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to the twenty-third special session of the General Assembly
entitled “Women 2000: gender equality, development and peace
for the twenty-first century”**

Statement submitted by Federation of Women Lawyers in Kenya, a non-governmental organization in consultative status with the Economic and Social Council*

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

* The present statement is issued without formal editing.



Statement

Background

According to the United Nations Development Programme Human Development Report Kenya's human inequality co-efficient in 2013 stood at 32.7 per cent. The 2014 Economic Survey states that 45.2 per cent of Kenyans were living below the poverty line at the time of the survey. Poverty incidence across the 47 counties ranged from a low of 21.8 per cent in Nairobi to a high of 87.5 per cent in Turkana. The poverty rate in Nairobi was approximately half of the national average while Turkana had double the poverty index. Socioeconomic and political inequalities in Kenya are rooted in both the historical and structural characteristics of the country. These include ethnic and sex discrimination, economic policies favouring the highly productive agricultural areas, and regional economic favouritisms by past regimes. These characteristics reveal not just the vertical inequality that brings out the disparities among individuals but also horizontal (group) inequality and inequality in dimensions such as time needed to access resources such as water, fuel, wood and health facilities.

Women's empowerment however remains one of the key pillars towards sustainable growth and development of a country. The Constitution of Kenya incorporates an elaborate bill of rights guaranteeing fundamental social, economic, political rights for all Kenyan citizens. Further, Kenya has enacted laws and policies that give effect to the bill of rights both at national and county levels. Kenya has also domesticated certain international laws.

There have also been efforts at structural reforms of the key government agencies and institutions to facilitate expeditious access to justice and service delivery. These include the National Police Service, Judiciary, Public Service among others. Despite these efforts, Kenya is plagued by lack of deliberate efforts from the duty bearers to implement the Constitution, National and County and domesticated International Laws. These limitations paralyze progress towards women's empowerment and adversely affect the realization of the Sustainable Development Goals.

This written statement focuses on specific components of the Sustainable Development Goals whose realization is pegged on deliberate and substantive economic, social and political empowerment of the women of Kenya. The statement addresses the following:

- Legislative gaps in gender equality
- Structural gaps in gender equality
- Capacity/awareness gaps in gender equality

Goal 5: Achieving gender equality and empowerment of all women and girls

Gender equality has been identified as one of the key pillars of sustainable growth and development of a country. Among the emerging areas of inequality in Kenya are political representation and participation in decision making processes, access to justice, basic education and health care services, access to land and property rights, security and general service delivery to Kenyans.

With respect to political empowerment, women constitute 51.4 per cent of the population and 47 per cent of the registered voters in Kenya but this numerical strength is not reflected in their representation in political leadership and decision-making. Gender disparity in voting remains a challenge as 16 per cent of women in Kenya still lack basic literacy skills, compared with 9 per cent of men. This affects voting rights as the women are reliant on electoral officials to understand, interpret, and record their intended vote accordingly. Illiterates are also more likely to be persuaded to sell their votes, or tricked or intimidated into voting. Further, political institutions, from political parties to electoral commission, also have limited capacity to ensure that women's interests are articulated and addressed in public policy.

With respect to economic empowerment, Kenya is now the ninth largest African economy with a Gross Domestic Product of \$55 billion following the rebasing of Kenya's Gross Domestic Product in September 2014 and subsequently Kenya attained a lower middle income status in 2012. However, women who form the largest labour force in Kenya especially in the agriculture only earn a small proportion of the revenues. The National Land Commission Act 2012, the Land Act 2012 and the Land Registration Act, 2012 have aided women in areas where they have traditionally been granted little or no rights to land and property. However, statistics still verify that access to and control over land is far from equal. Only 5 per cent of land title deeds in Kenya are jointly held, and only 1 per cent of land titles in Kenya are held by women alone. This is largely because of discriminatory law, corruption and institutional challenges that have hindered women from acquiring titles to land.

Towards the two third gender principle

The Constitution of Kenya obliges the state to ensure that neither gender occupies more than two thirds of elective or appointive positions. However, women still constitute 19.8 per cent of National Assembly members, 6.1 per cent of elected members of County Assembly, and 21.2 per cent of the total members of government. The Constitution further provided a deadline of August 2015 for the government to put in place a mechanism to achieve the two thirds gender principle. Subsequently the Attorney General set up a technical working group to develop a formula for realization of the 2/3rds gender principle. The working group considered all the recommendations and settled on a viable formula as an amendment to the Constitution to replicate the provisions of Article 177(b) with regards to composition of the County Assembly to Article 97 & 98 with respect to the composition of the National Assembly.

Despite being presented with a viable mechanism, the State has failed to enact a favourable legislation to implement the principle. As the country approaches the 2017 general elections, yet again, there is no framework in place to facilitate substantive equality in leadership through representation of both gender and other special interest groups and further participation in political decision-making structures. Hon members Cecil Mbairire and Saiponi have sponsored key Bills which are not given the much needed priority.

The Matrimonial Property Act

The Matrimonial Property Act enacted in November 2013, requires quantification of non-monetary contribution to matrimonial property by either spouse. While non-monetary contribution is recognized as contribution to acquisition of matrimonial property, there is no threshold for quantification of the same. These provisions offend the spirit of the Constitution which provides for equality in marriage and at the dissolution of the marriage and disempowers women economically rendering them casualties of failed/dissolved marriages.

The Marriage Act, 2014

The Marriage Act 2014 consolidates the registration of marriages to provide certainty and clarity for marital privileges between both sexes. However, Women who have not registered their customary marriages by the stipulated date risk losing entitlement to their share of matrimonial property (which in most times have only been registered in a husband's name). Given that 75 per cent of the total Kenyan population lives in rural areas which have limited or no infrastructure to access information, they are likely to lack awareness of legislative changes affecting their property rights within marriages. Although gains in specific areas have been made within the Marriage Act, such as formalizing the right for women to own property, the law still fails to grant equal rights to women or protect them from patriarchal authority.

The Protection against Domestic Violence Act, 2015

The Act provides for the protection and relief of victims of domestic violence; the protection of a spouse and any children or other dependent persons. The Act provides for Protection Orders for victims of domestic violence and gives the Police a major role to intervene in instances of domestic violence. Despite the various measures that the government has put in place around domestic violence, the Act fails to address the gaps of lacking shelters for victims.

Recommendations

- Enactment of a law for realization of the two-thirds gender principle and establish affirmative action programmes that address gender equality
- Strengthen access to financing opportunities and initiate economic empowerment programmes for women to enable them to participate in elective politics
- Programming around sensitization for the public on voting and the importance of women leadership and participation in political decision making
- Amendment of the Marriage Act and the Matrimonial Property Act to be in tandem with the Constitution
- The government should introduce diverse programmes to create awareness on the rights, potentials and abilities of women from different geographic locations, social classes, and tribal backgrounds
- Monitor enforcement of electoral laws and policies and review and strengthen political party structures to make them more democratic and inclusive