

**MEMORANDUM FROM THE WOMEN OF KENYA ON THE  
PARLIAMENTARY SELECT COMMITTEE DRAFT CONSTITUTION OF  
KENYA.**

**THE PARLIAMENTARY SELECT COMMITTEE CHANGES TO THE DRAFT  
HARMONISED CONSTITUTION ARE UNACCEPTABLE!**

The concerns of Kenyans since independence and in all aspects of life (political governance, economic development, land, use of national resources, access to services and opportunities in the public sector) have always been about resolving the inequalities and the consequent injustices many Kenyans experience. The women of Kenya are no exception and have specific concerns that can only be addressed in the new Constitution of Kenya. Some of these issues are not contentious and should not have been tampered with by the PSC.

1. **REPRESENTATION:**

**National Values, Principles and Goals**

The CoE had properly entrenched these under Clause 13. They included key principles that are important for entrenching a culture of inclusion of vulnerable populations and ensuring equality for women and other marginalized groups. Under Clause 13 (2) they had entrenched the principles of

- (i) Ensuring full participation of women, persons with disabilities, marginalized communities and all other citizens in the political, social and economic life of the nation.
- (j) Implementing the principle that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The PSC draft has recommended the removal of this clause among others, and re-located the Principle of no more than two-thirds of the same gender to the General principles for the electoral system and process - which does not adequately or clearly place responsibility for ensuring the principle is actualised in practice.

**The Women of Kenya demand that the Clause on the above provisions as expressed in the CoE draft be upheld in the draft Constitution that will be presented to Kenyans in the forthcoming referendum.**

**Composition of the National Assembly**

Of the 349 proposed parliamentary seats, only 47 (13.5%) are special seats for women, which is below the threshold for affirmative action. The allocation of the seats in the national Assembly does not respect the principle of no more than two thirds of one gender as outlined in the CoE Draft, and there is no proposal on how the one third will be achieved.

### **The Women of Kenya demand**

- 1. The special seats for women be increased to 74 from the proposed 47, to effectively address the principle of Affirmative Action.**
- 2. That the expiration date on Affirmative Action in the National Assembly proposed by the PSC be removed, as this mechanism should only expire after the expected level of equality is achieved**

### **2. DEVOLUTION - PUBLIC FINANCE**

Chapter twelve (Section 195 (5) of the PSC Draft on revenue allocation from national government to county government, sets a minimum of 15% of total national revenue. Even in low income countries, this does not satisfy the threshold for equitable resource allocation and will further marginalize women and other vulnerable groups, defeating the principle of Devolution.

**The Women of Kenya state that the criteria for resource allocation should be left to legislation. If there has to be a minimum threshold for resource devolution to county governments, it should be at least 40% of the national revenue, to adequately address Kenya's development agenda.**

### **3. CULTURE**

The COE draft indicated what the parameters of culture should include. This is important for women and other marginalized groups because most of the violations they face are perpetrated in the name of culture and tradition.

**The Women of Kenya demand that the clause on culture as captured in the COE harmonized draft be upheld.**

### **4. THE BILL OF RIGHTS**

In addition to civil and political rights, the CoE draft entrenched various social and economic rights, and highlighted the government's obligation to domesticate ratified international human rights instruments. .

The PSC draft recommended the deletion of the State Obligation to domesticate International Human rights instruments, deleted the provisions on social and economic rights, and relegated to parliament the sole power to decide through legislation when and how the rights and standards set in instruments can be applicable in the national context

Further the PSC draft removes the provisions which would guide accountability bodies in determining whether the government is complying with its obligations to protect and promote human rights.

**The Women of Kenya demand explicit recognition of the rights in the regional and international human rights instruments that Kenya has ratified. This will be the greatest gain for the Kenyan women and indeed the different marginalized populations.**

**We insist that the recognition of these rights should not be downgraded to the level of legislation and at the discretion of Parliament.**

### **The Right to Life**

The inclusion in the PSC draft of a definition of when life begins has negative implications for women's health and public health at large. For example:

- a. Some forms of contraceptives will become unconstitutional.
- b. The administration of some forms of Post Exposure Prophylaxis measures after sexual violence may become unconstitutional.
- c. As the sub-clause is not in any way linked to the others in Article 25 this could be interpreted negatively to require clearance from the Constitutional Court before women with ectopic pregnancies or conceptions that turn into tumors receive emergency treatment.
- d. The issue of government having the primary responsibility to protect and fulfill human rights including the right to health and reproductive health rights in particular can easily be ignored and those with unplanned pregnancies denied the necessary health services they urgently need.

## **5. THE GENDER COMMISSION**

As the Women's movement we demand that the Gender Commission be distinctly entrenched in the Constitution, separate from the "Equality

Commission” as proposed by the PSC, to avoid issues unique to gender and women’s empowerment getting subsumed or marginalized in a larger entity.

The organizations involved in the preparation and submission of the memorandum include:

Women in Law and Development Africa-Kenya (WILDAF Kenya), Kenya Women Parliamentary Association (KEWOPA), Development Through Media, Young Women’s Leadership Institute (YWLI), The Caucus for Women’s Leadership (CWL), Federation of Women Lawyers Kenya (FIDA K), Coalition on Violence Against Women (COVAW), the League Muslim Women Kenya, Action Aid Kenya, Bridge Africa, SOREC, The Women Political Alliance Kenya, Maendeleo Ya Wanawake, Tomorrow’s Child initiative, Women for Justice in Africa and African Woman and Child Feature Service, African Women Communication and Development Network (FEMNET), Kangemi Women Empowerment Centre, The League of Kenya Women Voters, Women Empowerment Society (WES), Centre for Rights Education and Awareness (CREAW), Collaborative Centre for Gender and Development (CCGD), National Council of Women of Kenya (NCWK)