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December 2019

## Ending Gender Violence in Elections

### Inclusion of Women in Kenyan Politics and the National Dialogue Process from a Transitional Justice Perspective

#### Defining Inclusion from a Transitional Justice Perspective

In its primary findings, the Truth, Justice and Reconciliation Commission (TJRC) noted that women and girls have been subject to systematic, state-sanctioned discrimination in all spheres of their lives.<sup>1</sup> The commission went further to observe that their exclusion from political processes emanates from a historically patriarchal culture, and the state has failed to take measures to end the practices that restrict women’s political involvement. The TJRC provided a set of recommendations to address the existing exclusion.

The constitution of Kenya that was promulgated in 2010 was meant to respond to Kenyans’ aspirations to be a part of the state and governance structure—in other words, to be included in the country’s social, political, and economic affairs. Ultimately, though, the new constitution has failed to fully live up to these expectations, and feelings of exclusion persist. In March 2018, President Uhuru Kenyatta and Rt. Hon. Raila Odinga launched the Building Bridges to a New Kenyan Nation Initiative, as part of an ongoing national dialogue process; they named inclusivity and divisive elections as two of the nine issues to be tackled “in the great work of building a strong and united Kenya.”<sup>2</sup>

The TJRC traced the patterns of women’s political exclusion up through 2007 and found that “women’s dominance in numbers [in the society at large] has never been reflected in the composition of positions of leadership and power in Kenya.”<sup>3</sup> They concluded, “The

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<sup>1</sup> TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 1” (2013), vii. Website: [http://knchr.org/Portals/o/Reports/TJRC\\_Volume\\_1.pdf](http://knchr.org/Portals/o/Reports/TJRC_Volume_1.pdf).

<sup>2</sup> The Building Bridges to Unity process was established by Gazette Notice Np. 5154 of May 24, 2018. An advisory task force was formed to (1) evaluate the national challenges outlined in the joint communiqué of “Building Bridges to a New Kenyan Nation,” which was signed between H.E. President Uhuru Kenyatta and the former prime minister Rt. Hon. Raila Odinga; (2) conduct consultations with citizens, representatives of the faith-based sector, cultural leaders, members of the private sector, and experts at both the national and county levels; and (3) outline the policy, administrative, and reform proposals that build lasting unity and implementation modalities for each of the identified challenge areas: ethnic antagonism and competition, lack of national ethos, inclusivity, devolution (that is politically and economically viable), divisive elections, safety and security, corruption, shared prosperity, and responsibility and rights.

<sup>3</sup> TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 2C” (2013), 75. Website: [http://knchr.org/Portals/o/Reports/TJRC\\_Volume\\_2C.pdf](http://knchr.org/Portals/o/Reports/TJRC_Volume_2C.pdf).

## Kenyan Women's Quest for Political Inclusion: Ending Gender Violence in Elections

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lack of women's representation in forums of decision making is evident in all spheres of life and levels of governance."<sup>4</sup>

The drafters of the constitution took into account the barriers women faced and sought to cultivate a political culture in which women would be adequately represented in civic as well as elective offices. Their efforts are reflected in the constitution's Article 27(8) of the Bill of Rights, which provides: "The 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." Article 81(b) reiterates this "gender principle" in regard to the electoral system. However, given their deeply ingrained patriarchal nature, Parliament, and especially the National Assembly,<sup>5</sup> have to date ignored these constitutional provisions.<sup>6</sup>

Since the constitution's promulgation in 2010, which was accompanied by a road map of its implementation with timelines to realize the intended gains of mainstreaming gender in public and elective offices, the National Assembly has deliberately failed to enact what is referred to as the Gender Bill<sup>7</sup>—Constitution of Kenya (Amendment) Bill 2018.<sup>8</sup> On four occasions, members of Parliament have refused to appear in the House, thus denying the mandatory quorum of two-thirds of the members that is needed to enact a constitutional amendment.<sup>9</sup> The president has also defied the two-thirds gender rule by appointing only 6 women cabinet secretaries out of 21 cabinet members.

Unrest and violence have marked many of Kenya's elections over the last several decades, but such violence has increasingly become normalized, with the worst electoral violence occurring following the disputed results of the 2007 presidential election. This phenomenon arose with the return of multiparty politics in 1991 as the political elite used violence as a tool for manipulation and exploitation to retain or gain political power.<sup>10</sup> The TJRC found that during the 1992, 1997, and 2007-2008 electoral violence, women were targeted for a range of human rights violations because of their ethnicity and perceived political affiliation.<sup>11</sup>

Could the gender exclusion displayed by the two arms of the government—most visibly in the president's majority male cabinet appointments and the legislature's deliberate undermining of the Gender Bill—be seen as an affirmation of the strong patriarchal traditional practices that also play a role in the Kenyan state's failure to protect the rights

4 Ibid.

5 Parliament has been heavily male-dominated in all post-independence governments. The National Assembly currently has a total of 78 women out of 349 members of parliament (290 elected from the constituencies, 47 women elected from the counties, and 12 representatives nominated by parliamentary political parties to represent the special interests of youth, people with disabilities, and workers), while the Senate has 20 women out of 67 senators (47 members directly elected by their counties, 16 women nominated by the political parties according to their relative strength in the Senate elections, two members to represent the youth, and two members to represent people with disabilities). Website: [www.parliament.go.ke/the-national-assembly/mps](http://www.parliament.go.ke/the-national-assembly/mps).

6 Kenya Women Parliamentary Association, "Report on Status of the Two Thirds Gender Principle Journey" (2017). Website: [www.kewopa.org/wp-content/uploads/2017/11/TwoThirdsJourneyReport.pdf](http://www.kewopa.org/wp-content/uploads/2017/11/TwoThirdsJourneyReport.pdf).

7 The Gender Bill seeks to legislate on the constitutional requirement that neither gender should account for more than two-thirds of any body, especially those composed of elective positions.

8 Various bills have been presented since 2015 seeking to give effect to the two-thirds rule through the creation of special seats that will ensure the gender principle is realized in parliament for a period of 20 years, starting from the 2017 general election, but without success.

9 Kenya Women Parliamentary Association, "Report"; Marilyn Muthoni Kamuru, "Kenya's Gender Bill: Battling Inequality, Saving the Constitution," *Al Jazeera*, March 17, 2019, [www.aljazeera.com/indepth/opinion/kenya-gender-bill-battling-inequality-saving-constitution-190317093452466.html](http://www.aljazeera.com/indepth/opinion/kenya-gender-bill-battling-inequality-saving-constitution-190317093452466.html).

10 Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, "Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya" (1999), 57.

11 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2C," 2.

of women during elections? According to the due diligence obligation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the state is required to investigate all incidences of violence against women, including systematic failures to prevent such violence; in the case of elections, the state is particularly obligated to protect women political aspirants and their supporters.

This paper highlights the need to overcome the political challenges women face in Kenya: their ongoing exclusion from political leadership; the continued violence against them during electoral contests, which is becoming normalized; and their inability to ascend to leadership positions in the country.

### Legacy of Violence Against Women During Elections

At different periods in the country's history, Kenyans have experienced repression and gross human rights violations. During the British colonial era, a practice was established—which was later followed by post-independence governments—of authorities using the security apparatus, particularly the police and in some instances the defense forces and army, to brutalize Kenyans.<sup>12</sup> The TJRC examined the various serious human rights violations that had occurred since independence in 1963 until 2008 when the peace accord was signed,<sup>13</sup> including state-sanctioned bodily integrity and sexual violations perpetrated against women and girls, which can be directly attributed to the exclusionist cultural and systemic traditions that persist in Kenya.<sup>14</sup>

Acts of sexual and gender-based violence, such as rape, gang rape, forced nudity, and sexual harassment, were common in the violence surrounding the 2007 elections. The TJRC also documented that female-headed households were singled out to be looted and torched.<sup>15</sup> Additionally, women were victims of murder, displacement, and forced deportation.

The police forces were complicit in the sexual violations that took place during the 2007-2008 post-election violence, as not only did they grant impunity to aggressors, but individual police officers also participated in the violence: In a 2014 ICTJ study, women described being raped by police officers. In one instance, a woman was victimized after seeking help from an officer for a rape committed by another man. Overwhelmingly, sexual violence victims who tried to file reports were met with hostility from the police, and their claims were not taken seriously.<sup>16</sup>

As in most contexts of massive human rights abuses, the sexual and gender-based violations that have happened during Kenya's electoral periods are not random acts. UN Security Council Resolution 1820 notes that such violence can be employed "as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group."<sup>17</sup> In Kenya, this violence has been used specifically to intimidate and prevent women from participating in the political process leading up to elections, and has driven a majority of women candidates to withdraw from political contests.

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12 The British colonial administration in Kenya started in 1895 and ended in 1963. The first independence government was run under Mzee Jomo Kenyatta from 1963 until his death in 1978; this was followed by the Moi era, from 1978 until 2002, and then the Kibaki era, from 2002 until 2012. The current government has been under Uhuru Kenyatta since 2013.

13 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 1," vii.

14 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2C," 1-2.

15 *Ibid.*, 108.

16 International Center for Transitional Justice, "The Accountability Gap on Sexual Violence in Kenya: Reforms and Initiatives since the Post-Election Crisis" (2014), 3-4.

17 UN Security Council, *Resolution 1820 (2008)* (New York: Official Record S/RES/1820, 2008), 1.

Ethnicity is a primary factor shaping the fault lines plaguing Kenyan society, and thus politics and ethnicity often become intertwined as ethnic groups seek political power to promote and protect the interests of their community.<sup>18</sup> During electoral periods, women were subjected to violence to dissuade them from voting for candidates who represented the interests of the “wrong” ethnicity.

In its reporting on the 2007 elections, the Kenya Human Rights Commission (KHRC) found that women were also targeted to ensure that *male* candidates received votes:

Violence and other forms of discrimination against women, in the context of elections, are acts perpetrated by men against women with the aim of devaluing, demeaning and de-humanizing them and their specific identity as women so as to promote men's dominance in electoral politics thereby influencing electoral choices and outcomes.<sup>19</sup>

Women who aspire to political positions have been subjected to physical violence, including rape and sexual assault, as well as sexual harassment, hate speech, and intimidation.<sup>20</sup> Among the women who have been sexually abused were aspirants for various elective office positions including the highly politically competitive position of member of county assembly. One woman testified during the public hearings of the TJRC that because of her candidacy, her sons had been poisoned and her female supporters threatened with eviction.<sup>21</sup>

Despite a range of measures having been put in place after the 2007-2008 post-election violence to address past human rights violations and undertake reforms to guarantee that they did not happen again, women's political participation has continued to be obstructed by violence and intimidation. During consultations with the Carter Center on the 2017 elections, women voters and aspirants reported having experienced election-related gender-based violence. The Carter Center report also found that “approximately 90 percent of women aspirants reported that they felt unsafe during the party primary period.”<sup>22</sup> This hostile environment was experienced not only by public candidates but also by everyday citizens engaging in political discussions. The study found that many women are fearful of expressing their political opinions in spaces where men are also present.<sup>23</sup>

### Women's Role in the Struggle for Democracy

Despite the obstacles and violence they have faced, and despite their inadequate representation in civic office (reflected by the low number of government positions they hold), Kenyan women have played a central role in shaping the trajectory of the country. Even before independence, women were integral to advancing the struggle against Britain's colonial government.<sup>24</sup> Nobel Peace Prize laureate Wangari Maathai remarked:

Without women's contributions in hiding and feeding the freedom fighters, nothing could have been achieved. It was the women who transported arms

18 Christopher Gitari, International Center for Transitional Justice, “Situating Security Sector Reforms in Kenya's Discourse on Inclusion and National Dialogue Process” (2019), 1.

19 Kenya Human Rights Commission (KHRC), “Violating the Vote: A Report of the 2007 General Elections” (2008), 30. Website: [www.khrc.or.ke/publications/37-violating-the-vote/file.html](http://www.khrc.or.ke/publications/37-violating-the-vote/file.html).

20 *Ibid.*, 31.

21 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 2C,” 83.

22 The Carter Center, “Youth and Women's Consultations on Political Participation in Kenya: Findings and Recommendations” (2018), 18. Website: [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/democracy/kenya-youth-and-women-political-participation-report.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/kenya-youth-and-women-political-participation-report.pdf).

23 *Ibid.*, 17.

24 Wanjiku Mkabi Kabira and Elishiba Njambi Kimani, “The Historical Journey of Women's Leadership in Kenya,” *Journal of Emerging Trends in Educational Research and Policy Studies* 3, 6 (2012): 842.

and food to the forest edge. It was the women who steered loyalists into the fighters' traps; it was the women, even prostitutes, who stole guns and bullets from those fighting their brothers. And it was the women who spied for the freedom fighters. The women as much as the men hazarded their lives to gain back a country.<sup>25</sup>

During the first two decades of independence, women mobilized largely around social development issues.<sup>26</sup> After the 1992 National Women's Convention, their activism and organizing became more political, with women working to access positions within the government. From the beginning, the women's movement strove to increase their political representation through the establishment of a quota system; however, the largely male-dominated political establishment was resistant to including women in its ranks.

Women often bear the brunt of human rights violations during conflicts, and in the aftermath they are also often denied the opportunity to influence the political process that determines how the past is addressed.<sup>27</sup> In Kenya, building upon the momentum of their early mobilizing, women activists and rights groups understood this challenge and intentionally sought to play a role in the peace process following the 2007 post-election violence. Following several weeks of consultations with women, a committee nominated by the women's organizations successfully lobbied for the inclusion of key gender issues in the Kenya National Dialogue and Reconciliation (KNDR) process.<sup>28</sup> In a memorandum to the mediation team led by Kofi Annan, the committee outlined the gender dimensions of the 2007-2008 post-election violence and made specific recommendations to respond to and redress the situation of women and girls. They stated:

Kenyan women assert their rights as citizens of this country to participate in all political processes and initiatives that seek to find solutions to the crisis that currently our beloved motherland faces.... [T]he important role of women's participation in the prevention and resolution of conflicts is reaffirmed in The Constitutive Act of the African Union, the AU's [African Union's] Solemn Declaration on Gender Equality, The Protocol to the African Charter on the Rights of women in Africa, The African Charter on the Rights and Welfare of the Child, and by the United Nations Security Council Resolution 1325.<sup>29</sup>

In addition to listing immediate steps that the government ought to take, such as ceasing violence against civilians and reinstating constitutional freedoms, the committee also stressed the need for comprehensive constitutional reform.<sup>30</sup> Furthermore, they demanded the establishment of "transitional Justice mechanisms that deal with the question of histori-

25 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2C," 89.

26 Pilar Domingo, Aoife McCullough, Florence Simbiri, and Bernadette Wanjala, "Women and Power: Shaping the Development of Kenya's 2010 Constitution" (March 2016), 9.

27 See United Nations, "Women, Peace and Security: Study Submitted by the Secretary General Pursuant to Security Council Resolution 1325(2000)" (2002), 53.

28 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2C," 152-55. The committee signed the "Women's Memorandum to the Mediation Team" on behalf of the women of Kenya on January 25, 2008, at the height of the conflict.

29 Ibid., 152.

30 The following women signed the memorandum under the aegis of the committee nominated by the women's organizations: (1) Florence Mpaayei, Nairobi Peace Initiative—Africa; (2) Atsango Chesoni, member of the Orange Democratic Movement (ODM) and human rights consultant; (3) Njeri Kabeberi, Centre for Multi-party Democracy; (4) Mildred Ngesa, Association of Media Women of Kenya; (5) Margaret Shava, International Alert; (6) Catherine Mumma, human rights and governance consultant; (7) Kaari Betty Murungi, Urgent Action Fund—Africa; (8) Saida Ali, Young Women's Leadership Institute; (9) Rukia Subow, Maendeleo Ya Wanawake; (10) Josephine Ojiambo, member of the Party of National Unity (PNU) National Coordinating Committee; and (11) Margaret Hutchinson, Education Centre for Women in Democracy.

cal injustices that include gross human rights violations, massacre, assassinations, economic crimes and corruption, [and] ethnic and political clashes.” They also called for the “establishment a historical record, confronting and gaining truth about past injustices, creating accountability for human rights violations and ultimately reconciling Kenyan communities.”<sup>31</sup>

Many of the reform measures that were proposed to the mediation team became integral parts of the KNDR process. Perhaps most significant for women's inclusion in political processes was the renewal of Kenya's constitutional review process. In the years leading up to the 2007-2008 post-election violence, Kenya engaged in its first significant effort to undertake constitutional reforms.<sup>32</sup> In response to the authoritarianism and ethnic conflict that had shaped Kenyans' struggle for democratization, several women's caucuses robustly engaged in the process from the start.<sup>33</sup> The caucuses sought to use the constitution-making process as an opportunity to push for social and political transformation, including affirmative action in political representation.<sup>34</sup>

The women's groups adopted broad social and economic justice agendas that went far beyond conventional gender considerations. Through their advocacy on these platforms, the caucuses became the de facto spokespeople for other marginalized groups. Their demand for inclusivity, not only of women but also of other segments of society, strengthened the Kenyan women's movement and enhanced its legitimacy. In reflecting on this time, Kenya's first woman judge, Justice Effie Owuor, stated, “Before long, women were, as one commentator has put it, ‘negotiating from the centre’ and fighting their battles from the very heart of the constitutional review process.”<sup>35</sup>

### The 2010 Constitution: From Theory to Practice for Women's Inclusion in Politics

With the adoption of the 2010 constitution, many of the battles that had been waged in the push for a new constitution since the early 1990s were perceived to have finally been won. The 2010 constitution included significant positive provisions related to gender equality and, unlike its predecessor, cited values and principles such as gender equity, nondiscrimination, and protection.<sup>36</sup> It also recognized the equal rights of women and men to access and own land, as well as women's right to reproductive health care.<sup>37</sup>

Furthermore, the constitution establishes in Article 27:

Every person is equal before the law and has the right to equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. Women and men have the right to equal treatment, including the right to opportunities in political, economic, cultural and social spheres.<sup>38</sup>

31 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 2C,” 154.

32 This resulted in a failed referendum in 2005.

33 These included groups such as Maendeleo Ya Wanawake, the Federation for Women Lawyers, the National Council of Women of Kenya, the Kenya Women Parliamentarians Political Caucus, and the Federation of Women Group.

34 John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), 53-54. Inequality, Rawls further argues, is subject only to the exception that it may be permitted if it produces the greatest possible benefit for those least well off in a given scheme of inequality.

35 Effie Owuor, “Women and Political Inclusion: A Historical Overview, 1963-2016,” in *Gender Equality and Political Processes in Kenya*, ed. Japhet Biegon (Nairobi: Strathmore University Press, 2016), 32.

36 Constitution of Kenya, Article 10.

37 *Ibid.*, Articles 60 and 43.

38 *Ibid.*, Article 27(1-3).

This article is of particular importance to women's inclusion in politics as it commits the Kenyan state to taking measures, including affirmative action, to address the impacts of past discrimination. It categorically states that elective or appointive bodies should not comprise more than two-thirds of the same gender.<sup>39</sup> Through this and other articles, the constitution creates a framework that can be used to address the historical underrepresentation of women in government.<sup>40</sup>

However, little progress has been made to meet the two-thirds gender rule as the National Assembly has failed to enact the Gender Bill, and there remains a significant gender gap in political participation. In the 2013 elections, 86 women were elected to the 416-member parliament; this represented a 10 percent increase from the previous election period but fell short of the 33 percent constitutional threshold.<sup>41</sup> Women did not fare better in the 2017 parliamentary elections, winning 78 of the 349 seats. The government has also continued to fall short on its responsibility to achieve gender parity in appointed positions, including in the police service: The two police deputy inspector general (DIG) positions should be filled by one woman and one man, but currently both DIGs are men. Despite women protesting in the streets to demand more inclusion, cabinet and other government appointments, such as permanent secretaries, do not meet the two-thirds threshold.<sup>42</sup>

The 2017 election also demonstrated the failure of the government to protect women, as witnessed in gender-based violence against women voters and aspirants. According to the Kenya National Commission for Human Rights (KNCHR) report on the 2017 elections, both security agents and nonstate actors committed heinous sexual and gender-based violations.<sup>43</sup> The women, in some instances with their children, were targeted based on their perceived political affiliation. The 201 sexual violence cases (about 96 percent of which involve women and girls) documented by the commission were only those recorded by victims who were bold enough to come forward; the KNCHR report indicates that these numbers pale dramatically in comparison to the actual number of women who experienced sexual and gender-based violations in the 2017 elections.

The failure of the Kenyan state to protect women from this electoral violence violates not only the constitution but also the state's responsibilities under international obligations. Chapter 4 of the constitution enshrines the Bill of Rights and fundamental freedoms for all and provides direction on the implementation of these principles. Article 21(3) provides that "all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities." To further cement these essential rights and liberties, the constitution provides that "the State shall enact and

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39 Ibid., Article 27(8).

40 Article 177(1)(b) and (c) of the 2010 constitution targets the two-thirds gender rule at the county assembly level. Article 90(1) targets the two-thirds gender rule in parliament. These political seats are provided for under Articles 97(1)(c) and 98(1)(b), (c), and (d).

41 Wanjiku Mukabi Kabira and Patricia Kameri-Mbote, "Gender Issues in Electoral Politics in Kenya: The Unrealized Constitutional Promise," in *Balancing the Scales of Electoral Justice—Resolving Disputes from the 2013 Elections in Kenya and the Emerging Jurisprudence*, eds. Collins Odote and Linda Musumba (Rome: International Law and Development Organization, 2016), 201.

42 Memory Kachambwa, "Political Participation for Kenya's Women Still a Far Cry from Its Constitutional Provision," *Women Deliver*, February 28, 2018. Website: <https://womendeliver.org/2018/political-participation-kenyas-women-still-far-cry-constitutional-provision/>.

43 Kenya National Commission on Human Rights, "Silhouettes of Brutality: An Account of Sexual Violence during and after the 2017 General Election." Website: [www.knchr.org/Portals/o/KNCHR\\_Silhouettes\\_of\\_Brutality.pdf](http://www.knchr.org/Portals/o/KNCHR_Silhouettes_of_Brutality.pdf).

implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.”<sup>44</sup>

Kenya is a signatory to a range of relevant international treaties and conventions. It is a state party to the African Charter on Human and Peoples' Rights (the African Charter), as well as five United Nations human rights treaties: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; CEDAW and its Optional Protocol; and the Convention on the Rights of the Child (CRC). In addition, Kenya has ratified the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), albeit with reservations. The Maputo Protocol upholds the rights of women to protection during ethnic conflict.<sup>45</sup> Through Article 2(6) of the 2010 Constitution of Kenya, any treaty or convention ratified by the country then forms part of its laws.

These international human rights laws compel Kenya to adhere to a standard of due diligence when addressing violence against women, including those aspiring for political representation, through four important processes: prevention, investigation, prosecution, and compensation.<sup>46</sup> By these standards, the state breached the constitution and the ratified international human rights laws when hundreds of women were victimized during the 2017 Kenyan election, particularly by security forces. As the former Special Rapporteur on violence against women, its causes and consequences Radhika Coomaraswamy notes, “In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators.”<sup>47</sup>

Under international human rights laws, Kenya is required to respect, protect, promote, and fulfill the human rights of all persons within its territory, without discrimination. This encompasses an obligation to ensure a prompt, adequate, and effective response to those whose rights have been violated, including by providing appropriate remedies and reparations, investigating the perpetrators, and bringing offenders to justice.

### **Bridging the Gap: Enhancing Women's Inclusion in Kenyan Politics**

Increasingly, women candidates for political seats and their supporters have reported undergoing sexual violence, and such violence has found its way online through sexual bullying that is perpetrated on Twitter and other online platforms.<sup>48</sup> Such kinds of political violence undermine women's political engagement and also dissuade many young women from pursuing politics as a career, further hampering efforts to attain a gender balance in political representation. Though all political parties in Kenya have signed a code of conduct outlawing any kind of political violence, enforcement of the code's provisions has been poor, thus entrenching impunity for those who commit violence.

Linking the ongoing national dialogue process to the transitional justice goal of non-repetition of violations against women and girls can lead to transformative results. There is a direct connection between protecting women during elections and women's inclusion in political processes and bodies. Protecting women political aspirants increases the likeli-

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44 Constitution of Kenya, Article 21(4).

45 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), Articles 2, 3, 4, and 11.

46 Human Rights Foundation, “The Due Diligence Obligation to Prevent Violence against Women: The Case of Pakistan” (December 22, 2011), 4. Website: <https://www.ohchr.org/Documents/Issues/Women/WRGS/GirlsAndDisability/OtherEntities/HumanRightsFoundation.pdf>.

47 Ibid., 8.

48 UN Women, “Violence Against Women in Politics” (2018), 11. Website: <https://www.ohchr.org/Documents/Issues/Women/ViolenceAgainstWomeninPoliticsReport.pdf>.

hood of their participation in Kenyan politics, thus improving their access to political seats to which they have a legitimate right and enabling them to participate in governance at any level they pursue. However, state-provided protection alone will not guarantee violations against women are not repeated. Perpetrators of violence against women must be held accountable through thorough investigation and prosecution as a deterrence to others, and women, including those aspiring for political seats and their supporters, must be adequately redressed for any harm suffered in their pursuit of inclusion.

To show commitment to addressing the deeply rooted systemic marginalization and structural inequalities in the country that have contributed to normalization of violence against women and girls including during political contests, Kenya needs firstly to enact legislation that will actually achieve the constitutionally stipulated gender composition in both elective and appointive bodies. In addition—borrowing from the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence—Kenya should implement measures to raise awareness about existing social prejudices, customs, and traditions that harm women, and to modify discriminatory policies and all other practices that promote acts of violence against women. The TJRC report has a range of recommendations for action and strategy that are designed to “entrench a lasting spirit of peace, national unity, dignity, healing, justice and reconciliation.”<sup>49</sup> By adopting and implementing those recommendations, which have specifically taken into consideration women's experiences and violations, the state will demonstrate the political will to overcome the challenge of women's sustained exclusion from political leadership. Enactment of the TJRC recommendations will also help to eliminate violence against women during electoral contests, thus removing another barrier to their ascendance to governance leadership positions in Kenya.

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49 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 1,” vi.