



## **EXERCISE 4**

# **SITUATIONAL DIAGNOSIS**

KENYA



## Situational Diagnosis

---

TITLE: SITUATIONAL DIAGNOSIS

KENYA GROUP: AUTHORS

REGINA MWANZA

LILIAN ADAWO

LUCY WAMUYU

OLGA MUTORO

JUNE 2012

## **SITUATIONAL DIAGNOSIS –KENYA**

### **The General Context**

#### **The General Context**

For many years, the role of Kenyan women in society has been underplayed and their rights sidelined. The Promulgation of the constitution of Kenya 2010 therefore acted as a relief to women in Kenya. It sought to; among other things ensure that women were allowed to participate in national, political and developmental agenda.

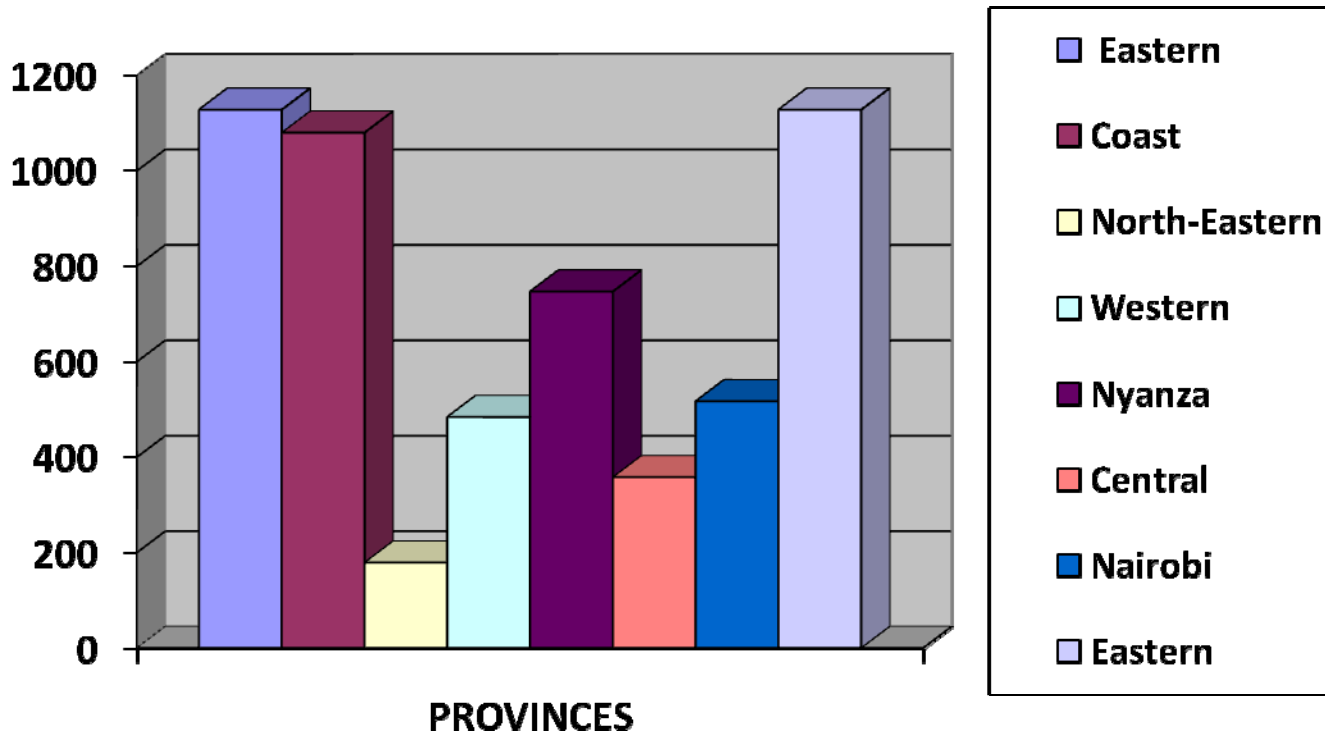
This paper therefore serves as an analysis of the developmental milestones that women in Kenya have overcome and in addition to that the challenges that they are still facing.

#### **Violence against Women**

There are many forms of violence against women generally and these include physical violence, emotional violence, domestic violence, sexual violence amongst many others. Our major focus in this topic will be on sexual violence.

Sexual offences in whichever form they take are endemic and increasing in Kenya even after passing of the Sexual Offences Act in 2006. The following chart represents the findings of the Director of Public Prosecutions on the number of sexual offences reported between 2006-2009.

Situational Diagnosis



Progress

The Sexual Offences Act came into force in order to introduce comprehensive reform regarding sexual offences. It introduces stiffer and enhanced penalties for offenders, expanded list of sexual offenders, eliminated authoritarian requirement of corroboration in sexual offences cases, took into account social developments, safeguarded header privacy of victims and many other reforms. The establishment of the Task Force on the Implementation of the Sexual Offences Act has convened a number of workshops to assess the country's capacity to address sexual violence and improve the implementation of the Sexual Violence Act. In addition to building outreach, investigations, prosecution, witness protection and medical and psychosocial support capacities. Kenyan stakeholders from all sectors emphasize the need for better coordination at policy and programmatic levels.

Challenges

Despite this major step, the law still has some challenges in applicability such as recognizing and criminalizing marital rape. This in itself is a form of discrimination against women in their quest for justice against domestic violence. Kenya has ratified the United Nations Declaration on the elimination of Violence against Women which envisions the criminalization of all offences against women. It is noteworthy that other African countries such as Tanzania, South Africa, Seychelles have passed legislations criminalizing all forms of rape including marital rape.<sup>1</sup>

<sup>1</sup> Dafflin Sure- Sexual offences Act significantly reduces sexual violence, FIDA Kenya Annual Report 2011

Section 38 of the said Act makes it a crime for a victim of sexual violence to make false allegations that is when allegations against the accused cannot be sustained. This provision fails to appreciate that shoddy investigation, misplacement of exhibits and unreliable witnesses have been the causes of erroneous acquittal of accused persons.

### **Women in Power and Decision- making**

Women representation in all decision- making organs is a fundamental issue in advancing gender equality. Under the Constitution of Kenya 2010, Parliament is required to enact legislation to promote the representation in parliament of women among other interest groups.<sup>2</sup>

#### **Progress**

It is now a Constitutional requirement that membership to the National assembly should include 47 women, each elected by the registered voters of their counties, each county constituting a single member constituency.<sup>3</sup> Membership to the senate ,which will have 47 elected members, among whom at least 16 should be women members nominated by political parties according to their proportion of members of the society. The county assemblies created by the Constitution require that no more than two-thirds of the membership of the assembly be of the same gender. This thus ensures at least one third representation in all political and essentially decision-making bodies. Women can therefore expect a ‘windfall’ in the new legislature , never before seen in Kenya.<sup>4</sup>

So far, recent appointments of constitutional office holders have observed and implemented two –thirds minimum gender equilibrium and that is a major progress.

#### **Challenges**

##### **a. Patriachy**

Even though compliance of the two-third rule is a Constitutional requirement, it is worth noting that Kenya is still a largely patriarchal society. Patriachal attitudes towards women are still deep-seated and chances are that they will remain so for a long time. Women are characteristically appointed as deputies in most governmental offices.

---

<sup>2</sup> Article 100 (a)

<sup>3</sup> Article 97

<sup>4</sup> Anne Amadi – Coming Elections: What women should expect –FIDA Kenya Annual Report 2011

b. Achieving the two-thirds principle

Currently, there is no formula through which the two-thirds principle should be achieved. The Constitution of Kenya ( Amendment ) Bill seeks to introduce special seats in the National Assembly and by amending Article 98 in the Senate so that the two-thirds principle is ensured. The implications of these amendments is that we might end up having more numbers of legislators and this will have huge budgetary implications.

c. Election Petitions

The minimum fees required to present an election petition in Kenya is one million Kenya shillings. With the recent rising rates in poverty levels, the sum is prohibitive for most women. Therefore in the event of any undemocratic election, women who might wish to contest flawed elections might not be in a position to do so.

d. Minimum Education requirements

Under the Elections Act 2011, the requirement for certain electoral positions include minimum educational requirements. The positions of President, Deputy President, County Governor, Deputy Governor, the minimum educational requirement for candidates is a first degree from a recognized university in Kenya which on the face of it is a welcome move meaning that all aspirants of these positions will be people who can handle and tackle issues of governance from a learned perspective.

For women aspirants, this requirement might pose a great challenge especially in marginalized communities where educational levels of women are still very low. Women without the minimum standards of education stand no chance of ascending to these positions, regardless of the positive contributions that they might have made in their respective communities.

### **Women and Health**

The myriad of challenges faced by Kenyan women in articulating the right to and access to health care are notorious and well documented. From stories of women literally held hostage in hospitals after giving birth for failure to pay for services rendered to women who are denied emergency medical treatment and end up dying, women being denied access to emergency contraception unless they have a prescription, or have been raped or are married, HIV positive women being denied any form of treatment at hospitals.<sup>5</sup>

#### **Progress**

---

<sup>5</sup> Irene Ndegwa – Right to Health for Kenya Women under 2010 Constitution : Fallacy or Reality?

The right to health is an express fundamental right under the constitution and when a violation of this right occurs, the Kenyan woman is entitled under Article 22(1) of the Constitution to institute court proceedings and seek appropriate remedy.

Advocacy and lobbying programme by various Civil Society Organizations such as the Federation of Women Lawyers (FIDA-Kenya) which has been able to conduct advocacy on harmful cultural practices such as Female Genital Mutilation (FGM). Using HeRWAI<sup>6</sup>, they came up with recommendations to the government on how to combat FGM especially on the need to push for legislation that specifically criminalizes FGM for all girls and women regardless of age with stiff penalties. The recommendations and lobbying saw the enactment of the Prohibition of FGM Act 2011.

### Challenges

For any human right to be truly effective, it must be justiciable and enforceable. Despite the right of health being enshrined in the Kenyan Constitution, enforcing it, is a major challenge. There are rising cases in mortality deaths, cases whereby women with HIV / AIDS and are not in a position to breastfeed their children cannot afford formula milk or even cow milk and many other cases.

The definition adopted by the Constitution of Kenya 2010 provides that “ Every person has the right to the highest attainable health which includes the right to healthcare services including reproductive health care...A person shall not be denied emergency medical treatment.”<sup>7</sup> This definition is an express adoption of the provision set out in the Covenant on Economic, Social & Cultural Rights (CESR) with an expansion from the Cairo Programme of Action<sup>8</sup>. It has been argued that the right to health is not self executing. Article 21(2) of the same Constitution provides that the right to health will be progressively realized by the state meaning that the state cannot be held accountable as such in a situation whereby the said rights are violated. The states major defence in such an instance will be that the rights were to be progressively realized.

### Conclusion

For any human right to be truly effective, it must be both justiciable and enforceable. As much as the Right to health is justiciable, it must be made enforceable by the state putting in legislative policies and other measures to ensure the full implementation of the right.

---

<sup>6</sup> Health Rights Assessment Instruments tool

<sup>7</sup> Article 43(1) of the Constitution of Kenya 2010

<sup>8</sup> Principle 8- everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure on a basis of equality of men and women, universal access to health-care services including reproductive health care.

### **Women and the Media**

The media plays an integral part of the communication system of all societies. Not only does it influence the shape policy formulation but also sways the public's conception of gender roles and responsibilities.<sup>9</sup>

#### **Progress**

There has been progress in terms of Civil Society Organizations organizing conferences in order to train the media on how to report events in order to achieve a positive impact on the viewers and the society at large. Not to forget on how to report cases involving children. The Children Act of 2001 upholds the principle that in all matters affecting children, their best interest is paramount. Increasingly when reporting cases on children, the media has tried to protect them, say in cases involving rapes and abuse, their faces are normally covered in order to protect their identity.

#### **Challenges**

There is still a long way to go for the media to be positively influenced to air stories on women and children such as to bring out the positive legislations that should be formulated in order to protect their fundamental rights.

It is worth noting that the media has the power to contribute greatly towards a harmonious society through the promotion of gender equality or undermine it by perpetuating and reinforcing social imbalances associated with the long held traditional notion of male dominance in society.

### **Women in Conflict Situations**

In January 2008, Kenya underwent her most turbulent period since becoming a republic following a disputed and hotly contested presidential election in December 2007.<sup>10</sup> Following the post- election violence, women and children suffered the most. There were soaring levels of deaths, displaced families, women and girls who were raped, people who were burnt in their homes amongst other many ills that plagued Kenya as a society.

Women lacked protection of the police and their spouses and were regarded as "spoils or articles of war". This was a gross violation of human rights. Women generally suffer violations of their rights disproportionately when normal codes of social conduct are ignored in times of crisis<sup>11</sup>.

---

<sup>9</sup> Anne Amadi – Coming Elections: What women should expect –FIDA Kenya Annual Report 2011

<sup>10</sup> Alex Njiri , The Role of Media in reporting Elections – FIDA Kenya Annual Report 2011

<sup>11</sup> Dafflin Sure- Sexual offences Act significantly reduces sexual violence, FIDA Kenya Annual Report 2011



### Progress

Electoral violence has been a major impediment to the full participation of women in electoral processes. Incidences of political violence against women political aspirants at the instigation of their male competitors are common, making it practically impossible for women to fairly contest in elective politics. The Political Parties Act 2011 prohibits the formation of a political party that promotes hatred on the basis of gender and promotes violence and intimidation to members and supporters.

These provisions if adhered to, will guarantee women a measure of a level playing field with assurance of safety and security as they engage in party nomination politics.<sup>12</sup>

### **CONCLUSION**

There have been some gains towards women in Kenya accessing justice especially with the promulgation of the Constitution of Kenya 2010 but much more needs to be done. As a society and more so as women, we hope to see a future society that is just to women and children and a society that provides an easy access to justice for all without any discrimination irrespective of gender, race, social status or any other kind of discrimination.

### **REFERENCES:**

1. The Constitution of Kenya 2010
2. The Convention on Economic, Social and Cultural rights
3. The Sexual Offences Act of 2006
4. Elections Act 2011
5. FIDA Kenya Annual Report 2011

---

<sup>12</sup> Anne Amadi – Coming Elections; What women should expect – FIDA Kenya Annual Report 2011



## Situational Diagnosis

---