

# **GENDER AND CLIMATE CHANGE IN THE DEVOLVED SYSTEM OF GOVERNMENT**

**14<sup>th</sup> May, 2013 at Panafric Hotel**

Gender and Climate change Working Group

Institute of environment and Water  
Management

by

**AGNES MASIKA**

# Transformative Aspects of the constitution of Kenya 2010

## 1. The sovereignty of the people and the supremacy of the constitution (chap 1)

- **1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.**
- (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.
- (4) The sovereign power of the people is exercised at—
  - *(a) the national level; and*
  - *(b) the county level.*

# Meaning of Devolution

- Devolution means allowing or giving powers of decision making to smaller or local units that have means to implement the decisions.
- It involves the transfer of functions, resources and power to the smaller or local units
- In the Constitution, Chapter 2: Article 6, the local units are called Counties and the Constitution creates 47 county governments.
- The devolved levels of government assume full **responsibility and accountability** for specific functions given to them by the people through the constitution.
- The purpose of the constitution is to promote participatory democracy and sustainable development for the benefit of all citizens.

# Objectives of Devolution

- Promote democratic, accountable and transparent exercise of power.
- Promote national unity by recognizing the diversity of the people of Kenya.
- Give powers of self-governance to the people and enhance their participation in decision making in matters that affect them.
- Recognize the rights of communities to manage their own affairs and further their development. The different communities in a county should be empowered to manage their affairs.
- To protect and promote the interests and rights of minorities and marginalized communities.
- Promote social and economic development and ensure that services are efficiently delivered to the people at the nearest possible level
- facilitate the delivery of services by State organs in the
- To provide a check and balance against Government

# Devolved system of governance

- Governance- management of public affairs
- Article 4 a and b creates two levels of government
  - The National Government
  - the County Government

# Structure of the two governments

## National Government

a) The National Executive -  
The President, the Deputy  
President and the Cabinet.

## Functions

- Coordinate development in the country
- Provide security in the country
- Ensure provision of basic needs to citizens
- Promote good relationship with the international community
- Ensure justice to all citizens

b). Legislature (National  
Assembly and the Senate)

## ii) Senate

- The senate consists of:
- 47 members each elected by the registered voters of each county
- 16 women members
- 2 members being one man and one woman, representing the youth
- 2 members being one man and one woman, representing persons with disabilities
- The Speaker

## Functions

- Represent the counties
- Protect the interests of the counties and their governments
- Participate in the law-making function of Parliament by considering, debating and approving Bills concerning counties
- Determine the allocation of national revenue among counties
- Exercises oversight over national revenue allocated to the county governments
- Participate in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office
- Control the management of county facilities and resources
-

## i) National Assembly

- 290 elected members
- 47 women each elected by the registered voters of the 47 counties
- 12 nominated members
- The Speaker

### Functions

- Allocates national revenue between the levels of government
- appropriation of funds for expenditure by the national government and other national state organs
- Exercises oversight over national revenue and its expenditure
- Reviews the conduct in office of the President, the Deputy President and other State officers
- initiates the process of removal of the President, the Deputy President and other State officers
- Exercises oversight of State organs
- 
- Approve declarations of war and extensions of states of emergency
- Recommend review of county boundaries
-

## c)Judiciary

- Chief Justice
- Deputy Chief Justice
- Chief Registrar
- Judges
- Magistrates
- The Judicial Service Commission
- Judicial staff
- **The Court System**
- Superior courts
- Supreme court
- Court of appeal
- High court
- **Subordinate courts**
- Magistrate courts
- Kadhi's courts
- Martial courts
- Local tribunal

## Functions

- To administer justice
- To resolve disputes

# The Gender Agenda

- **27.** (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- *The Constitution of Kenya* **25**  
State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.
- *81b) not more than two-thirds of the members of elective public* bodies shall be of the same gender;

# Environmental management and climate change

- **42. Every person has the right to a clean and healthy environment,**
- which includes the right—
- Labour relations.
- Environment.
- *The Constitution of Kenya* **31**
- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
- (b) to have obligations relating to the environment fulfilled under Article 70

# Obligations in respect of the environment.

- **69. (1) The State shall—**
- *(a) ensure sustainable exploitation, utilisation, management and*
- conservation of the environment and natural resources, and
- ensure the equitable sharing of the accruing benefits;
- *(b) work to achieve and maintain a tree cover of at least ten*
- *per*
- cent of the land area of Kenya;
- *(c) protect and enhance intellectual property in, and*
- *indigenous*
- knowledge of, biodiversity and the genetic resources of the
- communities;

- *(d) encourage public participation in the management,*
- protection and conservation of the environment;
- *(e) protect genetic resources and biological diversity;*
- *(f) establish systems of environmental impact assessment,*
- environmental audit and monitoring of the environment;
- *(g) eliminate processes and activities that are likely to endanger the environment; and*
- *(h) utilise the environment and natural resources for the benefit of the people of Kenya.*
- 2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

# The National Gender and Equality Commission in Kenya

- **Formed in 2011 in accordance With the Constitution.**
- To promote gender equality and equity and coordinate gender mainstreaming in national development.
- To participate in the formulation of national development policies.
- To initiate and advocate for legal reforms on issues affecting women, and to formulate laws, practices and policies that eliminate all forms of discrimination against women and all institutions, practices and customs that are detrimental to their dignity.
- To institute proposals and advise on the establishment and strengthening of institutional mechanisms which promote gender equity and equality in all spheres of life, and in particular access the benefits of education, healthcare, nutrition, shelter, employment and control of economic and national resources.

- To determine strategic priorities in all the socio-economic, political and development policies of the Government and advise on their implementation.
- Plan, supervise and coordinate education programmes to create public awareness and support for gender issues. Evaluate aid policies to determine their impact on women in Kenya.
- Conduct and coordinate research activities on gender issues.
- To carry out investigations on gender-based rights and violations and forward recommendations to the relevant authorities.
- To receive and evaluate annual reports on progress made by Government Ministries and other sectors on gender development and Women's empowerment.