constitution, pursuant to clauses (4) and (5) of that Article.¹² Its functions however remain the same. It is in line with the Commission's mandate on international treaties and conventions that the *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development* outlines the national agenda for gender equality and how Kenya intends to realise these ideals; details the overarching principles, which will be adopted and integrated into the National and County Government sectoral policies, practices and programmes and by all state and non-state actors; and it specifically takes cognizance of, inter alia: international and regional treaties on gender equality that Kenya has ratified such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹³

2.1.1 Universal Declaration of Human Rights

The *Universal Declaration of Human Rights*¹⁴ guarantees that all human beings are born free and equal in dignity and rights. They are

¹² National Gender and Equality Commission Act, 2011, sec. 3(1) (2).

¹³ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, Chapter one, para. 1.1.

¹⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁵

It also provides that each individual is entitled to enjoy their rights and freedoms ‘...without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.¹⁶ Article 7 therein also guarantees that ‘all persons are equal before the law and are entitled without any discrimination to equal protection of the law’.

2.1.2 Convention on the Elimination of All Forms of Discrimination against Women

The *Convention on the Elimination of All Forms of Discrimination against Women*¹⁷ (CEDAW) defines the term "discrimination against women" to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁸

CEDAW also provides that States Parties should condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the

¹⁵ *Universal Declaration of Human Rights*, Article 1.

¹⁶ *Universal Declaration of Human Rights*, Article 2.

¹⁷ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

¹⁸ *Ibid*, Article 1.

practical realization of this principle; to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and to repeal all national penal provisions which constitute discrimination against women.¹⁹

CEDAW also obligates States Parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.²⁰

CEDAW also provides that States Parties should take all appropriate measures: to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

¹⁹ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 2.

²⁰ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 3.

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²¹

CEDAW also provides that States Parties should take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: to participate in the elaboration and implementation of development planning at all levels; to have access to adequate health care facilities, including information, counselling and services in family planning; to benefit directly from social security programmes; to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment; to participate in all community activities; to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; and to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.²²

Thus, the CEDAW covers civil rights, the legal status of women, the dimension of human reproduction and the impact of cultural factors on gender relations. Unlike other legal instruments, it acknowledges that different factors affect the relationships and interactions between men and women and thus outlines some obligations for State Parties to address all these factors.

²¹ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 5.

²² *Convention on the Elimination of All Forms of Discrimination against Women*, Article 14(2).

2.1.3 International Covenant on Civil and Political Rights

The *International Covenant on Civil and Political Rights*²³ (ICCPR) guarantees that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.²⁴ ICCPR also provides that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁵

In addition, ICCPR provides that the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.²⁶

Article 26 of the *ICCPR* further provides that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

²³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

²⁴ *International Covenant on Civil and Political Rights*, Article 1.

²⁵ *International Covenant on Civil and Political Rights*, Article 2 (1).

²⁶ *International Covenant on Civil and Political Rights*, Article 3.

2.1.4 Nairobi Forward looking Strategies for the Advancement of Women

The *Nairobi Forward looking Strategies for the Advancement of Women*²⁷ captured the concern that the resources available to the programme on the advancement of women of the Secretariat were insufficient to ensure adequate support to the Committee on the Elimination of Discrimination against Women and effective implementation of other aspects of the programme, especially the preparations for the Fourth World Conference on Women, held in 1995.²⁸ The delegation that called again upon Member States to give priority to policies and programmes relating to the subtheme "Employment, health and education", in particular to literacy, for the empowerment of women, especially those in the rural areas, to meet their own needs through self-reliance and the mobilization of indigenous resources, as well as to issues relating to the role of women in economic and political decision-making, population, the environment and information.²⁹

The delegates also emphasized, in the framework of the Forward-looking Strategies, the importance of the total integration of women in the development process, bearing in mind the specific and urgent needs of the developing countries, and calls upon Member States to establish specific targets at each level in order to increase the participation of women in professional, management and decision-making positions in their countries.³⁰

²⁷ UN General Assembly, *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women: resolution / adopted by the General Assembly*, 16 December 1991, A/RES/46/98.

²⁸ *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, Preamble.

²⁹ *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, Para. 4.

³⁰ *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, Para. 15.

2.1.5 Fourth World Conference on Women, Beijing Declaration and Platform for Action

The Fourth World Conference on Women met in Beijing, China, from 4 to 15 September 1995 where delegates discussed and adopted the *Beijing Declaration and Platform for Action*³¹. The objective of the Beijing conference was to review the achievement of the goals of equality, development and peace, as outlined in the Nairobi Forward Looking Strategies for the Advancement of Women to the Year 2000 in 1985, and to establish a strategy for removing the remaining obstacles to the achievement of these goals.³²

The Declaration recognized that the status of women had advanced but that inequalities and obstacles remained. It reaffirmed commitments to: equal rights in a number of existing agreements; ensuring full implementation of human rights of women and the girl child; and empowerment and advancement of women, including the right to freedom of thought, conscience, religion and belief.³³ Delegates also stated their conviction that: women's empowerment and full participation are fundamental to equality, development and peace; equal rights and responsibilities are critical to families; women's involvement is required to eradicate poverty; peace is linked to the advancement of women; and gender-sensitive policies are essential to foster women's

³¹ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, , A/CONF.177/20 and A/CONF.177/20/Add.1 Date of adoption: 15 September 1995.

³² Organisation for Economic Co-operation and Development, "The Implications Of The Fourth World Conference On Women for Bilateral Development Co-Operation: Report From The DAC Expert Group On Women In Development Seminar, Held In Paris On 25-26 January 1996, *Working Party on Gender Equality*, DCD/DAC/WID(99)4<
[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/WID\(99\)4&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/WID(99)4&docLanguage=En)> Accessed 13 October 2020.

³³ Doran, P., V. Hulme, L. Wagner, W. Yang, and S. Wise. "Summary of the Fourth World Conference on Women: 4-15 September 1995." *Earth Negotiations Bulletin* 14, no. 21 (1995): 1 < <https://enb.iisd.org/download/pdf/enb1421e.pdf>> Accessed 13 October 2020.

empowerment and advancement.³⁴ Governments also affirmed their determination to: intensify efforts to achieve goals from the Nairobi strategies; ensure the full enjoyment by women and the girl child of human rights; eliminate discrimination and remove obstacles to equality; encourage men to participate in actions towards equality; promote women's economic independence; promote sustainable development and education; prevent and eliminate violence against women and girls; ensure full participation; and ensure equal access to economic resources.³⁵

2.1.6 United Nations Declaration on the Elimination of Violence against Women

The United Nations *Declaration on the Elimination of Violence against Women*³⁶ (DEVAW) provides that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia: the right to life; the right to equality; the right to liberty and security of person; the right to equal protection under the law; the right to be free from all forms of discrimination; the right to the highest standard attainable of physical and mental health; the right to just and favourable conditions of work; the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.³⁷ DEVAW also obligates States to condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.³⁸

³⁴ Doran, P., V. Hulme, L. Wagner, W. Yang, and S. Wise. "Summary of the Fourth World Conference on Women: 4-15 September 1995." *Earth Negotiations Bulletin* 14, no. 21 (1995): 1.

³⁵ Doran, P., V. Hulme, L. Wagner, W. Yang, and S. Wise. "Summary of the Fourth World Conference on Women: 4-15 September 1995." *Earth Negotiations Bulletin* 14, no. 21 (1995): 1.

³⁶ UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104.

³⁷ *Ibid*, Article 3.

³⁸ *Ibid*, Article 4.

2.1.7 African Charter on Human and Peoples Rights (Banjul Charter)

The *African Charter on Human and Peoples' Rights* (also known as the *Banjul Charter*)³⁹ is an international (African region) human rights instrument that is intended to promote and protect *human rights* and basic freedoms in the *African* continent.⁴⁰ The Banjul Charter obligates the Member States of the Organization of African Unity parties to the present Charter to recognize the rights, duties and freedoms enshrined in this Chapter and that they should undertake to adopt legislative or other measures to give effect to them.⁴¹

The Charter also guarantees that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.⁴²

Some authors have however questioned the commitment of African states in upholding human rights or even the effectiveness of the Charter itself in achieving protection of human rights. For instance, it has been observed that while the African Charter is defined as an application of the UN Declaration of Human Rights to the African perspective, and a legal instrument 'written by Africans for Africans', it is evident that African governments are less than willing to condemn human rights violations in their own states as demonstrated not only by the emphasis on development and political stability at the expense of human rights but also in the drafting of the African Charter itself.⁴³

³⁹ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("*Banjul Charter*"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁴⁰ 'African Commission on Human and Peoples' Rights Legal instruments' <<https://www.achpr.org/legalinstruments/detail?id=49>> accessed 15 October 2020.

⁴¹ *African Charter on Human and Peoples' Rights*, Article 1.

⁴² *African Charter on Human and Peoples' Rights*, Article 2.

⁴³ 'The African Charter on Human and Peoples' Rights: how effective is this legal instrument in shaping a continental human rights culture in Africa?' (*Le petit juriste*,

2.1.8 Southern African Development Community (SADC), 1997 Declaration on Gender and Development and 2008 Protocol on Gender and Development

The Southern African Development Community (SADC) Declaration on Gender and Development was made in 1997 on the basis that SADC Member States undertook, in the SADC Treaty Article 6(2), not to discriminate against any person on the grounds of inter alia, sex or gender. In addition, SADC Member States committed to mainstream gender into the SADC Programme of Action and Community Building initiatives as a prerequisite for sustainable development.⁴⁴

SADC Member States acknowledged gender equality as a fundamental human right and therefore signed the Declaration on Gender and Development on 8th September 1997 to promote closer regional cooperation and collective action as a means of fostering gender equality and as a reaffirmation of SADC's commitment to eliminating gender discrimination and mainstreaming gender issues in Southern Africa.⁴⁵

SADC Heads of State and Government signed and adopted the *SADC Protocol on Gender and Development* in August 2008 with the exception of Botswana and Mauritius. The Objectives of the Protocol are among others to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects. It also seeks to

21 December 2014) <<https://www.lepetitjuriste.fr/the-african-charter-on-human-and-peoples-rights-how-effective-is-this-legal-instrument-in-shaping-a-continental-human-rights-culture-in-africa/>> accessed 15 October 2020.

⁴⁴ 'Southern African Development Community : Gender' <<https://www.sadc.int/issues/gender/>> accessed 15 October 2020.

⁴⁵ 'Southern African Development Community: Show' <https://www.sadc.int/documents-publications/show/Declaration_on_Gender_Development_1997.pdf> accessed 15 October 2020.

harmonise the various international, continental and regional gender equality instruments that SADC Member States have subscribed to.⁴⁶

Generally, the principle objectives of the gender-mainstreaming programme in SADC are to: put in place the necessary institutional mechanisms, operational guidelines and to promote a culture that will facilitate gender mainstreaming in the Secretariat; build the capacity of the staff of the Secretariat and SADC Member States to systematically develop, implement and sustain gender mainstreamed plans, strategies and programmes on an ongoing basis; ensure that the necessary human and financial resources for gender mainstreaming are mobilized for training; capacity building and programme implementation; and ensure that the commitments of the integration and development objectives to gender equality and women's empowerment are effectively implemented at the Member State level.⁴⁷

While Kenya is not a Member State of SADC, the above objectives though not fully implemented by the members offer some guiding principles for Kenya to consider.

2.1.9 African Union (AU), Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

The *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*⁴⁸ requires that States Parties should combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard the Protocol

⁴⁶ 'Southern African Development Community: Show'

<https://www.sadc.int/documents-publications/show/Declaration_on_Gender_Development_1997.pdf> accessed 15 October 2020.

⁴⁷ 'Southern African Development Community: Gender Mainstreaming'

<<https://www.sadc.int/issues/gender/gender-mainstreaming/>> accessed 15 October 2020.

⁴⁸ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003.

requires State Parties to: include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application; enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women; integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life; take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist; and support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.⁴⁹

States Parties are also obligated to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.⁵⁰

2.1.10 African Union Solemn Declaration of Gender Equality in Africa, 2004

The *African Union Solemn Declaration on Gender Equality in Africa*⁵¹ was a Member State's reaffirmation of their commitment to the principle of gender equality as enshrined in Article 4 (1) of the Constitutive Act of the African Union, as well as other existing

⁴⁹ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, Article 2(1).

⁵⁰ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, Article 2(2).

⁵¹ African Union, *Solemn Declaration on Gender Equality in Africa*, adopted by the AU Assembly in 2004.

commitments, principles, goals and actions set out in the various regional, continental and international instruments on human and women's rights, including the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW -1979), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000); UN Resolution 1325 (2000) on Women, Peace and Security; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).⁵²

The Members agreed to ensure the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary.⁵³

2.1.11 African Union Gender Policy, 2009

The overall goal of the African Union Gender Policy⁵⁴ is to adopt a rights based approach to development through evidence-based decision-making and the use of sex-disaggregated data and performance indicators for the achievement of gender equality and women's empowerment in Africa. It seeks to promote a gender responsive environment and practices and undertake commitments linked to the realisation of gender equality and women's empowerment in Member States, and at the international, continental, regional and national levels.⁵⁵

⁵² *Solemn Declaration on Gender Equality in Africa*, Preamble.

⁵³ *Solemn Declaration on Gender Equality in Africa*, Para. 6.

⁵⁴ African Union Gender Policy, Rev 2/Feb 10, 2009.

⁵⁵ *Ibid*, p.10.

2.2. National Legal Instruments and Institutions Relating to Gender Equality and Mainstreaming in Kenya

Kenya has been on a journey towards achieving gender equality and equity, a goal that has remained elusive over the years. There have been policies aimed at promoting the same and they have always been reviewed or replaced by new ones in a bid to improve on the framework and address any gaps. There have been positive steps that have been realized along the way such as recognition of equality of men and women rights to own property or inherit property and fair labour practices, among others. Despite this, Kenya cannot boast of an impressive track record as gender inequality is still manifest.⁵⁶

2.2.1 National Policy on Gender and Development, 2000

Notably, the first National Policy on Gender and Development was adopted in 2000 and was meant to provide a legitimate point of reference for addressing gender inequalities at all levels of government and by all stakeholders, and further provided an avenue for gender mainstreaming across all sectors in order to generate efficient and equitable development outcomes for all Kenyans.⁵⁷

The National Policy on Gender and Development of 2000 has since been reviewed in order to align it to the new legal framework including

⁵⁶ Njogu, Kimani, and Elizabeth Orchardson-Mazrui. "Gender inequality and women's rights in the Great Lakes: Can culture contribute to women's empowerment." *New York: UNICEF* (2013); Jagoe, Kirstie, Madeleine Rossanese, Dana Charron, Jonathan Rouse, Francis Waweru, MaryAnne Waruguru, Samantha Delapena, Ricardo Piedrahita, Kavanaugh Livingston, and Julie Ipe. "Sharing the burden: Shifts in family time use, agency and gender dynamics after introduction of new cookstoves in rural Kenya." *Energy Research & Social Science* 64 (2020): 101413; Flowe, Heather D., Sarah Rockowitz, James Rockey, Wangu Kanja, CATHERINE KAMAU, Melissa Colloff, Jasmin Kauldar, Jessica Woodhams, and Kari Davies. "Sexual and Other Forms of Violence During the COVID-19 Pandemic Emergency in Kenya." (2020).

⁵⁷ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 9.

the Constitution of Kenya.⁵⁸ This was superseded by the Sessional Paper No. 2 of 2006 on Gender Equality and Development which was meant to promote women empowerment and mainstreaming the needs of women, men, girls and boys in all sectors of development in Kenya so that they can participate and benefit equally from development initiatives.⁵⁹

2.2.2. National Policy for Prevention and Response to Gender Based Violence, 2014

The National Policy for Prevention and Response to Gender Based Violence's main purpose was to put in place a framework to accelerate implementation of laws, policies and programmes for prevention and response to Gender Based Violence (GBV) by state and non – state actors for the realization of a society where men, women, boys and girls are free from all forms violence.⁶⁰ This Policy sought to achieve the following objectives: to facilitate a coordinated approach in addressing GBV and to ensure effective programming; to improve enforcement of laws and policies towards GBV prevention and response; to increase access to quality and comprehensive support services across sectors; and to improve sustainability of GBV prevention and response interventions.⁶¹

The Policy also acknowledged that while it is women and girls who suffer the greatest share of GBV in the country, men and boys also experience the same.⁶²

⁵⁸ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 10.

⁵⁹ *Ibid*, p. 12.

⁶⁰ Republic of Kenya, National Policy for Prevention and Response to Gender Based Violence, November, 2014, p. 12 <<http://psyg.go.ke/docs/National%20Policy%20on%20prevention%20and%20Response%20to%20Gender%20Based%20Violence.pdf> > accessed 10 October 2020.

⁶¹ Republic of Kenya, National Policy for Prevention and Response to Gender Based Violence, November, 2014, pp. 12-13.

⁶² *Ibid*, p. 11.

Land Laws such as the Land Act and Land Registration Act acknowledge the right of women to acquire, inherit and hold or dispose land. However, the reality on the ground is that women and girls are still being dispossessed of property especially when it comes to inheritance.

2.2.3 Constitution of Kenya 2010

The Constitution of Kenya 2010 was the culmination of the recognition of the need to streamline gender issues in the country's development agenda. It not only guarantees equality and non-discrimination of all persons regardless of gender, but also has outlined some remedial measures to address the existing inequality in the country. It forms the basis of all other efforts since the year 2010.

2.2.4 National Gender and Equality Commission

The National Gender and Equality Commission is established under the National Gender and Equality Commission Act, 2011⁶³ which was enacted to establish the National Gender and Equality Commission as a successor to the Kenya National Human Rights and Equality Commission pursuant to Article 59(4) of the Constitution; to provide for the membership, powers and functions of the Commission, and for connected purposes.⁶⁴ The functions of the Commission are, inter alia, to: promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution; monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children; and co-ordinate and facilitate mainstreaming of issues of gender,

⁶³ National Gender and Equality Commission Act, 2011, Laws of Kenya, Sec. 3(1).

⁶⁴ Ibid, Preamble.

persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof.⁶⁵

2.2.5 State Department for Gender Affairs

The State Department for Gender Affairs falls under the Ministry of Public Service, Youth and Gender Affairs. The Ministry of Public Service and Gender was created under the re-organization of the National Government in November 2015.⁶⁶

The mandate of the State Department of Gender is hinged on the Constitution of Kenya and Executive Order of June, 2018. It is responsible for: Gender Policy Management; Special Programmes for Women Empowerment; Gender Mainstreaming in Ministries, Departments and Agencies (MDAs); Community Mobilization; Domestication of International Treaties and Conventions on Gender; and Policy and Programmes on Gender Violence.⁶⁷

3. Gender and Development in Kenya: The Challenges

The 2014 National Policy for Prevention and Response to Gender Based Violence identified the following as the greatest contributing factors to GBV in Kenya: unequal power relations between men and women; socio-cultural norms that normalize GBV, discriminatory practices and changing gender roles; poverty; illiteracy; breakdown of the family unit and support systems; insecurity; alcohol and substance abuse; uncensored media content; and conflict; political instability as well as poor enforcement of laws and policies.⁶⁸

⁶⁵ Ibid, sec. 8.

⁶⁶ 'Background' (*Ministry of Public Service And Gender*) <http://www.psyg.go.ke/?page_id=241> accessed 10 October 2020.

⁶⁷ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2020, pp. 12-13.

⁶⁸ Republic of Kenya, *National Policy for Prevention and Response to Gender Based Violence*, November, 2014, p. 14.

While it is worthy pointing out that the 2014 Policy was geared towards dealing with GBV, the above factors contribute to much more than just GBV; they hamper the equal participation of both men and women in development matters in the country. Indeed, one of the guiding principles of the 2014 Policy was recognition of the importance of gender equity and gender equality in national development.⁶⁹

In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012]eKLR⁷⁰, the advisory opinion related to two discrete elements in respect of which the Attorney-General thus moved the Court: “The Advisory Opinion of the Court is sought on the following issues:

- A. *Whether Article 81(b) as read with Article 27(4), Article 27(6), Article 27(8), Article 96, Article 97, Article 98, Article 177(1) (b), Article 116 and Article 125 of the Constitution of the Republic of Kenya require progressive realization of the enforcement of the one-third gender rule or requires the same to be implemented during the general elections scheduled for 4th March, 2013?*

- B. *Whether an unsuccessful candidate in the first round of Presidential election under Article 136 of the Constitution or any other person is entitled to petition the Supreme Court to challenge the outcome of the first round of the said election under Article 140 or any other provision of the Constitution?”*

⁶⁹ Republic of Kenya, National Policy for Prevention and Response to Gender Based Violence, November, 2014, p. 13.

⁷⁰ In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012]eKLR, Advisory Opinions Application 2 of 2012.

Regarding the one-third gender rule, the Attorney-General moved the Supreme Court seeking an opinion as to whether the terms of Article 81(b) apply in respect of the very next general elections, to be held on 4 March 2013, or on the contrary, apply *progressively* over an extended period of time.

The Supreme Court observed as follows:

[47] This Court is fully cognisant of the distinct social imperfection which led to the adoption of Articles 27(8) and 81(b) of the Constitution: that in elective or other public bodies, the participation of women has, for decades, been held at bare nominal levels, on account of discriminatory practices, or gender-indifferent laws, policies and regulations. This presents itself as a manifestation of historically unequal power relations between men and women in Kenyan society. Learned counsel Ms. Thongori aptly referred to this phenomenon as “the socialization of patriarchy”; and its resultant diminution of women’s participation in public affairs has had a major negative impact on the social terrain as a whole. Thus, the Constitution sets out to redress such aberrations, not just through affirmative action provisions such as those in Articles 27 and 81, but also by way of a detailed and robust Bill of Rights, as well as a set of “national values and principles of governance” [Article 10].

While there was no unanimous decision on whether implementation of the one-third Two-thirds gender rule was to be realised immediately or progressively, Kenya is still grappling with the question of gender representation in the elective posts in Kenya, with the recent advisory opinion from the Chief Justice directed to the President on the need to dissolve Parliament for failure to uphold the gender equity

constitutional requirements complicating the debate even further.⁷¹ The Deputy Chief Justice has since appointed a special bench of judges to decide on the constitutional status of the advisory opinion as issued by the Chief justice.⁷²

The upshot of the above is that despite Kenya's progressive constitutional and statutory framework on achieving gender mainstreaming, the country is far from enjoying gender equality and equity especially in relation to women's position in leadership and national development roles, with representation of women in Kenya's Parliament remaining minimal over the years despite the promulgation of the current Constitution of Kenya in 2010.⁷³ Indeed, despite its leading economic position in the East African region, Kenya ranks the lowest among the East African countries when it comes to the place of women in leadership positions.⁷⁴ For instance, in 2016, it was reported that women held 64 percent of seats in the lower house of Rwanda's national legislature, the largest share of any country.⁷⁵ However, despite

⁷¹ 'Chief Justice's Advice to the President on Dissolution of Parliament for Failure to Enact the Gender Rule | Kenya Law' <<http://kenyalaw.org/kenyalawblog/chief-justices-advice-to-the-president-on-dissolution-of-parliament/>> accessed 15 October 2020.

⁷² Japheth Ogila, 'DCJ Mwilu Forms Five-Judge Bench to Hear Maraga's Parliament Dissolution Advice' (*The Standard*) <<https://www.standardmedia.co.ke/nairobi/article/2001390110/mwilu-forms-judge-bench-to-hear-cjs-parliament-dissolution-advice>> accessed 15 October 2020; 'Fate of Parliament Lies in the Hands of Five Judges' (*People Daily*, 14 October 2020) <<https://www.pd.co.ke/news/fate-of-parliament-lies-in-the-hands-of-five-judges-55560/>> accessed 15 October 2020; John Osoro, '5 Judges Appointed to Hear Petitions on CJ Advise to Uhuru to Dissolve Parliament' *Capital News* (*Capital News*, 14 October 2020) <<https://www.capitalfm.co.ke/news/2020/10/5-judges-appointed-to-hear-petitions-on-cj-advise-to-uhuru-to-dissolve-parliament/>> accessed 15 October 2020.

⁷³ 'Actualization and Implementation of the "Two-Thirds Gender Principle" in Kenya | Www.Sidint.Net' <<https://www.sidint.net/content/actualization-and-implementation-two-thirds-gender-principle-kenya>> accessed 15 October 2020.

⁷⁴ *Ibid.*

⁷⁵ 'It's The No. 1 Country for Women in Politics — But Not In Daily Life' (*NPR.org*) <<https://www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it>> accessed 15 October 2020.

this commendable state of affairs in Rwanda, there are conflicting reports on the status of women rights in everyday life, with some reporters saying that the political state of affairs is very different from every day community life of women in Rwanda.⁷⁶ It is therefore possible to have a politically empowered group of men and women but without guaranteeing them enjoyment of other fundamental rights. As things stand, it is therefore safe to argue that the problem of gender inequality and inequity in Kenya goes beyond availability of statutory and constitutional framework. It is for this reason that the 2019 National Policy on Gender and Development was drafted in order to enable the stakeholders take practical steps towards addressing the existing challenges.

4. 2019 National Policy on Gender and Development: Overview

The National Policy on Gender and Development seeks to create a just, fair and transformed society free from gender based discrimination in all spheres of life practices.

The National Policy highlights the fact that the patriarchal social order supported by statutory, religious and customary laws and practices; and the administrative and procedural mechanisms for accessing rights have continued to hamper the goal of attaining gender equality and women's empowerment.⁷⁷ The Gender Policy was informed by the observation that although the Kenyan law and the Constitution contain progressive provisions that were expected to address gender inequality, they have not delivered gender equality in practice, thus raising the need to develop a policy that addresses the variety of manifestations of gender

⁷⁶ Ibid; Azad Essa, 'The Mixed Tale of Women's Empowerment in Rwanda' <<https://www.aljazeera.com/features/2018/9/20/the-mixed-tale-of-womens-empowerment-in-rwanda>> accessed 15 October 2020; 'How Women Are Stepping up to Remake Rwanda' (*Culture*, 15 October 2019) <<https://www.nationalgeographic.com/culture/2019/10/how-women-are-remaking-rwanda-feature/>> accessed 15 October 2020.

⁷⁷ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 9.

discrimination and inequality.⁷⁸ The 2019 Policy builds on the National Policy for Gender and Development of 2000, and Sessional Paper No. 2 of 2006 on Gender Equality and Development which were meant to promote women empowerment and mainstreaming the needs of women, men, girls and boys in all sectors of development in Kenya so that they can participate and benefit equally from development initiatives.⁷⁹

The 2019 Policy rightly points out that while there has been emphasis by the Kenyan Government on promoting gender equality in all aspects of its activities, evaluations point to clear gaps in promoting gender equality such as disparities in education and economic opportunities, representation, participation, and adequate access to health, all of which present new opportunities and challenges in the pursuit of gender equality and women's empowerment.⁸⁰ As a result, the Policy has been designed to guide and ensure that all planning, programming, budgeting and implementation of development programmes include a gender perspective both at National and County levels.⁸¹

The Policy has promised the following focus areas: improved livelihoods, promotion and protection of human rights, participation in decision-making and governance, recognition of gender and promotion of women empowerment in macro-economic management among others.⁸² The Scope of the National Gender and Development Policy application is specifically and directly to all Government Ministries, Independent Bodies, Quasi-autonomous entities, and Departments and Agencies both at the national and county levels of government. It is also expected that the principles, strategies and approaches in the policy

⁷⁸ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, pp. 9-10.

⁷⁹ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 12.

⁸⁰ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 13.

⁸¹ *Ibid*, p. 13.

⁸² *Ibid*, p.13.

shall also apply to the, private sector and civil society.⁸³ The Policy also aims at achieving equality of opportunity and outcomes with respect to access to and control of national and county resources and services; and equality of treatment that meets the specific and distinct needs of different categories of women and men.⁸⁴

However, while the Policy is concerned with all categories and aspects of gender, it has put a special focus on the empowerment of women who are currently considered the marginalized gender.⁸⁵ The Policy has identified a set of factors that will act as indicators for measuring the implementation and effectiveness of the gender and development agenda.⁸⁶ In addition, the Policy points out that if concerted efforts are made and adequate resources are allocated to the processes of institutionalizing gender equality and the empowerment of women as proposed in this policy, the result will be a fairer and transformed society in which women and men will benefit in the following ways: Equality of treatment and Freedom from Discrimination as provided for under Article 27 of the Constitution; Equality in the political, social, economic and cultural development spheres for women and men; Respect for the human rights of women, men, boys and girls; Respect for provisions on equality in the Bill of Rights in civil, administrative and judicial regulations and procedures and customary, cultural and religious practices; Enforcement of statutory, religious and customary laws within the framework of this policy and the Constitution; and Duty bearers at the National and County levels of Government will be equipped with relevant gender responsive requirements for planning, budgeting and implementing development programmes.⁸⁷

⁸³ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 13.

⁸⁴ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, p. 13.

⁸⁵ *Ibid*, p. 13.

⁸⁶ *Ibid*, p. 13.

⁸⁷ *Ibid*, pp. 13-14.

Chapter Two of the Policy dwells on situational analysis and key aspects which impact on Kenya's progress towards gender equality.⁸⁸ The Chapter highlights the following as the major challenges that affect realization of gender equality in Kenya: Poverty; Access to Labour and the Economy; Access to Education; Access to Health Care; Land, Housing and Agriculture; Access to Environment and Natural Resources; Peace and Security; Governance, Power and Decision-Making; Information and Communications Technologies (ICT); Respect of Human Rights for All; Sexual and Gender Based Violence (SGBV); Access to Justice; Discrimination between the Girl Child and Boy Child; Intersectional Discrimination; Media Influence; and Institutional Mechanisms for the advancement of Gender Equality and Empowerment of Women.⁸⁹

Chapter Two highlights the specific concerns that arise under each of the foregoing thematic areas affecting the gender debate in Kenya.

Chapter three of the Policy document captures that Policy goal, principle and objectives, which are all aimed at ensuring gender equality and women empowerment in the social, economic, political and cultural spheres as envisaged in the Constitution. The framework also seeks to establish and strengthen Affirmative Action efforts aimed at reducing gender inequalities and geographical disparities in the distribution of natural resources and access to productive resources such as land, labour, finances, information and technology.⁹⁰

The overall goal of this policy is to achieve gender equality by creating a just society where women, men, boys and girls have equal access to

⁸⁸ Ibid, p. 14.

⁸⁹ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Two.

⁹⁰ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Three, p. 28.

opportunities in the political, economic, cultural and social spheres of life.”⁹¹

The objectives of the Policy are to: Facilitate implementation of the Constitution and domesticate the international and regional obligations and commitments that promote gender equality and freedom from discrimination; Provide a framework to integrate and mainstream gender into the National and County Government development planning and budgeting as well as resultant policies, programmes and plans including those of non-state actors; Promote and support the rights-based approach when dealing with gender related matters; and, Define institutional framework and performance indicators for effective tracking, monitoring, evaluation and reporting implementation of gender equality and women empowerment.⁹²

In order to achieve the foregoing, the following approaches will be used: Gender mainstreaming and integration in all planned interventions; Affirmative Action to ensure that temporary special measures are used to address past gender inequalities and injustices; Empowerment of women, men, boys and girls to facilitate equality, equity and non-discrimination; Involvement of men in addressing gender issues; Institutional and human capacity building; Gender responsive development planning budgeting; and, Generating data and indicators that are disaggregated by sex, age and disability.⁹³

The 2019 Policy anticipates to achieve the following outcomes: Equality and economic empowerment will be achieved; Diversity of all Kenyans will be acknowledged and respected; Women men, boys and

⁹¹ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Three, para. 3.2.

⁹² Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Three, para. 3.3.

⁹³ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Three, para. 3.5.

girls will have equal rights and access to education, health, housing, employment, and other services and resources; Women and men will have equality of opportunity to participate in decision making and to contribute to the political, social, economic and cultural development agenda; Promotion of equal rights at the time of, during and on the dissolution of the marriage for spouses; and, Sexual and Gender based Violence will abate and men, women, boys and girls will live with dignity.⁹⁴

Chapter four of the Policy outlines the policy priority areas the Ministry in charge of Gender Affairs will oversee and implement through the institutional arrangements discussed chapter five thereof.⁹⁵ Chapter four offers recommendations on the challenges identified in chapter two of the Policy document.

Chapter five of the Policy document presents the institutional and implementation framework for implementing the National Gender and Development Policy, where the institutions identified will facilitate integration and mainstreaming of gender concerns as part of their mandates in implementing the policy. According to the Policy document, therefore, implementation of the policy will thus take a multi-sectoral approach cutting across both the state and non-state actors at all levels. The Ministry in charge of Gender Affairs will however take the leading role of coordinating all the other players in the country so as to enhance harmony and avoid duplication.⁹⁶

The Policy document points out that different aspects of the policy will be implemented by various actors including Ministries, Counties,

⁹⁴ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Three, para. 3.6.

⁹⁵ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Four, para. 4.1.

⁹⁶ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter Five, para. 5.1.

Departments and Agencies, Constitutional Commissions and Independent Offices in collaboration with the private sector, Civil Society Organizations, Faith Based Organizations, among other key actors.⁹⁷

Chapter six on monitoring and evaluation envisages that Monitoring and evaluation shall be an essential strategy in the implementation of the Policy in order to ensure that results frameworks on each policy action detailing outputs, outcomes, impacts and key actors shall be developed to facilitate annual plans and development planning processes in all sector at all levels.⁹⁸

5. Actualising the National Policy on Gender and Development in Kenya: Prospects

The 2019 National Policy on Gender and Development is a commendable document that is quite detailed in not only identifying the challenges but also offering solutions as well as an oversight framework. It is however noteworthy that there is still the challenge of drafting the actual Act in a way that ensures that the spirit of the Policy and the approaches envisaged will be possible to implement. The institutional framework will be critical in realization of the same. However, there is a need to work very closely with communities in order to ensure that there is a continued change of practices and behaviour especially those related to gender roles in the society.⁹⁹

⁹⁷ Ibid, para. 5.2.

⁹⁸ Republic of Kenya, *Sessional Paper No. 02 of 2019 on National Policy on Gender and Development*, October 2019, Chapter six, para. 6.1.

⁹⁹ Koburtay, Tamer, Jawad Syed, and Radi Haloub. "Implications of religion, culture, and legislation for gender equality at work: Qualitative insights from Jordan." *Journal of Business Ethics* 164, no. 3 (2020): 421-436; Glas, Saskia, Niels Spierings, and Peer Scheepers. "Re-understanding religion and support for gender equality in Arab countries." *Gender & Society* 32, no. 5 (2018): 686-712; Wood, Hannelie J. "Gender inequality: The problem of harmful, patriarchal, traditional and cultural gender practices in the church." *HTS Theological Studies* 75, no. 1 (2019): 1-8.

The Constitution of Kenya 2010 recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.¹⁰⁰ It also guarantees the right of every person to use the language, and to participate in the cultural life, of the person's choice.¹⁰¹ However, the Constitution also provides that no person shall be compelled by another person to perform, observe or undergo any cultural practice or rite.¹⁰²

It is also noteworthy the Constitution provides for equality of all persons and non-discrimination. It prohibits discrimination by either state or any other person 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.¹⁰³ While some traditions have been instrumental in preserving the heritage of the people of Kenya, there are others that are admittedly discriminative especially against women and are also used to hamper their progress in all spheres of life.¹⁰⁴

There is a need for a sustained debate aimed at changing communities' mentality on the culturally-specific gendered roles and responsibilities

¹⁰⁰ Constitution of Kenya 2010, Article 11(1).

¹⁰¹ Constitution of Kenya 2010, Article 44 (1).

¹⁰² Constitution of Kenya 2010, Article 44 (3).

¹⁰³ Constitution of Kenya 2010, Article 27 (4) (5).

¹⁰⁴ Rivière, François, ed. *Investing in cultural diversity and intercultural dialogue*. Vol. 2. Unesco, 2009; Martin Wamalwa, 'Culture And Women Empowerment In Kenya: A Philosophical Analysis' (2007); Nozomi Kawarazuka, Catherine Locke and Janet Seeley, 'Women Bargaining with Patriarchy in Coastal Kenya: Contradictions, Creative Agency and Food Provisioning' (2019) 26 *Gender, Place & Culture* 384; Ongong'a, Jude J. "African traditional cultural conundrums which make women prone to hiv/aids infections: a case of the Maasai of Kenya." *International Journal of Education and Research*, Vol. 1 No. 8 August 2013 (2013) < <https://www.ijern.com/journal/August-2013/18.pdf> > Accessed 10 October 2020.

since these tend to affect how men and women interact both at household level as well as professionally.¹⁰⁵

For as long as the deep-seated culturally inspired mentality on the supposed role of men and women, formal legal, policy and institutional frameworks may not do much in terms of transformation.¹⁰⁶ However, these frameworks alongside public awareness on the importance of acknowledging that both men and women should be afforded equal opportunities to contribute to the national development debate.¹⁰⁷ For instance, the UN Women Report (A/75/274), *Intensification of efforts to eliminate all forms of violence against women: Report of the Secretary-General (2020)*, submitted pursuant to UN General Assembly resolution 73/148¹⁰⁸, provides information on measures taken by Member States and activities carried out within the United Nations system to eliminate violence against women and girls in the context of COVID-19 as well as reporting on advances in eliminating sexual harassment.¹⁰⁹ This Report is evidence of the heavy burden that women

¹⁰⁵ Nozomi Kawarazuka, Catherine Locke and Janet Seeley, 'Women Bargaining with Patriarchy in Coastal Kenya: Contradictions, Creative Agency and Food Provisioning' (2019) 26 *Gender, Place & Culture* 384.

¹⁰⁶ Eisend, Martin. "Gender roles." *Journal of Advertising* 48, no. 1 (2019): 72-80; Olsson, Maria, and Sarah E. Martiny. "Does exposure to counterstereotypical role models influence girls' and women's gender stereotypes and career choices? A review of social psychological research." *Frontiers in psychology* 9 (2018): 2264; Couprie, Hélène, Elisabeth Cudeville, and Catherine Sofer. "Efficiency versus gender roles and stereotypes: an experiment in domestic production." *Experimental Economics* 23, no. 1 (2020): 181-211; Godsil, Rachel D., Linda R. Tropp, Phillip Atiba Goff, J. A. Powell, and J. MacFarlane. "The effects of gender roles, implicit bias, and stereotype threat on the lives of women and girls." *The Science of Equality* 2, no. 1 (2016): 14-15; Ellemers, Naomi. "Gender stereotypes." *Annual review of psychology* 69 (2018): 275-298.

¹⁰⁷ Ibid.

¹⁰⁸ Resolution adopted by the General Assembly on 17 December 2018 [on the report of the Third Committee (A/73/582)] 73/148: *Intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment*.

¹⁰⁹ 'Intensification of Efforts to Eliminate All Forms of Violence against Women: Report of the Secretary-General (2020) | Digital Library: Publications' (*UN Women*) <<https://www.unwomen.org/digital-library/publications/2020/07/a-75-274-sg-report-ending-violence-against-women-and-girls>> accessed 15 October 2020.

and girls still have to bear in society even as at 2020. It has been reported that while everyone is facing unprecedented challenges, women are bearing the brunt of the economic and social fallout of COVID-19. Women who are poor and marginalized face an even higher risk of COVID-19 transmission and fatalities, loss of livelihood, and increased violence.¹¹⁰ Gender equality and equity awareness should be inculcated into children, both boys and girls from an early age in order to foster positive change. Both men and women need to start appreciating the need for gender equality and equity from an early age for sustained transformation of the society.¹¹¹

6. Conclusion

The National Policy on Gender and development, 2019 is a great leap towards addressing the challenges affecting achievement of gender equality and equity in the country. It has detailed and plausible recommendations on how to move forward. However, its actualization requires the effort of every person and all ages. If the Policy's spirit and recommendations can be captured in an Act of Parliament, followed by concerted efforts and campaign by every member of the society to bring a wind of change, then Kenya will not struggle with achieving the one-third/two-third gender rule since both men and women will be able to compete fairly for economic, political and social opportunities.¹¹² The

¹¹⁰ 'COVID-19 and Its Economic Toll on Women: The Story behind the Numbers' (*UN Women*) <<https://www.unwomen.org/news/stories/2020/9/feature-covid-19-economic-impacts-on-women>> accessed 15 October 2020.; see also 'The COVID-19 Shadow Pandemic: Domestic Violence in the World of Work - A Call to Action for the Private Sector | WEPS' <<https://www.weps.org/resource/covid-19-shadow-pandemic-domestic-violence-world-work-call-action-private-sector>> accessed 15 October 2020.

¹¹¹ Blum, Robert Wm, Jo Boyden, Annabel Erulkar, Caroline Kabiru, and Siswanto Wilopo. "Achieving Gender Equality Requires Placing Adolescents at the Center." *Journal of Adolescent Health* 64, no. 6 (2019): 691-693; Aturu, J. O. "Gender Equality, Education and Sustainable Development in Nigeria: An Assessment." *International Journal of Education and Evaluation* 4, no. 1 (2018): 70-77.

¹¹² United Nations Department of Economic and Social Affairs Division for Social Policy and Development, 'ONLINE SURVEY ON Promoting Empowerment of People in achieving poverty eradication, social integration and full employment

gender debate should not be treated as an isolated question because as it has been demonstrated in the Policy document, achieving gender equality and equity will require the stakeholders to address different challenges: Gender equality and equity will look like just a by-product of developing society.¹¹³ It is indeed possible to achieve gender equality and equity if the Policy document of 2019 can be implemented and supported by good will from all groups of persons and all levels of government.

If Kenya is to achieve the sustainable development goals as well as its national development plans such as the Vision 2030, then gender equality and equity must be addressed as a matter of priority since development requires concerted efforts of both men and women. Actualising the National Policy on Gender and Development in Kenya is indeed possible.

integration and full employment and decent work for all.’ <<https://www.un.org/esa/socdev/publications/FullSurveyEmpowerment.pdf>> Accessed 14 October 2020; In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012]eKLR, Advisory Opinions Application 2 of 2012.

¹¹³ Dugarova, Esuna. *Gender equality as an accelerator for achieving the Sustainable Development Goals*. Discussion Paper, UNDP & UN Women, 2018; Beatrice Akala, ‘Gender Inequality in Education Is Still an Issue in Kenya and South Africa’ (*The Conversation*) <<http://theconversation.com/gender-inequality-in-education-is-still-an-issue-in-kenya-and-south-africa-125747>> accessed 15 October 2020; North, Amy, and Helen Longlands. "Gender, Poverty and Educational Equality." *The SAGE Handbook of Inclusion and Diversity in Education* (2019): 103; Fredman, Sandra, Jaakko Kuosmanen, and Meghan Campbell. "Transformative equality: Making the sustainable development goals work for women." *Ethics & International Affairs* 30, no. 2 (2016): 177-187; Nurhaeni, I. D. A., and Y. Kurniawan. "Developing training and vocational education for achieving gender equality." (2017): 97.

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‘Background’ (*Ministry of Public Service And Gender*) <http://www.psyg.go.ke/?page_id=241> accessed 10 October 2020.

‘Chief Justice’s Advice to the President on Dissolution of Parliament for Failure to Enact the Gender Rule | Kenya Law’ <<http://kenyalaw.org/kenyalawblog/chief-justices-advice-to-the-president-on-dissolution-of-parliament/>> accessed 15 October 2020.

‘COVID-19 and Its Economic Toll on Women: The Story behind the Numbers’ (*UN Women*) <<https://www.unwomen.org/news/stories/2020/9/feature-covid-19-economic-impacts-on-women>> accessed 15 October 2020.

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