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KENYA - Winnie Guchu: "Through the whole constitutional reform process women definitely demonstrated that they were a force to reckon with and the importance of adequate women's representation in decision-making was secured. We also got people to discuss the issues. Therefore although the proposed reforms for women's rights were not approved during the referendum, some gains were made and there are still great opportunities for the advancement of women's rights in Kenya."

What next for Kenyan women?

On November 21, 2005, after a five-year constitutional review process, Kenya held a referendum to approve or reject a draft constitution. Sixty-seven percent of the voters rejected the draft.

AWID interviewed Winnie Guchu, a Nairobi based women's rights activist and consultant, about the country's constitutional review process and what it has meant for women's rights.

By Kathambi Kinoti

AWID: Did women play any significant role in the constitutional review process?

WG: Women have been a part of the process right from the very beginning. Activism for women's rights in Kenya came to the fore after the United Nations Women's Decade, which produced the Nairobi Forward Looking Strategies, was held in Kenya in 1985. Organizations working on women's issues began to spring up in the country after the conference, and they began to look at human rights from the perspective of women's rights. At about the same time, those working in the field of human rights began the clamour for the democratization of the country, whose constitution stipulated that Kenya would be a one-party state. Women's organizations, such as the Federation of Women Lawyers (FIDA Kenya) added their voices to the calls for democracy. They became powerful stakeholders in the democratization process because they jumped in when the process started. In 1991, the controversial section of the law that outlawed multipartyism was repealed. At that time of initial constitutional reform, women's organizations ensured that the constitution was amended to provide that one-third of all non-elected positions in Parliament were reserved for women. When Kenya's President at the time went against this provision and did not nominate the requisite number of women to the National Assembly, FIDA Kenya and the League of Kenya Women Voters took him to court. The

message they were sending was that women were not going to give up the space that they had fought for.

Later, it was realized that democratization would require a total overhaul of the constitution and the enactment of a new 'people-driven' constitution. A major project, which culminated in the recent referendum, began. The Constitution of Kenya Review Commission was formed. Its task was to go round the country and collect and compile the views of Kenyans on what they felt they needed in their constitution, and to come up with a draft which would be presented to a national constitutional conference for discussion. Women's civil society organizations were very active in providing education to ensure that women were aware of how their rights were affected by the current constitution and that they would be able to make recommendations for reform. They also ensured that the one-third representation precedent was followed in appointing the commissioners of the Review Commission, and the delegates to the national conference. Women's civil society organizations were therefore instrumental in ensuring that women were on board during the process of reviewing the constitution, and their issues were incorporated into the substance of the constitution.

AWID: What gains did the draft constitution propose for women's rights?

WG: There were four main areas it addressed concerning women's rights: inheritance rights, citizenship, women's leadership and representation and reproductive rights.

Traditionally, women's inheritance rights are very restricted. Married women cannot inherit property from their parents, and they cannot have absolute ownership rights in their matrimonial homes, much less inherit from their parents-in-law. Women produce most of the labour that goes into acquisition and development of property, particularly land, and it is only fair that they should have rights in the property that they labour for. The draft constitution proposed to entrench women's property inheritance rights.

Kenyan women have a second-class citizenship in that they are not able to bestow citizenship on their foreign spouses and children born outside the country as is the case for Kenyan men. The new constitution sought to equalize their position.

Regarding reproductive rights, the draft constitution expressly confirmed the illegality of abortion, but left room for Parliament to make laws regarding abortion.

There were tremendous opportunities for women to participate in leadership in the draft, which proposed a system of devolution of power to district governments in contrast to the current system where power is concentrated

in the central government. One-third of the representation in district governments would have been reserved for women. We often focus on parliamentary positions when we talk about getting more women into leadership. However, there are different levels of leadership and women are expanding the spaces within which they exercise their leadership. In the 1980s and 1990s the main space available was within women's groups. Women's leadership capacities were built within these groups and other social development work such as in microenterprises and in the markets. These have been used as modules to build trust within the communities who now recognize that women can be leaders, develop infrastructure and be engaged in activities that benefit local communities. We saw the opportunities that would have been created within district governments as an expansion of this. The natural progression would be to national leadership.

AWID: How did campaigns for and against the draft constitution address women's issues?

WG: Although the 'Yes' camp talked about what women would gain, the 'No' camp used women's issues as a political tool to campaign against the draft constitution. It campaigned vigorously against the inheritance provisions and the fact that the constitution left it open for Parliament to make laws about abortion, notwithstanding the fact that the constitution expressly stated that abortion would be illegal. The whole discussion on abortion was blown out of proportion and women who wanted to open the debate about it were portrayed as murderers. The work that had been done on the ground by women's civil society organizations was virtually destroyed by the politicians.

AWID: What next for Kenyan women?

WG: Since women's issues were misused politically, we have lost significant ground. However we still have opportunities. The whole debate around the constitution and the campaigns leading up to the referendum showed that there is a great thirst amongst the public for knowledge. People wanted to know more about the issues before casting their vote. The power of FM radio stations was also made clear. We have an oral and visual culture, rather than a reading culture. The public attaches tremendous importance to what they hear on the radio and see on television. We need to make effective use of the media and we need to stop being shy about talking about issues such as abortion. We have had enough of men talking for us. Women should be the ones discussing and making decisions about our own reproductive health.

It is important for the women's movement to recruit ideologically and extensively if we are going to be sustainable. We also need to change our strategy and stop behaving as if we were conducting public relations for

women's issues, but repossess our space. We also need to change the way we interact with political parties. No matter how strong a candidate is on the ground, the political party has tremendous influence and it is difficult to work independently without its support. Women need to learn the dynamics of power.

Kenyans are more and more aware that they can demand certain things of their leaders. The initial reforms were driven largely by civil society, which was also instrumental in raising the consciousness of the public. We need to carefully think through how the change can be more people-driven to give it added impetus.

Through the whole constitutional reform process women definitely demonstrated that they were a force to reckon with and the importance of adequate women's representation in decision-making was secured. We also got people to discuss the issues. Therefore although the proposed reforms for women's rights were not approved during the referendum, some gains were made and there are still great opportunities for the advancement of women's rights in Kenya.

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