

2-8-2012

## Public Hearing Transcripts - Thematic - Women - RTJRC08.02 (NHIF Auditorium) (Women)

Truth, Justice, and Reconciliation Commission

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### Recommended Citation

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON WEDNESDAY 8<sup>TH</sup>  
FEBRUARY, 2012, AT THE NHIF AUDITORIUM**  
**(Women Thematic Hearing)**

**PRESENT**

<b>Tecla Wanjala Namachanja</b>	-	<b>The Acting Chair, Kenya</b>
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Margaret Shava	-	Commissioner, Kenya
Anne Ileri	-	Leader of Evidence

*(The Commission commenced at 9.55 a.m.)*

**The Acting Chair** (Commissioner Namachanja): Good morning! Welcome to the women's hearing. Please, remain standing for the National Anthem and the Commission's prayer.

*(The National Anthem was sung)*

*(Opening Prayer)*

I would like to welcome you to our women's thematic hearings today. To start with, I would like to introduce the Commissioners that will form this panel today. On my right I have our sister from Zambia, Judge Gertrude Chawatama, who is one of the international commissioners. On my left, I have Ambassador Berhanu Dinka, another international Commissioner, from Ethiopia. My name is Tecla Namachanja Wanjala, the Acting Chair of the Commission. Later we shall be joined by our sister, Commissioner Margaret Shava. I am sorry we have apologies from Commissioner Maj-Gen. Farah who is unwell and another international Commissioner, Commissioner Ron Syle is busy helping us with other work of this Commission. As you know, we are working under pressure to finish our work.

For the second week, the Commission has been conducting thematic hearings. We started last week where we had thematic hearings on ethnic tension and violence and issues to do with IDPs. Yesterday, we were supposed to have thematic hearings on people living with disabilities but because of logistical problems, we were unable to proceed and we have scheduled them for 16<sup>th</sup> of this month. We are grateful to the organizers and the people who were to participate in these hearings yesterday for understanding our situation. Contrary to the information we heard in the news yesterday that Kenyans are keeping away from this Commission, whenever we have been especially in the regional hearings, our halls have been packed like what we are having here today. What is important is that this is a victim driven Commission and the victims are passionate about this Commission. In fact, we do not have time to hear all of them. For today, our focus is on women's

hearing and the Act that created the TJRC mandated the Commission to give special attention to special groups among these groups, we have women issues. This was based on the experience from the past Commissions where women's experiences were not heard as men's experiences. So, learning from this experience, the TJRC created a special forum for women specific meetings. Through these meetings, we have interacted with over 200 individual women who have shared with us but the halls for the women hearings have been packed and we have reached over 1,000 women through such forums regionally.

Through such forums, women have appeared before this Commission to share with them the experiences and how they have been impacted by gross violations of human rights but they have also shared with us in terms of recommendations what we need to put in place so that the situation does not continue. For the women thematic hearings, we have invited women who have worked on women issues who have researched in this area so that they come and affirm the voices of the women who have appeared before us individually but more important so that they can also help us affirm the recommendations that this Commission will come up with.

Without wasting any more time, I would like to invite our first presenter who is the chairperson of Maendeleo Ya Wanawake, Madam Rukia Subow. I know how much she has worked on women, peace and conflicts issues. Welcome, mama.

**Ms. Rukia Subow:** Thank you very much for giving me this chance. Judge Gertrude Chawatama, my friend Tecla Namachanja Wanjala, my other friend Berhanu Dinka and I know our sister Margaret will be joining us... I got the message very late yesterday so I did not come with any paper but I will share with you what women go through in these areas. I will base my story not only in Kenya because conflict is everywhere in this world and women suffered wherever they are. Whether you are in China, Africa or in any of the six continents, women share the same issues. If I go back to what I am, people might think that I only work for Maendeleo Ya Wanawake but before Maendeleo Ya Wanawake, I had been working on peace issues in this country and outside this country.

I have been to Cambodia, Vietnam, Jordan and almost half of Africa on issues concerning women and peace. Tecla, you know that we are the founders of Peacenet Kenya. Conflicts in this country did not start yesterday. They started way back but where we can start is from 1992 when we had conflicts on election in Mt. Elgon where houses were burnt and people were displaced. The Government did its best to build houses for the people in Mt. Elgon but little did we know that when we were giving people houses, we were leaving out those who were not affected. Having those three bedroom house from a thatched house, the other group felt that they should burn their houses so that they get new houses and the conflict exacerbated because others were built houses while some were not.

Through my experience during the post-election violence, I also sat in the Humanitarian Committee on IDPs and I have visited 118 camps in this country. We have all concentrated our efforts on post-election violence but there are many displaced people in

this country. Squatters are also displaced and a large number of the displaced people are women and children. In Wajir North, which is my district bordering Ethiopia and Kenya, we have people who were displaced in 1992 and we do not talk about it but we have put more effort on post-election violence. This is what I want to talk about. I know we are talking about repatriation but repatriation without justice will never make any good and the women will not feel comfortable being resettled with no justice done. We know women go through many problems in the camps.

The camps are created out of conflict but it does not mean that it has stopped. The bodies of women became weapons of war. Women in those camps, I am sorry to say this, go through very many conflicts which are even worse than death. When you die, you do not know what happens. You die and you are buried and you forget about it but when you are still alive and your body is used as a weapon of death, it is more painful than death because you keep on going through that trauma. A woman goes through hell as the head of a household in an IDP camp. Since they are poor; they sell their bodies to get favours and food for their children because they are the heads of their families. They have lost their loved ones, they have lost relatives and some of them have not seen the bodies of their husbands or loved ones. Early pregnancies within the camp is rampant with young women who were in school before but right now, they feel that they cannot go back to school because the schools are not near.

Women go and look for firewood in the forests. While they are doing that, they are raped on their way back to the camps. We know many women go through diseases like HIV/AIDs and they might not even have ARVs in those areas. Women are really empowered when they become the heads of households in these IDP camps. If you visit these camps, you will find that most of the heads of these IDP camps are women. This is whether she is a chairperson or a deputy chairperson. Because she is the head of the household, she would like to help other women and other people in the camp. So, what happens is that when these women are repatriated, it does not mean that the conflict is over. The husbands might come back from where nobody knows if he is not dead. When he comes back, he will find that the woman has been empowered and from there, the role changes. The man feels he is head of the house while the wife thinks otherwise because she is now empowered.

The children have grown with the mother and they do not recognize the father. So, that is another conflict that arises after repatriation. Women suffer whenever they are, whether they are in camps or whether they are repatriated. I have seen very many cases within this country during the post election violence. I have seen a woman from Kisii in Kericho who after hiding for several days with her three children, she was handed over the head of her husband to take home. What will she do? She carried the head of her husband in a paper bag but she could not reach her home in Kisii. She had been hiding with her three children. Later on, she stopped on a highway, she got into a matatu but since head was already decomposing, she was thrown out of the matatu and she had to walk. At last, she stopped a saloon car, she told her story and she was given a lift to her home. Those are situations that women go through. I know of an incident when the Kiambaa Church was

burnt and as an organization, we went there after three days. It is very painful to talk about some issues but you will forgive me because it is very emotional for me.

**The Acting Chair** (Commissioner Namachanja): Sorry, my sister. It is normal to go through what you are going through.

**Ms. Rukia Subow:** When we left Nairobi for Nakuru, we had to put Kibaki's poster on our car and after Nakuru, we had to change our poster to Raila's because we really wanted to reach the place where many people suffered. I am a Muslim but I really felt that those were Kenyans and they were my sisters. We reached there and the bodies were picked up by the police but we found three skulls which I carried with my piece of cloth before handing them over to the police. Those are the issues that women go through and it will never leave my mind. For almost six months, every time I would go to sleep, I would see the skulls. It is painful not to see your loved one buried and forget about it. This is because you do not know if one day he will come through that door. The fear that I have is for the children who have grown up knowing what happened to their families or their fathers. That is where we should begin and we know that we really need reconciliation in this country but we will never forget what happened because it is part of our history although we have to move on. People talk of women being given compensation but you cannot erase what happened in their minds. If they are given somewhere to live, I think they will have to forgive but not forget. It is very hard and as we heard the other day when I was here, you cannot see your cow being milked by your neighbour and you buy the same milk from your cow. It is very painful and I think we have a lot to do in this country. I do not know if it is the TJRC that will come up with solutions but they will also have to come from the people themselves. We have to forgive ourselves, think that we are all Kenyans and we do not have any other country to go to. We have to be tolerant to everyone.

We need repatriation policies in this country. We talked about it in 2005. There was a big conference in Nairobi but the policies that we talked about and gave solution to have not been taken care of up to now. We have not gone into conflict and I think when we do something, we have to take action. Early response is the best so that we have an early response. I was thinking that cases of violence against women are never brought to court. Women are quiet about it and they do not want to talk about it. We know that there were many women who were raped in Nairobi but they were raped by people with no faces. They cannot connect the rapists to their names and their faces. Maybe they were soldiers or maybe they covered their faces. There is a dilemma when you are raped by a gang of four or ten men and you cannot identify even one. There is need to establish legal instruments that respond to women's needs and priorities and consider the perspective of women affected by this issue and systematic human rights violation. We all talk about human rights but are there specific courts where women can go and talk about it even if it is not convicting the aggressor but talking about it because it makes a big difference. We know sexual violence; issues of economic, social, cultural and political rights have been infringed in some areas. We know that there are some communities which will not come out even if they are raped because it is taboo and they will not get married and people will try to stigmatize the same women and it is very difficult.

I think there is a lot to be done in our country and I want to conclude by saying these things happen. Sometimes conflicts are good and sometimes conflicts are bad but for the woman, conflict is always bad. In every conflict, there are people who enjoy. There are also people who benefit from conflict and in all the years that I have worked with peace and conflict issues regionally and internationally, I feel that the Kenyan conflict was worse because I am a Kenyan. I have never thought in my life that I will see bodies of women and men killed by your own brothers and sisters. I think there are many issues and as soon as we, Kenyans, know that we do not need to kill each other for someone else to benefit, we will stop the conflicts.

Thank you very much for giving me this chance.

**The Acting Chair** (Commissioner Namachanja): Thank you, my sister Rukia. I invite the commissioners to ask you a few questions for clarification. Before Commissioner Dinka asks questions, I would like to inform you that we have been joined by our sister, Commissioner Margaret Shava. Commissioner Shava, welcome. I informed the audience that you will join us later.

**Commissioner Dinka:** Thank you very much, Mama Rukia. Your presentation was extremely lucid and educational for some of us. I thank you for it because I think after listening to you, we are all better persons. My question is in reference to your statement that repatriation without justice will not bring peace and you said this after detailing the suffering and the pain that the women went through during the violence and then in the IDP camps. In your view, what do you think is the best way to get some form of justice acceptable to the victims during the reconciliation process and also during the repatriation process and ahead of it? Can you give us one or two things that should be done?

**Ms. Rukia Subow:** I know that the Government has done a lot. I know we had over 1,033 people who lost their lives, 6,921 people were displaced and 350,000 Kenyans took refuge in 118 camps, 3,921 took refuge among relatives, friends and well-wishers all over the country and 78,254 houses were burnt and destroyed country wide. Six hundred and forty household fled to Uganda and this is the IDP situation in 118 camps and out of all these, 75 percent in these camps are women and children. It is not only in Kenya but internationally as well, in every camp, women and children are more than men. There are less than four IDP camps whose IDPs have not been settled in the country. We know there are many issues concerning the Government. As soon as our President announced that people should be given two-and-a-quarter acres, those who were settled in their own farms came back to the camps. So, that is a very harrowing situation to the Government too because you cannot identify who had a farm and who had no farm. Sometimes the husband stays in the farm and the woman goes to the camp. This is a desperate situation for the Government and also for the IDPs. Nobody in this world would like to stay in an IDP camp for four years in torn tents. You have gone to the ground and you have seen it for yourself. There is a Government directive that you cannot give out more tents because you are creating more IDP camps.

The best thing to do for these IDPs is to take them back to their farms. The Government already promised farms to those who do not have. The situation is that we, Kenyans, do not love each other. Where we get farms to buy for IDPs, the host communities are very hostile to the IDPs because people have not healed. If they are healed, they could have accepted these people with both hands but you still hear that communities are denied settlement by other Kenyans. I want to say this with all my heart; wananchi have done a good job but politicians are behind this and they do not want people to be settled. That comes from my heart but I feel that if they really had goodwill, they could have accepted these people to be settled in areas where land has been identified. The Government has tried but there are people who are inciting people at the lower level.

Your question about what can be done to women, as I mentioned, we need special courts for women on this issue. We are not saying that post-election violence cases will end tomorrow. No, it will still be there. Women are not raped during conflict alone. Even now in Kibera and other areas of Nairobi, women are raped and there are thousands of them but they are not coming out to talk about it. We need those courts and even if they do not know the aggressors, they hear your story. I now feel relieved because for many days, I have worked on these things and keeping them to myself. They would also be relieved if they talk about their cases. We only target grown-ups but what do you do with the orphaned children? There are many children who are in orphanages in Central Province and other parts of the country. These children need a lot of reconciliation within themselves. They need trauma healing and we have done a lot with women.

In Maendeleo Ya Wanawake, we had 98 groups that were working with IDPs and other women who were living with their relatives but that was not enough. We need to do more.

**Commissioner Dinka:** Thank you very much, Mama Rukia. My last question to you is about the children. As you said, conflicts and the IDP camps started a long time ago in 1992 and that is over 20 years ago. Children had been affected at that time, they have been affected and they have seen what their parents had gone through. From what we are hearing now, nothing much has been done in terms of counseling and justice. If they do not perceive that justice has been done to their parents who have been victimized and to themselves who have lost years of education and living in camps, do you think they would come back when they grow up with a sense of vengeance? If that is the case, we have tremendous problem on our hands and something has to be done. What would you suggest in terms of recommendations that the Government, the public, the civil society and even international communities that support Kenya should do? What should be done to get these young people into some kind of normal mode so that they would grow up as responsible citizens without this essence of vengeance in themselves?

**Ms. Rukia Subow:** You have already answered the question that we have to ask ourselves as Kenyans on what seeds we are growing or planting because those are the children who have lost their families and their loved ones. Some of them were very young but they will know and people will tell them. Even adopted children later come to know who their parents are. So these children will know what happened to their loved

ones and why they are in orphanages. What we need with the help of the Government, well-wishers and we, as citizens, is how we erase these issues from the children because tomorrow, these children will be adults. Very soon, they will be over 18 and they will still have those grudges and they will really want to revenge.

It happens because this is human and they are human. I am not ruling out that Kenya will be different because I have seen it in other countries. Revenge is the worst that can happen in a conflict. If revenge is not taken care of, that conflict will, never stop. We need children departments and other well wishers or donors to come up with a programme where these children can have camps when schools are closed where they can talk about it and relate to each other. This should not be confined to one community but different communities in this country so that we build a new Kenya.

We need a new Kenya in 2030 and by that time, we shall have retired, we are at home but history will really beat us as elders of this nation that we have not done for these grown-ups. By 2030, some of them will be 20 or 18 years so we need these children and they need to come together when schools are closed. They talk about these issues and they are told what happened. They do not need to hear from outsiders, they need to hear from us so that they can play together and forget about these issues. They will not forget but they will try to have friends because right now, I know that they are so many orphanages in Central Province and these are children from one community. It will not help at all because they belong to one community and they will have these things in their minds. So they need to go out to other communities in exchange programmes which will really help these children; boot camps where they can play together and talk about issues.

**Commissioner Dinka:** Thank you very much. I am very grateful to you. As I said earlier, it has been very educational.

**Commissioner Shava:** I just like to say thank you to, Mama Rukia, with whom we have worked. I am sorry I missed the greater part of your presentation but I am sure I will have the opportunity to read it. Thank you for taking time to come and talk to us.

**Commissioner Chawatama:** Thank you very much for taking time to come and speak to us. Indeed as a non-Kenyan, the minute I started hearing from the women of Kenya the experiences that they have gone through, whether it is as a result of the post-election violence or in the home or work place, it really broke my heart. As a woman, I have never ever in the years that I have worked in the court system heard such horrific stories as I have heard in this country. Those of you who followed our journey, when I cried, it is because of the stories that I was hearing from the women and the sufferings that they went through; the gang rapes and loss of their husbands. We heard a young widow who also carried her husband's head. She was so young that it just broke your heart to hear the experience that she went through. The property that they have lost, some just wanted a photo of the children that they had lost but they just had nothing to even show that they had been mothers. I do not think that this country should continue in that way. So, you coming here and talking to us and making recommendations is a good thing. The presence of women in the hall to come and listen to what you are saying is also good



because we also found that a lot of Kenyans are not aware of what has happened to other communities and sometimes they feel that they are alone. The people of North Eastern felt so alone and they thought that the problems that they were going through were unique only to them. They did not realize that there were even massacres that had taken place in other regions so the presence of the women to hear what you have to say and also to participate and to affirm what we have heard as we have journeyed throughout the nation is also a good thing.

You also talked about the women in camps and the women heading homes. What was also sad is that this is not unique to the camps alone. There was a woman and I remember clearly, I would never forget and this was in Mombasa and she said that mothers have to go out and work so that they can pay fees and feed their children. When another commissioner asked her a question, she said women have to work and ensure that their children go to school. So I said; you have said mothers and you have said women, where are the men? It is very clear that there is a problem in the family set up as well and that needs to be sorted out. The women in Kenya are working very hard and they need the support of the Government and they need the support of a lot of organizations. We also heard that between 75 and 78 per cent of the population in your country are people who are under 35 and as you were talking, and I think Ambassador Dinka touched on this, I would like to know as an organization, what programs you have to mentor girls and to just help them become good citizens, good mothers, good wives and to excel in the work place. Do you have any programs whatsoever where you mentor young girls?

**Ms. Rukia Subow:** The organization that I head is one of the oldest organizations in Africa not only in Kenya because Maendeleo Ya Wanawake is celebrating its 60<sup>th</sup> birthday this year and it is a mother and grandmother right now. There is a perception that the organization belongs to elderly women and it is wrong because I joined Maendeleo when I was 19 years and by that time, I was a young woman. We have programs and right now, we have educational programs. We have scholarship programs for girls who are pursuing PhD and also Masters Degree in China. When I came to Maendeleo five years ago, the peace program was not there. So I am the one who introduced peace programs in the organization and this is because of my background. I think that if you leave out women in peace issues, we will not do much in this country because even the UN Security Council has given 1,325 that women can be on the table of negotiations. We even negotiated for the Coalition Government but unfortunately or fortunately, those who were accepted to sit with Kofi Annan were representing political parties. They were not representing women as such but we needed women to be heard and women were heard. We gave a paper to the Kofi Annan group and we were part of CCP, where concerned citizens and women did a lot of reconciliation within ourselves.

We had a program in Serena called Spitting Out where women from all over the country came in after the post-election violence and we were supposed to speak about what happened. Some of us broke down there and some of us talked about what happened, pointing fingers to your sister that you have killed my people. I think that really helped because as soon as we left that place, women came and said, why do we have to kill ourselves and we started from there. As an organization, we conducted several workshops

and we had 98 groups who were trained on the basics of trauma healing and they have gone all over the country especially to the Rift Valley Province. Even now, our projects are still on. We have three years projects on peace programs and we are trying to think of how women can sit together in every kind of state program; that the women from North Eastern will go to Nyanza and Central Province and talk to the women in those regions. We know that women from northern Kenya know about conflicts. They have been in conflicts all their lives and they are the ones who have brought peace to North Eastern Province. It is not the men because if a woman really wants to have peace in the house, she will talk to the son and also, to the husband. Unfortunately, what women did not know is that when they are preparing tea and food for their husbands or in a group because of culture, men were talking to themselves on the table or under trees but they did not know what these men were talking about. Maybe they were preparing for a raid but what we are asking women to know their surroundings. They should know what the men and their sons are talking about.

If his intention is to go and raid, can you stop him and tell him that if he dies, as a woman, I will lose three people in my life; husband, brother and a son? He will die alone but I will lose three loved persons in my life. So that is what we are doing and it is continuous. The organization allows young women to join Maendeleo ya Wanawake and we have professors and doctors. Most of the politicians in Parliament started from the organization to the next level because of the leadership programs that we have. It is a kind of mentoring women to go for leadership positions because if women go for leadership in this country, I think we will stop a lot of conflicts. That is what I believe.

**Commissioner Chawatama:** You also talked about a conference at which repatriation policy - and from different walks of life was discussed. I do not know if it was just me because I do not understand Swahili that we are not hearing Swahili being interpreted or we are not interpreting. Can we, please, interpret?

**Ms. Nancy Kanyago:** If I may, Commissioner, the language for the presentation was English.

**Commissioner Chawatama:** After this, can arrangements please be made to have at least Swahili because that would help our audience? In our travels around the country, we listened to the different women and their experiences. The only conclusion that I reached, and through discussions with other commissioners, it is true and I agree with you that if you heal a woman, you will heal a home and you heal a community and you heal a nation. Every woman in Kenya has that responsibility to participate in whatever peace initiatives that are taking place. As a woman, we know that it is very easy to influence your son and your husband but as you have said, it is in the knowing what they are discussing when they meet as men. I have no more questions for you but just to thank you very much for coming and talking to us but you have also given me some homework as a person involved in justice. Should the court be set up and what kind of court should this be and you have said that in most instances, the women do not know the people who rape them but would like a place and you suggested a court where they can at least come and talk about their experiences. I am thinking whether the court is the best place for that and also whether indeed, we should have a special court which I think we should be for

women who have been raped and have suffered violence of sorts in order to speed up these cases so that the trauma is lessened because somebody knows that they have spoken and there is a legal entity that is doing something about it. I will also in my capacity as judge try to think and we shall have a discussion before I finally leave and go back home. Thank you very much.

**Ms. Rukia Subow:** Thank you very much, Presiding Chair and commissioners for giving me this chance to talk about women issues. Women issues are not very short, they are very long because there will be others talking about them. About the special court, I do not understand this because I am not from the Judiciary but we need a place where women will feel comfortable to talk about it. It can be in a hearing where women can really talk about issues and some of them might talk out whatever they have. I know the TJRC is doing that. I come from Wajir and I lost four family members during the Wagalla Massacre and up to today, after all those years, I cannot forget. I will forgive but not forget. My grandmother was 105 years that time. As they burnt the house, she carried her younger grandchild on her back. As she was running, they fell down together and she broke her back. That is how she died. It is not only the people who died but the people who suffered are still there and you all know about this because we went together to Wajir. It is unfortunate that that was not done by communities themselves but your own people who are supposed to protect you. I am talking from experience and I have gone through what the women are talking about although not in a camp but in my own home and the women have a lot of stories to tell even those who live in the cities. Violence against women is not only in camps. It is happening even in urban areas. Women who are executives go through this mayhem in their own homes and in the morning when you see her with a scar on her face, she will tell you that she has fallen in the bathroom or she knocked on something but this is the life she is living in. The only advice I would give to women is that if you are living in that condition, you have to leave early because if you stay there, you might lose your life. That is all.

**The Acting Chair** (Commissioner Namachanja): Thank you, my sister, Rukia. What we have realized concerning the public hearings is that we use it as a first step of trauma healing so what has been happening and what you have experienced is real. We are still traumatized by the past, by our experiences and I am happy that you feel relieved having come to share your experience on behalf of women in Kenya. I would encourage you to complete the story you shared with us. When you went to the Rift Valley and when you were walking around, you picked three heads, where were they? What did you do with those heads? Please share that one with us.

**Ms. Rukia Subow:** I did not have anywhere to take the bodies or the skulls, but the police who were collecting the bodies took them. I know that the bodies were taken to the mortuary but from there, I do not know if they were buried in mass graves or if they were buried individually. These were children and I do not know why they were not found on the first day because they disappeared within the bush around the church. Recently, we went to the same church and it has been rebuilt and they have cut all the trees there. That is where I was showing people as the place where we collected the bodies. The interesting thing is that when I see women suffering is that when we went there, we found

the women guild head-scarfs in the compound and that shows you that there were more women in that compound.

There were the blue head scarfs with the cross scattered there. Some were half burnt and some were not burnt. I do not know where they were taken. Later, we had a program in Eldoret of different communities sitting together to talk about what happened for three days. We had almost a hundred men, women, youth, peace committee and community policing group, women from the market and we all sat down and talked about this issue last year. One of the gentlemen stood up and said that he knows that at the back of his farm there are many people buried there in a ditch and in holes and up to now, they have not been taken out. The only thing I could tell him was to go to the police and report this because there are many people missing who have not come back home and others think they are in jail.

There are many young people in the Rift Valley who were put in jail and maybe the mothers are still waiting that the son will finish the sentence but maybe, they have already gone. There are many things and I think you have got the same stories from the ground. That is what we are doing and we are still doing. We are not only concentrating on Rift Valley but we are concentrating on the whole country so that people can share their stories and they will give us a way forward. We are going to elections right now; do you think this will happen again? There are many people who are saying that it will never happen again because they know now and that is something to be proud of that they know now. In my first talk, I said that as soon as the people know that you do not need to kill your brother and sister for other individuals to gain, that is when you are going to stop it and many people have known that. I am sure the young people have known that. Thank you.

**The Acting Chair** (Commissioner Namachanja): My sister, we will also come up with recommendations in terms of demoralization. Thinking of the story you have shared with us in the place, for example, where you found so many head scarfs of women guild, how would you wish that we remember such a place? If we were to put up something that we shall remember and whenever we look at it, we say never again in such places such as Wagalla and elsewhere? Do you have any ideas?

**Ms. Rukia Subow:** We have started doing what other countries are doing. There is Kimathi and Tom Mboya statues and people reflect back and say these are our heroes. We need a monument for these people. I have gone back to the church and it has been rebuilt but I am sorry to say that it is only one community that attends that church, which is wrong. The church is for everyone and the community around that church does not attend that church because they believe that it belongs to the other community. How do we take people back to that church and pray and eat together? We need a monument there. As an organization, we have two videos; one is called never again, where women are talking about their testimonies. Although we have edited, there are others that were really not good in the way they were talking about. There are many Kenyans who do not know what we do because we are not really fond of media as an organization because there are women at the lower cadres of organization who are unsung heroes. There are

women who have hidden other women in their homes for up to 15 days. There are women who came up and built houses together.

I know of a woman in Kapsabet whose house was burnt because she is Kikuyu married to a Kalenjin. She lost everything and she had never gone back to her home for many years. She had lived there for over 50 years. She is assimilated and she looks like Kalenjin so her house was burnt. Later, other women surrounding that community saved this woman in their homes and after a few months, they built a better house for the woman. The men came together with the women and they built a house for her and that is a good gesture from the other communities. I know of women in a place called Kipkelion where there was a big camp of IDPs comprising of Kalenjin, Kisii and Kikuyu. That is the first camp in Kenya to disperse because they sat together as the three communities and asked themselves what they had done. They came to realize that they were wrong to kill their neighbours who they have lived with for 20 or 30 years. Those same communities built houses for themselves. They were given money by donors to build homes and all the three communities built the houses together. So the Kipkelion Camp dispersed six months after the post-election violence. That is what we really needed in other camps but that never happened.

I have experienced women coming together, cooking together and eating together. I have seen a war stopped in northern Kenya between a tribe in Ethiopia called Irje and Pokots. The women sat together and decided that those breastfeeding women will exchange their children and breastfeed the child of the other tribe. The men were surprised. Traditionally, if you breastfed a child, that child belongs to you and you cannot do anything. So there are many traditional mechanisms that we can use in all conflicts. We can use those experiences because that is their culture. Right now, we know what is going on in Moyale. We have traditional mechanisms between the Borana and the Gabra. Also, on the Ethiopian side, we have traditional mechanisms but what is making these people to go into violence is politics. Politics has never been with the pastoral communities but right now, those who have tested the politics want people to run away so that they do not vote. We will be seeing this as we near the elections. So many communities will be displaced because of voting in a group so that they reduce the number of those communities especially in pastoral communities. This means that we, as an organization, have early warning system in place. Women have been trained on early warning systems. We have short messaging services (sms) in the organization which women use to text us and tell us what is happening. There is a theme that we are using and it is, if you see anything, say something. The sms no. is 2345 and that is our early warning before the elections. Maendeleo is a member of National Steering Committee for Conflict Management in this country. We are also a member of the UIANO platform and we are doing a lot on the ground. I think we need wananchi to take their own initiative. With organization, they come in, talk to you and leave but the initiative has to be owned by the citizens themselves so that we can do a lot. Thank you.

**The Acting Chair** (Commissioner Namachanja): I participated in the spitting out process encouraged by Madam Graca Machel and I can see a number of us here who were part of that process. When she asked us to discuss and input into the process, we were unable to

move because of the pain we had for each other. After spitting out, we felt relieved and we were able to dialogue. My worry is that with regard to post-electoral violence, since we experienced the violence, communities killed each other but what is happening and we are not seeing the intensity of it is building the relationship among the communities. I am talking about reconciliation. It is over five years and I do not know if we have had any reconciliation process by your institution. If not, what do we need to do?

We have been going around and having a special forum for women. We give it the morning session up to around one o'clock but when it reaches that time, women still want to talk meaning we do not have space out there where we can share our pain. This is an appeal to Maendeleo Ya Wanawake because I know that you are all over. If you could pick up the dialogue to continue discussing for the purposes of healing and reconciliation, we shall really appreciate. Thank you.

**Ms. Rukia Subow:** I think what I want to say is that what we are doing is not enough. There are many avenues that we can open. If you have resources, you can do anything and the issue is resources. We have done our best and we are still doing it. After spitting, everybody went their own way. Many organizations came together but we never sat again to see what we could do about it but every organization went their own way and did their little bit everywhere. I do not know if my national treasurer is here. My national treasurer comes from Trans Nzoia and we had several sittings within themselves in Cherangany Hills. We sat with the people and I think we started talking to each other from April and March 2008 and that was when things were very hot. I remember in Kapsabet and she can bear me witness, we sat with the community and an old lady aged 98 years, and at that time there were issues of the envelope; who was in the Waki envelope. This old lady stood up and said that as soon as they knew about the red envelope, these communities are not going to stay with us. That was way back in 2008 April and March and the women who were from that same community said it is true and that is what they were going to do because that envelope contained names of their sons and they knew what they were going to do. We went back again after some time because the donors give you criteria on where to go. If it was our wish, we know where to go but you know with the donor money, you go to certain areas and other organizations are given other areas where they do mapping and we as an organization are given one particular area. When we went back, my treasurer was also with us because she comes from the Rift Valley.

In Maendeleo ya Wanawake, we have eight national officials and each one represents the eight provinces which were there before but we always give a priority to the women at national office to go to their region because she is known there and she knows how to talk with the women. We do a lot of mobilization at the lower level because our structure goes up to the village level. That is why we were getting women to talk about these issues. Later when we went back, we were not getting the same reaction we were getting those years and that time heals. Time is a very good healer. I think they were talking that way earlier because it was soon after the conflict but after two or three years, the tone changed. As I said in my first speech, we still need to do a lot. The women are there, they have not disappeared. There are many in 2008 who were children but they are now young women and we still need to work with them on the ground.

**The Acting Chair** (Commissioner Namachanja): Thank you my sister. I would encourage you to stay on. We have other great speakers who have been working a lot with women who are coming to continue from where you have left. Thank you and God bless you.

**Ms. Nancy Kanyago:** Commissioners and members of the public, our next presenter will be from the Federation of Women Lawyers (FIDA) to make a presentation on recommendations for justice for women and thereafter the national legal aid programme.

**Ms. Anne Ireri:** Presiding Chair, Commissioners, my names are Anne Ireri. I am a lawyer by training and an advocate of the High Court of Kenya. I work with FIDA as a Programme Manager for the Access to Justice Programme that we run. We are really grateful for you allocating us time, specifically as an organization, to share with you our insights particularly on the issues of legal policy and administrative redress for violations against women.

As an organization, we have been in existence for a while and particularly access to justice remains very key to us and we attempt to deliver this particular issue through a number of programmes that are akin to bridging the gap especially for indigent women who are really our clientele. The earlier speaker, Mama Rukia, really eluded to this a lot, which I will also reiterate. In the interest of time, I shall run through straight to the issues that we have seen.

We have been part of the process. We are not new to the process. Both in Nairobi, Mombasa and through our offices, we have been able to present several memoranda on particular issues that we, as an organization, feel very keen about.

In my short presentation, I will also borrow a lot and allude to my own personal experience as a litigator on women and children issues as an advocate of the High Court and really just try to raise several issues that we feel particularly concerned about that are really impeding access to justice for women in Kenya.

As an organization, we run, as I mentioned, the access to justice programme, which is the legal aid scheme. Majority of the cases that are presented to FIDA (K), concern child custody and maintenance which are brought by mothers; one of the key concerns that we have heard is the high number or statistics that we have and we have constantly shared this even with our partners. Out of this, we have been able to interrogate what really are the issues that women are facing. At the outset when FIDA was established, this was one of the key things that we sought to address. Her ladyship did allude to the fact that we have many women in Kenya who are raising children on their own. Biologically, we know it does not take one person to bring a child into the world. For us, I think over and above the legal provisions that we have and specifically the Constitution of Kenya, the issue of parental responsibility is outlined to be shared between parents whether married or not. Even with the existence of the Children Act, we still feel this is not sufficient to address the issue of women in Kenya.

For those of us who have been to our legal aid clinic; and I know this scenario is replicated in any other institution that offers legal aid, it is really heart wrenching to see how women particularly like in Nairobi wake up as early as 3.00 a.m., or 4.00 a.m. to access legal services because of the need they have. This is due to several reasons which at times the public might not be aware of and we need to interrogate why this is happening.

First and foremost, I speak as a lawyer and I know for a fact that legal services of any lawyer are very expensive. We know the poverty rates in Kenya and how this has disproportionately affected women in Kenya. They are then left at the mercy of legal aid schemes. One of the glaring issues we have and we would propose is; we have in existence a brilliant national legal aid scheme. We are really hoping that this can be taken to the next level. Access to justice has been specifically provided under the Constitution of Kenya as well. We have this at Article 48. The essence of legal aid is to ensure that any citizen of a county regardless of your economic empowerment can access legal redress. We have several instances where women have been violated. We have partners and spouses who are really abdicating parental responsibility because of one reason or another. It could be personal breakdown within the relationship or other things. Whatever this issue is, our position is that it should not affect the growth of children. This is because at the end of the day, this is the next generation of Kenya we are looking at. We have women who are practically begging spouses and partners to cater and support them in the upkeep of the children. We need to interrogate as a society who are we leaving them to; whose mercy are they at.

For us, we feel that luckily at an advanced stage that it is the National Legal Aid Bill which will move us to the next stage. We are appealing particularly to National Assembly to enact this into law. When this time comes, please, give reprieve to the women of Kenya by at least rolling out the National Legal Aid Act and then we can have the procedural and administrative safeguards that have been provided under it to ensure that access to justice is a reality for women in Kenya.

At the same time, as legal practitioners who often practices at the Children Courts and mainstream courts, we are aware of the technicalities that are involved in these particular judicial systems. Take a case of a woman who has never been to school and who is supposed to present a petition or a legal case before a court. We have for instance, for those of us who have been in practice, the new civil procedure rules. These are quite technical and even for us as legal practitioners; it really takes a lot of time to understand them. As an organization, we have done a lot through best practices and also learning from our neighbours. When we have primary cases or what we call small courts claim, they do come in handy. By no means should the word “small” really mean that we are trivializing women or children issues. The unique and beauty about these particular courts is that, first and foremost, they are less technical. They really offer what we call instant justice and they also embrace a lot of traditional reconciliation and reconciliation means.



For us, looking at the overall family institution our position has been, let us also at the same time try and maintain the family. When you go through the formal legal or justice system, it is really adversarial. It is really about who wins. For us, one of the things and I have seen a lot of my clients indicating is that, “Yes, I want to proceed with this case but at the end of the day, he is my husband. He is the father of my children. I need to maintain him in my children’s life”. We completely accept and agree because at the same time, our biological nature as women, we consider a lot. By the time, in fact, a woman comes to a legal aid organization, believe you me, she is at brink point. She is has gone over all other means of trying to reconcile.

For us having done a lot of research on small courts system, we feel they are appropriate to women. They are friendlier and indeed go a long way to reduce the backlog that we have currently. In the long run, for women, it is an appropriate mechanism to also promote reconciliation. We might not be together as husband and wife, but as partners, we are participating jointly in raising our children for the betterment of the society.

Commissioners, I will then move to the other issue that we have seen as an institution. It is a major violation against women and I know other speakers after me will allude to this. This is specifically on sexual and gender based violence. Over all, the hearings and the memorandum, sexual and gender based violence stands out. It is really horrifying. I know for most of us if we go back to what we have ever heard about this, it is really horrifying. If I may digress a bit, the first time when I actually engaged with the gender based violence case I was very young straight from law school. I heard a woman come to FIDA, Nairobi, and her thigh had been slashed by a machete by a partner. She came to us, she was really bleeding. The first aid was to try and get treatment for her. After psycho-social support that she received, she eventually told me, “Anne, I cannot take this man to court”. For us, as an organization, that was five years or six years ago, it really promoted us to relook this issue. Upon listening and dialoguing with her, she raised very many issues. She was only 19 years old and she had never been to school. This man was her soul supporter so to speak. She had two children both below the age of three years. She maintained that, “Yes, you, as lawyers, the public and the society will push me to prosecute this man but I know my reality.

First and foremost, this was a forced marriage arrangement. So my family is already questioning why I want to walk away from this man. For us, this is just a story that is replicated. There are, of course, even worse scenarios. It is really sad if you listen and participate in the prosecution of most of these cases. I have personally undertaken quite a number. In my previous capacity, I was working at the coast regional office where I was the coordinator for the multi-sectoral committee on sexual and gender based violence. We had a lot of these cases.

For me, as a lawyer, my first instinct is yes, there is the sympathy and empathy that we give. However, what in my legal training can I do best to ensure that you benefit to the maximum from access to justice? Certain things do stand out. We have in existence certain legal provisions and mechanisms; we have the Sexual Offences Act, the Constitution of Kenya that guarantees dignity and equal protection before the law.

However, we feel that there are still certain issues that really need to be thoroughly considered by policy and legislative drafters, by those who are tasked with mandating what direction frameworks especially with regard to protection of women proceeding in this country. I will just mention a few.

I will start with investigations because sexual and gender based violence are crimes. When they are presented to any law enforcement agency, the first step is to investigate. I think for most of us who have interacted with the women; that is the discouraging point because, first and foremost, we need to interrogate whether we are ready as a society and law enforcement agency to thoroughly carry out these investigations. What really stands out is that we need to, first and foremost, modernize this. The levels of crimes that are taking place now are really advanced. We need modernization of investigation agencies being equipped with forensics and also skills be it being taken for further training to be able to thoroughly mete out and have a lot of evidence. The burden of proof in most of these cases is really high and in addition to the evidence that you receive orally to really corroborate most of these crimes in any court. We need that high threshold in terms of harnessing evidence.

In addition to investigation, it needs to be accompanied by psycho-social support because this really takes back a survivor of any kind of violence to re-live the memory and the horrific incidences. We need a lot of, if possible, mandatory psycho-social support at the outset when investigations are carried out.

Moving on to prosecution which is usually then the next stage, as the earlier speaker alluded to, it is really long overdue. We need specialized courts. Specialized courts come with confidentiality and a lot of special and unique treatment because of the kind of violence that these women have been exposed to and who then come with what is really required to protect these victims. I will just give an example. It is really very sad at times to see in any court - that is what we have - a victim whose two year old child has been defiled and the alleged perpetrator is actually just standing a few meters away from her. Really, we need to rethink this. Do we expect this particular victim to openly speak out? This is a constant reminder of what happened and we have seen it happening in other jurisdictions where they can give evidence through intermediaries and camera hearings. These provisions are in the Sexual Offences Act. Our appeal is, let us operationalize it. Let the administrative functions that are supposed to be rolled out and fast tracked and we have this kind of special protection.

Lastly, again on legal representation, we propose that the Director for Public Prosecutions has commenced the special prosecution system with regard to gender based violence. However, we still feel the need to be thoroughly institutionalized. Let them, if possible, be on a payroll. Let them be State officers. Let them go for further training. Again, even if you are a lawyer by training, to prosecute these kinds of offences, you need a lot of training to understand where victims are coming from and the psychic behind someone who commits some of these crimes to be able to maximize on the provisions that are in place.

I will then now touch on the issue of property ownership. We know for a fact that in Kenya, poverty wears a female face. It is the women who wake up very early to go to the market. They till the land yet they do not own that land. The land is registered in the husband's name. I think as women lawyers and as persons who are assisting women, we cannot avoid economically empowering them and also ensuring that they have access to property. We have horrifying cases of many women being disinherited. This is a concern to us. We know once your husband passes on, whatever you owned ends there. We know of instances where women are attempting to economically empower themselves when they want to purchase a parcel of land, they are asked to come back with permission. For us, we have salient issues that we have noted and I will just go through them to ensure that in future, we do not have this. Yes, we have come from a dark place, but as we move forward, what can be done?

I think the starting point is that we have the Constitution that clearly guarantees the right to property ownership. We need this thoroughly implemented without bias. We need administrative structures to be put in place.

Secondly, and very thorny, if I may use word, is the issue of matrimonial property in the Kenyan society. We alongside very many other women organizations have made proposals to the Matrimonial Property Bill that is currently pending. We are really urging the legislators to fast track this. The reason being, for most of us who have had to file summons in court and then you are alluding to 1882 legislation, really, it is outdated. It is long overdue and I think the formulation of this particular Bill was participatory. We received several views by the time we were proposing this and it contains beautiful and really provisions that will ensure that if I enter into this marriage even if I own one sufuria, I have every right to that one sufuria if need be that, unfortunately, the marriage breaks down. I think where we are having provisions that really insist on women producing receipts, we know how women work. I know for a fact so many of FIDA clients allude and tell us I took out this facility for my husband because of the love and trust. Why did I have to write down that I loaned him money? They are the ones who are approaching SACCOs to take loan on behalf of their families because that is their nature.

With regard to the issue of matrimonial property, we need to ensure that women are not discriminated against. It is very interesting that if you have a car or a parcel of land, if they come to assess it, the first question they will ask is: "Where is the man of the home?" It is always a societal assumption that it never occurs that it is the lady who could be behind the ownership of the property.

Thirdly, we also feel that certain legislations that are already in place outside the Constitution, for instance, the Succession Act have certain provisions that have outright discriminate. As an institution, we have done an audit to most of these legislations and with particular reference to the Succession Act. We feel that we need to have proposals that have recommended the amendment of this Act especially when it comes to the life interest of women; they need to be relooked into. We should have provisions that indicate that life interest with regard to your husband is state as a woman terminates upon you

remarrying and it does not apply to a man really what, as a society, are we speaking with regard to the place of women in our society?

Lastly, with regard to land because land is very sentimental in most of African jurisdictions, we feel that we need to thoroughly encourage and recommend, now that we have the pending Bills, over and above their enactment, we need participation of women in the adjudication and the discussion of matters to do with land. In the traditional set up, women never feature in land discussions yet they are the ones who grow the food, harvest it and they are the ones who cook for their families. That means they are consumers of that particular resource, they need to be equally brought to the table as regards discussions on land.

Finally, I will give my parting shot with regard to reparations. I think as an institution, we have definitely had discussions on the issue of reparations. We feel that as you recommend, our proposal would be let us look at where the women are coming from. Yes, in terms of transitional justice, several models have been given as to how to deal with reparations. Once a woman is violated, for instance, the ripple effect is that the generations after her are likely to be disadvantaged. So when we are looking at ensuring that the women in Kenya are alleviated from the situation, let us try and go back a bit and see if I was denied a chance to go to school because I was forced into an early marriage, chances are high that my children have also not been exposed a lot to this kind of important right, which is education. Let us then have that comparison and look in terms of then ensuring that we do not have a repetition of this in the third and fourth generations, for instance. How best are we placed to ensure that those who were further victimized because of my situation are then well compensated financially or getting guarantees of non-repetition? It could be symbolic measures where appropriate but at the same time we insist, as an organization, that with regard to sexual and gender based violence, let us have no amnesty.

We know that even if we have international mechanisms that are dealing with the post-election violence (PEV) where we know a lot of gender based violence occurred, with the ICC, it has certain limitations. Our position, as an organization, is that we recommend fast tracking of enactment of local mechanisms to deal particularly with sexual and gender based violence that occurred at middle level and lower level. We have the statistics. Those who were affected gave their evidence. We feel that it is long overdue. Let it not be over politicized. Let us stick to the basics and ensure that we have timely redress and ensure that women who were affected get justice and we never have a repetition of that.

Thank you very much.

**The Acting Chair** (Commissioner Namachanja): Thank you, Anne, for sharing with us concerning your work and for helping us affirm the recommendations in this field. We shall now ask you a few questions for clarification.

**Commissioner Chawatama:** Thank you very much for those submissions which are well thought and well presented. The issues that you have brought up are issues that we have heard as we have travelled all over Kenya and listened to a number of women. One of the complaints, of course, has been access to justice. The fact that adjournments are so frequently granted by the courts that women often have to give up on going to court and often because they do not even have fare and they are having to make a choice between buying a loaf of bread for the children to eat or going to court only to get their matter adjourned again and again.

Also, there is a lot of ignorance on the court process and the services that the courts themselves offer. For example, many women we spoke to were not aware that there is a provision where certain fees can be waived for the poor. They are defeated long before they even attempt to go to court and then, of course, the treatment by the police. You find that many women did not want to report their matters because they are badly treated by the police who do not even want to investigate the cases. Even when they do report, the way they are talked to has been very discouraging.

I have liked the recommendation for a small claims court to deal with women issues because as you have said, they are not as costly and it is also speedy justice. Women in Kenya like in most countries are also very busy. They do not want to spend days and days in court.

I would also encourage that many women support the work you are doing because I do not know when you have a Parliament that will be women friendly and a Parliament that will have the majority of members being women. In the areas where we have struggled even as a nation issues like the Succession Act, even as a court, we could not come up with rules basically because the men found it easy to provide for four wives. Those of us who were coming up with the rules also said what if I want to have two husbands and I want the rules to say that I can provide for them as well. Understanding the position of women and where they are coming from where a woman has been in a marriage for more than 30 years and has contributed and all over a sudden, they want you to share 50–50 with another woman. Her contribution should also be taken into consideration whatever it is. I have seen that Parliament is never friendly even in legislation that has to do with sexual issues.

With regard to the issue of funding as FIDA in order to help the women and offer them legal aid services, where does your funding come from? Do you sometimes face challenges? Are you unable to assist women because of lack of funds?

**Ms. Anne Ireri:** Thank you for those very well thought out and articulated comments. I will start with the issue of funding as you have pointed out. I would clarify that FIDA is non-governmental and we are non-profit making body. We are then entirely donor-funded and this comes with its challenges. I think internationally, we are aware that the global recession that took place, the very many changing shifts within the diaspora including the Arab springs have really affected how funding then comes to developing nations. One of the challenges we are constantly having is how to sustain especially the

welfare component. By welfare, I mean the one to one guaranteeing and giving legal aid provision. I think for us, we were hoping and really recommending that the national legal aid scheme is operationalized, if not yesterday. The advantages of this are that it then has Government support. FIDA has been in existence for 25 years. We hope we will be there for the next couple of years but we are not guaranteed. When we have a national system that ensures legal aid, then it is easier to support. You can fund-raise for the same and you are guaranteed that you will have continuous flow of legal aid and access to justice. For us, funding still remains a challenge. We hope that we will continuously be able to attract donor funding. We shall prioritize the agenda of access to justice but alongside, we are calling on the political class to prioritize this and also appeal to them perhaps, there is a perception that it will only benefit women. Men also require this. At the end of the day, if a woman is able to access justice, it could be your mother, your sister, your daughter; it is the home that is assisted. For us I think it is very important that we then have the Government agenda including provision of legal aid and access to justice.

Just to touch on a few other things that your ladyship mentioned especially with regard to the police and other judicial issues; currently, as an organization, we are in certain working groups. We are part of the team that is looking at the police reforms and the vetting process. We have been able to particularly point out the issue of police treatment with regard to sexual and gender based violence. We are hoping that once the vetting process starts, then they will also look at how to improve the delivery of service with regard to this.

As FIDA, we also sit in the Judiciary think tank; that is a committee that comprises of several stakeholders who represent constituents who are consumers of justice. Through this particular institution and through court users and committees at the decentralized level, we have been able to on an ongoing basis raise the issue of adjournments and seeing where we can waive fees. We will remain very keen in this particular committee and look out for these issues as well.

**Commissioner Chawatama:** Thank you very much. Your presentation has raised a number of recommendations that we shall keenly look into, especially the issue of the national legal aid. We are going to have an opportunity to invite the Judiciary. A lot of what you have put before us, we will do the same and we will speak to them about the concerns not only of the people that we heard out there but also those affirmed by yourself and so many others.

**Commissioner Shava:** Thank you very much, counsel, for your very able presentation. It was a pleasure to listen to you. You articulated the issues very well and the presentation was very orderly and recommendations very clear. I just have a few questions for you. When we have been going around the country, one of the things that has come out is that the gender desk that FIDA and others fought so hard to establish at police stations to ensure a more friendly environment for the reporting of crimes of a sexual nature are inoperative. What is your comment?

**Ms. Anne Ireri:** Thank you for that particular concern. Briefly, just as a background to the establishment of most of these desks, as women rights stakeholders, we felt that it was not sufficient to have women reporting cases at a police station to the officer in charge at the general OB desk. There were issues of confidentiality and that the officer really understands the gravity of the issue that is raised. As FIDA and other women stakeholders, we then attempted to dialogue with the Kenya Police to be able to have institutionalized means and mechanisms of protecting women when reporting. Prior to this, it was quite a costly engagement because then you had to accompany it with relevant training, capacity building and relevant capacity staffing especially on psycho-social support. As an institution, we have been engaging with the Kenya Police for quite a while. One of the glaring challenges we have heard in terms of manning the gender is that I will take a case of a police station like Muthangari. So you train a police officer there and the next time you go, you do not find that police officer. You are told they have been moved to the Anti-Stock Theft Unit or the Traffic Section. Really, for us we have raised this with the police department through their headquarters. One of the feedbacks that we have received is that transfer is inevitable.

One of the things we are attempting to have then is a recommendation to the police unit and the Constitution has clearly articulated that there should be an overhaul of the police. When they are setting up structures with regard to sexual and gender based violence, let us invest as a nation in this particular unit. I want to believe that the specialized units of the police, for example, the intelligence section, it is not common to have them transferred. Why then can we not have this seriousness applied to sexual and gender based violence?

Secondly, the challenge we have also had with regard to the gender desks is the funding levels because they are not cheap to run. For them to be professional and to have the capacity required, you need a specified area even with a police department to be dedicated to this particular issue. For us, one of the other things we have raised is that if we have the administrative sections of Sexual Offences Act operationalized, then we will have a lot of dedication even from the central Government to running this particular department. Most of the time, the perception is that this is a department of an NGO. We need a lot of political goodwill even within the police to embrace this particular section starting from the training. One particular experience we have had and raised is that even at the training institutes, in addition to the police officers being given a lot of insight and awareness on sexual violence, let them be appraised on a constant basis especially if you are an officer who deals with this particular issue on a daily basis. For us, we are looking a lot at administrative reforms and the political goodwill within the police headquarters to embrace and sustain this particular gender desk.

**Commissioner Shava:** Thank you for that very comprehensive answer, again, with very specific recommendations.

I just have two more quick questions. You said that FIDA has audited the laws of Kenya for discriminatory provisions against women, could you just tell us briefly after the audit

and the results of your audit, what are the next steps you plan to take? What will you do with that information?

**The Acting Chair** (Commissioner Namachanja): Just a moment, Anne. I would request that the Kiswahili interpretation, please, stop for a moment because it is drowning the voices. After this presenter, we shall see how to go about it. Maybe we can find out from the audience how many people do not understand English. If there are a few, then we can put them somewhere and take care of them. Sorry for that.

Anne, please continue!

**Ms. Anne Ireri:** Thank you, Commissioner Shava, for that particular concern. I would like to indicate that part of our mandate as FIDA as legal practitioners and researchers, we feel that in order to alleviate the situation of women in Kenya, our contribution could particularly be focused on the area of legal and policy reform that is informed by well carried out and professional research.

I will give the example of two particular legislations; the Succession Act and the land laws in Kenya. We have been engaging professional partnerships with law faculties both within Kenya and outside Kenya to carry out thorough indepth research on the provisions of these particular laws and how they impact on women. We have had very interesting findings and we propose to use these particular findings in two-folds.

First, we want to work with the Kenya Law Reform Commission to particularly point out where then they need to carry out amendments and propose to the National Assembly to then make appropriate amendments. As practitioners and litigators, we would use this research and we have used it in the past to institute public interest in litigation. The goal behind public interest litigation is to raise the awareness of a particular issue and hope that the public and those who have been affected by this particular provision are able to find redress. One point of public interest litigation is that, the wind is not what we perceive that you can go and have a judgement from the constitutional court that favours everyone but even the process itself is a redress because then, you have dialogue within the public over the particular issue. As an institution, we are looking forward to those. We are very keen on the former and we are hoping that since we have the Constitution that has guaranteed these issues, we can then propose particular amendments to the National Assembly for the benefit of women and the country.

**Commissioner Shava:** Thank you, counsel. With regard to educating women and Kenyans generally on certain legal provisions, one of our findings, as we have gone around the country is that people seem to have a strong belief that the Constitution is a good thing and that it protects their rights, particularly women. At the same time, they are not sure exactly how. They do not know the particular sections and their effects. As you have pointed out, women are the face of poverty in Kenya. Many of them do not have sufficient education to enable them understand, even those who do not seem to understand how they can use the Constitution to assist them in those particular situations where they feel their rights have been violated.



With regard to the Constitution and the pending bills that you have mentioned and the audit that you have carried out for discriminatory provisions, what are FIDA's plans to educate women and also men in this country on how to operationalize those provisions in instances of injustices that they face?

**Ms. Anne Ireri:** Thank you, Commissioner. I think for most of us who were very keen during the 2010 Referendum process, we saw certain issues that came up. As a society, persons voted for or against the current Constitution for various reasons which mostly were personal out of knowledge from interacting with the document or what one had been told. Gladly, we now have the Constitution and it comes with new challenges. One acknowledgement we must make as a nation is that it is quite a technical document. It has a lot that needs to be digested by the common *mwananchi*. The civic education that we conducted then was not sufficient. I often come across citizens who actually allude to certain rights as being envisioned in the Constitution whereas they are not there and *vice-versa*, owing to the information that one received at the source. As FIDA, we give take cognizance of the fact that this is an election year and we are making deliberate effort to thoroughly and professionally carry out civic education alongside other like-minded organizations. We should inform citizens what we have in place, the provisions of the Constitution and what to do with them. At FIDA, one of our key components is legal awareness not only to women but to the public. We regularly carry out public and legal open days where you can see that the public is hungry for information and we try our best to ensure that this information is disseminated most practically and accessible to the common *mwananchi*.

We have done that and we are hoping to see that more and more like-minded organizations including the Government do take deliberate measures this year, especially before the forthcoming elections to thoroughly conduct education on this Constitution. Let the citizens understand what is in place, not only in the Constitution but in many other ongoing processes including this honourable course. Civic education is always marred by perceptions. It is very hard to sometimes change the perception of those who have already been brought into a particular school of thought. However, that will not make us relent. There are structures in place and let us continue looking for ways even if it means taking advantage of any situation. If we have ten women at the legal clinic, we shall educate them. If we have a forum in Kisumu for mediators, we take time to educate them. If we have a forum in Malindi for our trainers of trainers on self-representation, we still dedicate a lot of time to inform them and disseminate information on the Constitution in the best simplified way possible.

Therefore, I call upon and urge other like-minded institutions to carry this out and even after 2012 we shall continue to take time to educate people particularly the chapter on devolution. This chapter has been marred with political anecdotes and different communities receive information and devolution differently depending on where they are. So, let us continuously support justice and ensure that communities are not at loggerheads again especially on matters of devolution by carrying out professional civic education on how it is supposed to take place.

**Commissioner Shava:** Thank you very much, Ms. Ireri. We will like you to know that when we were at the coastal region, that is, Taita and Kilifi, we saw the results of your work with regard to the training of paralegals. We found many women there who were very strong in standing up for their rights and speaking truthfully. We were directly relating their efforts to the training that they had received from FIDA. So, we have indeed seen the results of your work out there. I have no further questions for you.

**The Acting Chair** (Commissioner Namachanja): On behalf of the Truth, Justice and Reconciliation Commission (TJRC), I would like to sincerely thank FIDA for supporting this process and being with us up to this far. I hope that we are going to network even more as we fine tune our report.

**Ms. Anne Ireri:** As a parting shot on behalf of FIDA we are really grateful for particularly having us on board. We really wish you well as you conclude this particular important journey. As an institution, we are particularly looking forward to the report because we know many of our constituents have shown a lot of hope in this particular process. So, we are looking forward to that and see how best to take the journey forward. Thank you.

**The Acting Chair** (Commissioner Namachanja): As we prepare to receive our next speaker, I will ask our sisters and brothers who are more comfortable with Kiswahili to see Mr. Njenga so that we can organize for you how you can follow the process.

“Nilikuwa ninauliza kama kuna wenzetu ambao wangependa kusikiliza kikao hiki kwa lugha ya Kiswahili. Wanawezakuja upande huu ili wasaidiwe”

**Ms. Nancy Kanyago:** Commissioners, with your permission, we will just make a small amendment to the flow of the programme. The next presenters will be talking on similar issues in terms of medical and psycho-social support for survivors of gender and sexual based violence. There is the Gender Violence Recovery Centre (GVRC) of the Nairobi Women’s Hospital and Kenyatta National Hospital. They will make their presentations back to back and then you can pose your questions to them.

**Ms. Wangeci Grace:** Presiding Chair and Commissioner, my name is Wangeci Grace, the Executive Director of the Gender Violence Recovery Centre, Nairobi Women’s Hospital. We are honoured to be making our contributions to this forum. This is an extremely important forum for us and for the women of this Republic. Therefore, we feel that it is the right time to make observations on violence against women. We have experiences that we witnessed during the post-election violence period.

Just as a preamble, I want to say that GVRC is a charitable institution of the Nairobi Women’s Hospital. We are non-profit making and we essentially provide free medical and psycho-social support to survivors of gender based violence. It also undertakes a lot of primary prevention programmes, looking at issues of advocacy and enhancing behaviour change and practices within communities and also building on life issue for both children and adults in terms of prevention. Since 2001 when GVRC was established,

we have seen over 20,000 survivors of sexual and gender based violence. Interestingly the percentages have traditionally been 57 per cent of those survivors being women, men 3 per cent, girl children 35 per cent and boys 5 per cent. Just looking at the last one year alone, the trend is changing such that now, we have 46 per cent being girls, 44 per cent women, 7 per cent boys and 3 per cent men.

In total, the percentage of men and boys remain at 10 per cent. Now, 90 per cent of the survivors we have seen at the centre are women and girls. What is alarming to us is that the age of survivors is getting younger. So, we are asking ourselves what is happening to our society because we have seen as young as a one month old baby sexually assaulted. Just three weeks ago we discharged a two-and-a-half year old girl sexually defiled by her blood father. This child had to undergo theatre procedures just to repair her. She is now discharged but cannot function well. The bigger question is what is happening to our society? What are the values that we uphold as a society? Does it mean that these things happen in secrecy and we assume or believe that they do not happen, or do we know that they happen and do nothing about it?

Let me look at violence against women especially that perpetuated by the State. If you look at what is expected, the Government and state forces would essentially protect women but during the post-election period we saw some level of tolerance where violence was sort of accepted. I will give case scenarios of real experiences that came to us. In total we saw 3,684 survivors of sexual and gender based violence. Rape and defilement was at 83 per cent of the survivors and 17 per cent was through physical violence. There were very horrific experiences and I will share with you so that people might appreciate the level of pain that the people experienced and the trauma that came with it so that when we talk about the need for psycho-social support it might be understood. A 34 year old woman had been in the company of other women. They were in public transport and the vehicle was carjacked. They were raped. The unfortunate thing is that this woman was experiencing her menses. She told them not to do it. She was forced to lick the blood from her pad. Tell me how such a woman can live with that kind of trauma. She had never imagined that could happen to her. I know you have heard of horrific experiences when you went round and engaged communities. These are people who were fortunate enough to get guidance to come to the centre for services. These are just the few that got the services. When you imagine the pain that this person has been put through and yet they have to walk to access a health facility. People were calling to request us to send an ambulance to Kibera to carry those injured. It was a nightmare.

During that time public transport was not available, so those people who could not get immediate attention were at the risk of contracting HIV/AIDS, Sexually Transmitted Diseases and unwanted pregnancies. My colleague will also share with us because we went through the same experiences. Amidst of all these things is that we talk about the big issues and forget the real people experiencing violence. We talk about violence out there but we forget that it happened within us. Today, we do not want to look at academic issues but real experiences and make recommendations based on them.

A university student, because of supporting an ODM candidate, was physically assaulted and sodomised by a gang simply because they did not belong to the party that he was supporting. There was a family that suffered primary and secondary trauma caused by witnessing killings. We even had to offer psycho-social support at the work place. We mobilized counselors to do that job. We had to tell the workers that we are Kenyans and we need to live as Kenyans. I do not want to get into demographics which show how violence against women is on the rise and how high it has been. I would not get into that due to time but I will briefly share. 12 per cent of women aged between 15 years to 49 years reported that their first sexual encounter was forced against them. 37 per cent of women report that the perpetrators to sexual violence are their current husbands or partners. These are people who are supposed to provide love, care and protection.

I will skip the rest of the Kenya demographic statistics and just look at the existing gaps within the laws. The first one has to do with interpretation and enforcement of the Sexual Offences Act. We have a beautiful Act in place but how is it being interpreted and implemented? Just to give an example that worries us a lot, the Sexual Offences Act is very clear on Section 38 which says that if you allege or accuse somebody falsely then you go in for the same period of time this person was supposed to serve. For example, if you accuse somebody of defilement of a child under the age 11 years then you go in for life imprisonment. That is what the Sexual Offences Act says but when it comes to interpretation, when a woman goes to report the offence to the police they are told that in case your case does not go through, then you will go in for that period. So, the woman will withdraw because she is not sure that her case will win and the perpetrator walks away scot-free.

Therefore, in as much as the law may be clear and in some cases it is not very clear; there is also a big issue when it comes to interpretation. We have conducted a rapid assessment on the implementation of the Sexual Offences Act, and just to share random samples that we picked up, on 12<sup>th</sup> April in the *Standard* Newspaper a perpetrator who was a family friend and had defiled a pupil got 22 years yet this was a minor. The child was eight years old. The Sexual Offences Act provide for life imprisonment. In the *Standard* again on 19<sup>th</sup> April a minor of ten years was defiled, had been held hostage for two days but the person was jailed for ten years. What does the law provide for? The law provides for life imprisonment. Personally I am not a lawyer and I know that there are many issues that are taken into consideration, if the law is clear on the minimum sentences then why do we have sentences that do not meet that? So, there are questions again on the implementation of the Act itself.

Looking at access and cost of justice, and my colleague from FIDA has discussed this at length, I would want to look at issues of distance, that is, how far does one travel to a court and especially in the rural set ups? The Truth, Justice and Reconciliation Commission (TJRC) has gone to different counties, we have now covered about 20 counties. If you look at the distances that people have to cover to get to a court, then the case is adjourned and then they have to go back, it is discouraging. The cost is supposed to be minimal. The P3 form is supposed to be given of free but when you go to a police station you are told to make a photocopy and the minimum form of photocopying is

Kshs20. We may assume that Kshs20 is very little but I would want to share with you that it is a lot of money to any rural person and especially someone under the poverty bracket. They cannot afford it.

I am really glad that there has been a call for specialized courts. If a child is standing giving witness against an alleged perpetrator and this person is facing the child or they will meet outside the court, what happens? There are some courts where when you go in they call out murder cases, theft cases, motor vehicle theft and the next case is a rape case and yet the courts are crowded. So, when you meet the same people outside and everybody is looking at you saying “*niweweulibakwa*”, can you imagine the trauma? Those are simple things that really interfere with the judicial process.

There is the issue of “Kangaroo courts” and corruption. Even where the law provides that the Attorney-General is the only one that can dismiss a case, we have many people who go to the council of elders or the chief who will call a *baraza* and a “Kangaroo court” will determine that the perpetrator pays five goats or so. These are not made up stories but true stories. So, the perpetrator pays two goats, two chickens or Kshs5, 000 and the case is closed. Is that justice?

Regarding medical and psycho-social support, the cost is very high. We struggle at the centre to offer these services. Again just like FIDA we are a non-governmental organization which means that we do not get any government funding. We have to raise resources to ensure support for survivors. What is interesting is; whereas we have guidelines on the management of survivors of gender based violence you will find that in some counties that we have been to, where medicine is supposed to be given for 28 days, in some cases it is given for three days or seven days. The reason is that it is out of stock. We cannot blame the service provider because the mechanism has failed. So, what we are doing is increasing resistance. Some of these things need to be thought out and planned carefully.

Regarding evidence management, during post-election violence, there were people who went to report and were told that a statement cannot be recorded. They had evidence at that time and it was never collected. Will those people ever get justice? We have a particular case in point where a lady was gang raped by eight known persons and she said that she could identify them. She even made a police report. The DNA indicated eight different strands. That is conclusive that there were actually eight people who defiled her. That case has never been concluded.

As I go to my recommendations, I would like to say that the focus that we have placed on the ICC process, we have, sort of, determined that all the other people can get away with what they did. These are known persons but they can get away with it. What we are saying is that first and foremost, it is time for individual responsibility on the criminal offences that were committed. There should be no big fish and small fish. If you were part of a criminal offence then you should face the consequences of what you did. We are also recommending promotion of peace and dialogue as a consistent message and I am happy that this Commission is in place because that is one of the mandates that it will be

looking into. We are also talking about preparedness as a country. Are we alert? Somebody spoke about the warning mechanisms. Is there coordination? Are we ready and have we set in motion structures for support and especially in terms of response to Sexual and Gender Based Violence?

We should also consider equipping and funding facilities to offer comprehensive and free medical health services for gender based violence. When we look at the referral mechanism, for example, shelter, we have limited opportunities for shelter for women and children. Boys have very little opportunities for shelter. When they have been in an abusive environment and their families are broken they have nowhere to be taken to. The few places that exist are extremely crowded and at times not offering the best care and protection as should be. Support community based psycho-social support mechanisms. When you look at sustainability, it is difficult for organizations, especially those that are Nairobi-based to offer this kind of support on an ongoing basis.

So, if you build the skills and support mechanisms in the community and in the counties, it is more sustainable and it would last. Therefore you can get people going in for regular support within range. We should also endeavor to strengthen the capacity of law enforcement. When you look at the way the chain of evidence is managed, the players are the prosecutors, magistrates, police, organizations that handle health and legal issues, how does the whole of this mechanism work? Enhancing prosecution of cases and ensuring that the public understands individual responsibility is very important. It is not the party or the leader but as an individual. If you are above 18 years old and somebody sends you to go and rape another or torch somebody's house then you are the one who committed that crime and you should take responsibility. We are also talking of proper mapping of partners and disseminating information. There is a lot being done especially by civil society and Government functions and departments but in most cases it is not well coordinated. In some counties, some functions are completely lacking. For example, in most of the counties we went to, there are no counselors on the ground and there are no social workers in the health facilities. So, there is a big gap when it comes to offering coordination and support services. So, let people know where they can run to for help.

The issue of witness protection has been discussed so I will not get into that. Let me touch on the issues of protocols. For example, Commissioner Gertrude talked about going to a police station and you are treated badly and yet you are the survivor. That is actually making you more vulnerable. You are being re-traumatized again. So, just being able to ensure that the persons who are the first contact with the survivor, be it a nurse or the person who is conducting the examination, are trained to handle survivors of gender based violence is important. We cannot assume that everybody knows. There is also need for scaling down the protocols. Last year we worked with the Nursing Council of Kenya and we were able to incorporate the training of gender based management protocols within the training curriculum for the degree course. Can we bring this down to all the tertiary levels and medical training colleges so that people are engaged from the beginning? The other issue is speedy gazettement of the PRC form. There are people who say that it is okay to use the P3 form because it is a Government document but look at what it has been doing. You go for P3 because it is the legal document.

If you have a PRC form and you went to a hospital on Monday, for example, the evidence that was there that day is not the evidence that will be there on Thursday. At times people go for medical services before going to the police to report. If that is not managed then we lose evidence and again a case is thrown out on weak evidence that was presented. The gazettement of the PRC form will support that heavily. In some counties you will be amazed that doctors will charge between Kshs1, 500 and Kshs3, 000 for them to appear in court to give their expert opinion. This should be a free service to Kenyans. How many people can afford that? Yes, there is a valid reason; that pays for their transport and the time they have to leave the hospital, which is their co-business to go to court to give evidence, which is a non-co business? Again that needs to be looked into. That is a big worry and concern in terms of accessing justice. It is just simply not affordable.

Finally, we should think about special support for women especially those who are aspiring to vie for different positions. Again, we know that there was specific violence that was meted against women candidates of different positions. We must invest in the family and society. That is the bottom-line. The bottom-line is that family values have been eroded. We have failed social systems so we must invest in the family and society. We should particularly interrogate the role of men when it comes to protecting women and girls against violence. Thank you very much.

**Dr. Makanyengo:** Commissioners, distinguished guests and the general public, I am Dr. Makanyengo and I am doing a presentation on Gender Based Violence (GBV) in Kenyatta National Hospital (KNH).

KNH in 2006 decided to start providing GBV services in one place because we realized that these patients have been coming all the years but not in one centre, hence they were not getting the special service they deserved. After the enactment of the Sexual Offences Act in 2006, we decided to have the services in one place. After the post-election violence we realized the need to actually further strengthen our services. So, we launched the service on 29<sup>th</sup> May, 2008 with a multi-disciplinary team managing the services, for example, psychiatrists, psychologists, counselors, social workers and other health practitioners. In our case, we decided to broaden the issue of GBV not just to be sexual violence. We realized that there were quite a number of people who were coming with physical violence, psychological violence and also socio-economic violence. We are looking at the new Act which was broader and it addressed torture and mistreatment that people who are vulnerable go through. In our case, we are actually handling GBV cases which are not just sexual. We have quite a number of patients who are victims of gender based violence. We have a burns unit. We got quite a number during the post-election violence. There are those who have psychological trauma. We found that sometimes psychological trauma can be even more traumatizing than physical and sexual violence.

The challenge we have faced in KNH is on documentation. We have been using the P3 forms for a long time and we all know that it is inadequate. However, it is what is legally recognized. There is a PRC form which the Ministry of Health developed in partnership

with Liverpool VCT and partners. We had an input in development of the form but we realized that the post-rape care does not document other forms of violence like psychological trauma. We have now come up with a more comprehensive and broader GBV form which includes what is in P3 form and the PRC forms but we are yet to share it so that the Ministry of Health and other stakeholders can use. We are very much ready for that. We realized that there is need for that. We are offering emergency, post care form because a patient is supposed to come with 72 hours for treatment especially those who are raped. There is emergency psycho-social care. We have support groups which are a success story. The support groups are an opportunity for women to ventilate and spit out. People who have gone through horror stories and torture get an opportunity to share. Collection of forensic evidence is there but we have a gap there. There is a challenge and I will share with you shortly. We link survivors to organizations and we have had success stories and perpetrators have been convicted with the help of organizations like Cradle International and so on. That kind of unity is what we need to replicate in other GBV centres in the country. We link with police who have been very helpful especially from Kilimani Police Station. We still encounter challenges and we need more support. We need a system where police are attached to a hospital. If a crime is committed in another jurisdiction then we have a problem with police taking over the case.

Another question is; who carries these specimens to the Government chemist? That is our biggest challenge. We have a cupboard full of these specimens in paper bags because there was nobody to take them. Hence justice has not been met. I talked about support groups. We have children and women support groups. There was a time we had men survivors and they also had a support group. There are several success stories. The worst scenario is a child who was taken and thrown in a ditch and gang raped. She was about ten years old. She was left for the dead but she was rescued and brought to KNH.

In fact, people thought that the child had died, but she is up and able to testify in a public forum about what she went through. We have several success stories as a result of the psycho-social care.

Basically, we have been creating awareness to staff and carrying out outreach programmes to schools and colleges to establish and strengthen collaboration. As Kenyatta National Hospital (KNH), we really need to be utilized especially in building capacity. We participated so much in post election violence together with our partners, the Women Hospital. Of course, we could not go everywhere because some of us could not pass certain areas because they were asking first: "What language do you speak?" So, even for the healthcare providers, we had an issue. Right now, we have been working with the TJRC. Our counselors have been going around throughout just to give them support. We did some training to Commissioners and others. I hope that it was and continues to be useful to you. We are members of the Sexual Offences Taskforce which is very important in terms of implementation of the Sexual Offences Act. They have participated with the support of the US Embassy, USAID and Pathfinder to train healthcare workers throughout the country, police, prosecutors and magistrates. So, right now, we have prosecutors and magistrates, many of who understand and actually facilitate those cases. But I still think that we probably need to do a lot more. Of course,



like our partner, the Women Hospital, majority are women followed by girls, boys and men. That pattern is still there.

On the way forward, I think there is a big gap in terms of...Okay; we have policies, guidelines, training and curriculum. We have participated in them, but how is the national structure? We have the Ministry of Gender, Children and Social Development doing so much and taking leadership in terms of running those services, but we have also the National Commission on Gender, which also has a crucial role. But are we connecting? We also have the Ministry of Health and Department of Reproductive Health Services doing a lot of training, but we are kind of separate. We are not working together as a team. I think we need to really recommend a way forward. I know that the Ministry of Justice, National Cohesion and Constitutional Affairs has done so much. They are the ones who got us together as early as 2005, to get the multi-disciplinary team of police, medical sector and others to actually come up with a way forward in terms of a joint programme on sexual offences. But now I do not see them there. I keep telling them that I think they need to be in the picture, because they did a very good coordination as early as 2005, but then I do not think that they should back down.

I have mentioned the training which is ongoing regarding the Sexual Offences Act. The other challenges that we have are linking the cases to the criminal justice system and delays in collection of specimen. We still have many specimens in the hospitals, but our partners, IJM have actually come forward and said: "Give us these cases and let us follow." We now have cases of successful conviction. So, I realized that if this thing is to be rolled out, we must partner with IJM, FIDA, Covaw and Cradle because they have a role to play. We cannot do all that on our own.

That is all for now but you can ask questions.  
Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you, Grace and Dr. Makanyengo. We shall ask you questions and then when we are through, each one of you can respond or you can share. I will start with Commissioner Shava.

**Commissioner Shava:** Thank you very much, Presiding Chair. I am finding myself in an interesting position. The previous speaker is from an organization of which I am a member, which is FIDA. We sit on the Taskforce on the implementation of the Sexual Offences Act. So, these are people I know and we have done a lot of good work together. I would like to commend you both on your very interesting and informative presentations. We look forward to perusing at a more leisurely pace all the information that you have provided us with, which, indeed, has enriched these proceedings.

Ms. Wangeci, you asked a very important question. If you are talking about the defilement of a one month old child, then you have to ask yourself, what kind of society are we living in? The question you asked after that was: "Are these things happening in secret so that nobody knows or do we know and we are ignoring the situation?" That is a really weighty question. I regret to say that the answer to both questions is "yes." Some of these things happen in secret, but as we have gone around the country, we have

unfortunately come across situations where you will find that because of different layers of reasons, a woman well aware that her husband is defiling their child, but because of socio-economic reasons and stigma, she opts to ignore the situation. This child is a school going child and so, what will happen in terms of the perpetuation of this circle of poverty and ignorance? It is really very sad. So, I am very happy that you raised that question because sometimes we like to shield our eyes from some of these things, but they are happening. You do have mothers who are ignoring this fact and people within the society who also know. Happily, we also did see instances where when it is a mother who is pretending that she does not know what is going on, it is the neighbour or somebody else who brings the situation to the attention of the public and then action is taken.

Then, you talked about the interpretation and enforcement of the Sexual Offences Act and how more needs to be done about that. I think to that, I would just say that, yes, there have been some training sessions, including by the Attorney General's multi-sectoral taskforce on the implementation of the Sexual Offences Act. There has been recognition that members of the bench need training on how to interpret this Act. This Act was supposed to be one and, indeed, it is one that brings together all the aspects of sexual violence into one Act, so that you can look at one document and understand what the offences and penalties are. But you still have cases, unfortunately, where people are referring to the Penal Code instead of the Sexual Offences Act and issuing sentences on that basis. So, I would agree with you that a lot more needs to be done.

On the issue of Section 38 of the Sexual Offences Act, having played a role in the development of that Act and its passing through Parliament, I can tell you that it is not that the Mover of the Bill did not recognize that this section was a problem, but rather that the passing of that Act, if you remember the atmosphere around it, was really a process of negotiation. This is because there were those who intended to make sure that it did not see the light of day, because of some of the rather severe provisions that it had. This provision was what made them feel better. So, it was inserted. But I would like to say to our previous presenter that this is where FIDA can really come in, in the case of public interest litigation. This is because as you have said, it has a deterrent effect on the prosecution of sexual offences; when one is now faced with additional fear of going to jail because the prosecution was not successful, which is essentially what that section is saying. So, I think this is a primary area where public interest litigation is called for and remove it in that way, because, sometimes, it is dangerous to return things to the Floor of Parliament. This is because other things can be removed, which you did not intend to have removed.

For Dr. Makanyengo, I was there at the launch at KNH, of the GVRC and I really agree with you that it is important for institutions to work together, because they have different areas of expertise. In order to reach the wider and larger number of people, there is no room for territorialism in the approach. So, I really agree with you on that.

One more thing for Ms. Wangeci is that when you put onto the table the question of: Should we have special support for women political candidates, we can also tell you that when we were in the public hearing in Kisumu Town, we heard from Mama Phoebe

Asiyo things. She told us things which she said that she had never spoken out, which I will say because it was a public hearing. She was subjected to humiliation as she fought for political space in the battle for the multiparty system to be resurrected in Kenya. She was subjected to humiliation by the Provincial Administration because she was seen as a proponent of the system, and she was at the forefront. That was a really very moving testimony. Then, when we were in Kitui we heard from hon. Agnes Ndeti and hon. Wavinya Ndeti of the situations that they have faced. There was a woman who was actually shot in the process of campaigning and now walks bent double, and she is not an old woman. These are the things that happen to women. So, indeed, I just want to affirm that, that is a legitimate concern in this country and something that we need to think more about.

I just have one question for Dr. Makanyengo. I know that after the GVRC was started at the Nairobi Women's Hospital and thereafter at KNH, there have been efforts to launch other initiatives like that around the country, for example, Naivasha, which for some reasons, remain to be thoroughly analyzed. It seems to be a hotspot for sexual violence against women and girls. There have been efforts to establish GVRCs in those other areas. Perhaps, you could tell us a little bit about whether they have been successful and are operational. Where can people who have been subjected to sexual violence access care in public institutions around the country?

**Dr. Makanyengo:** I would say that the Division of Reproductive Health together with partners and some of our staff at KNH have been involved. They have participated in training and actually building capacity of staff in some of those centers. So, there are more GBV centers now than they were a year or two ago. But my vision is that all counties have centers of excellence and GBV centers, which will be able to roll out and build capacity of other smaller facilities. Like my friend was saying, this issue of distance is a problem. Gender based violence occurs in the whole country and so, we should not centralize in Nairobi. I think we are going in that direction and at KNH, our strength is training. It is actually our mandate as per the Constitution to build capacity and train, together with partners.

**The Acting Chair** (Commissioner Namachanja): We shall all ask questions and then we can respond. Yes, Ambassador!

**Commissioner Dinka:** Thank you very much, Grace and Dr. Makanyengo, for your excellent presentation of a very serious issue.

I just want to ask one question for both of you. In the recommendation that you gave us, I do not see anything talking about what to do with the perpetrators. For example, I do not know whether you have come face to face with people like the relative of this one month old young baby. Who defiled her? What kind of a human being was he? What motivates him? Why does he do the kind of thing he did? Based on that, some kind of a general recommendation could be made about what the Government should do. In a number of countries there are all kinds of measures that they take. In the US, different states have different laws against people who do this kind of thing, especially to repeaters. Have you

ever met those type of people? I am talking about the perpetrators now. Have you seen any study that has been done that recommend on this kind of thing?

Secondly, I am sure that you are the professionals and familiar with similar stories in other parts of Africa, particularly in this region. Looking at the statistics, how do you compare Kenya to the rest of Africa? I am asking this question because I have worked in a number of African countries and particularly, in war-torn areas and never heard the kind of frequency, magnitude and degree of perpetration of the whole thing that I hear in this country. What kind of people are these? Have you been able to talk to them? How do you compare the Kenyan case to other cases in the continent in terms of frequency and bestiality?

**Commissioner Chawatama:** Thank you very much for your presentations and the role that you have played in making this process successful. I know that you spoke to us at the very beginning and I think you need to speak to us at the end. I do not think any amount of speaking could have prepared us for what we really found on the ground. I really salute our politicians. I do not know where they get the stamina from to want to rule over people who are so broken and wounded. They must have big hearts and really love this nation and its people. I was able to identify with some of the things that you said, especially when it comes to sentencing, where the law provides for a minimum or mandatory sentence and in some instances, requires the adjudicator to exercise discretion and how in all instances, the adjudicator can abuse the powers that the law provides. It was and I think is still very common that there is always an assumption that when a woman says that she has been raped, nobody believes her. So, the prosecutors come into court and already do not believe in the particular offence that they are prosecuting. So, even the manner in which they handle the victim and line of questioning is so bad that one has to rise sometimes and go into one's chambers, just to contain oneself, and maybe call them and ask: "What kind of questioning is that? Is that how you would want to question a survivor?" At the same time, sometimes children can talk of being defiled as if it only happened in a day. But we need to understand that sometimes when children talk, they will talk about several instances, but reduce it to a day. You must know that it has been a continuous defilement. We had to learn how clever these people who defile children are. Fathers would take their daughters out on a date. When the child wears jeans, he tells her to wear a skirt. It is dating and dating and the next thing daddy is touching you and so on. So, we had to understand so much even as adjudicators where I come from. It is true that it requires a lot of training both on the part of the prosecutors and adjudicators.

I am also interested in the document that you have come up with and what it contains. I know a lot of prescribed documents, like a lot of laws that we inherited. We have just not improved in our documentation. So, it would be interesting to know if there were other organizations that contributed to coming up with this particular document, and whether or not we can have a copy and possibly see if it is a document that we can possibly try to use to replace the infamous P3 form. If there was no participation by other stakeholders, is this something that can still be done so that even in strengthening our recommendation, we are able to say that it is not just KNH but this was done with the help of people who are involved, for example, in the criminal justice system? As I said earlier, we will have

an opportunity to speak to the court. We will make sure that they get to hear some of the concerns that you have raised.

Thank you.

**The Acting Chair** (Commissioner Namachanja): I just have one question concerning dealing with societal trauma. I would like to thank the two institutions that you are representing for journeying with us on issues of trauma healing. But my worry is that there is a lot of traumatization at the community level, and we experienced this during the hearings. My worry is leaving the communities with no mechanisms in place to deal with societal trauma. Any ideas that you have on this will really help us.

**Dr. Makanyengo:** Thank you very much for the questions. I will start with the question regarding the perpetrators. It is quite challenging because we find that according to studies, most of the people who are perpetrators, especially sexual violence, are within the family and known to the victim. It could either be the father, uncle, cousin or brother. It could also be the neighbour and a few are strangers. So, they are just people who you may know. They are just around us. It is quite challenging because the question is: How do we detect or screen that this person who looks very normal and probably your son or cousin has those tendencies? I have seen the need for us to educate the public more on the early signs for detection within yourself and other people around; whether it is parents or relatives. We have not reached there yet. I think we still need to do a lot of research. Perhaps, we need to sit back and look at what is on the literature review. That is an area of research that we need to collaborate and actually work on. It is urgently needed, so that we can intervene. Intervention is education, prevention and sensitization of the public. For those who are perpetrators, we have had child perpetrators coming to KNH. What do you do with a 14 year old who has come from a dysfunctional family and is already a victim of his parents? In his particular case, we took the boy and did counseling. We are in the process of seeing how to start a support group for such children. This is because some of them are not to blame, since they are from dysfunctional families and, maybe, were victims of abuse from their parents. But then there are those who are really criminals and I think need to be put away. When they come out, they also need rehabilitation. So, there is a whole scope of intervention, which we really need to sit down and come up with a policy paper. I am very happy to participate in that.

We also need to be aware that factors in the media, pornography... Even in the mobile phone, you can see child sex pornography. That influences that kind of behavior. They talk of one in three women in Kenya have been victims at some stage. According to violence against children study, it was found that there was more violence in Kenya than Tanzania. When I was in Tanzania doing another study, it was quite high. So, I think that in Kenya we have quite a bit of gender based violence. Maybe, those are the issues that we need to look at.

On the other question of staff, I realize that we need to put that in the policy. People working with survivors go through a lot of stress. I see you on television and know, perhaps what you are going through. There is need for therapy for staff in the legal sector, healthcare workers and relatives, because what these people are going through--- At some

stage, probably, you might go to your room and cry and then pretend the following day as if nothing has happened. So, I hope that there are mechanisms in which you manage your stress, but there should be a policy.

On the GBV form, yes, we can share. We are happy to sit with our partners and stakeholders, so that they can put in an input, so that it is owned by everybody and we can lobby for it to be accepted by the Government. This will ensure that we truly document all forms of GBVs.

With regard to the societal trauma, we have to find a mechanism where people can ventilate. People include schools, the youth and so on. Within schools, I am afraid we have a lot of problems. In the current schools that we have, there is not enough fora for children to really ventilate. Even at an individual's level, you have issues and need probably guidance and counseling. Some schools have taken up that well, but majority of them do not have a mechanism for children to go and ventilate their issues. For the general public, it is hardly there. I admire the army because they have the *baraza*, which is very useful where *askaris* can go and say anything and after that, they feel better. I think we need to utilize community counselors. We have community health workers who are very interesting people. They are ordinary people who volunteer and may get a stipend, but they have been trained. If we can build the capacity for community health workers to do some basic GBV services down there, that would go a long way and we are happy to participate in that.

**Ms. Wangeci Grace:** Thank you very much, Commissioners, for the comments that you made and especially, for acknowledging the difficult issues that we have to deal with at times.

Most were comments but there were a few questions here and there. One was on the issue of the perpetrators. Interestingly for us, and this is very sad, all the cases that we have seen, especially where the violence was perpetrated on a child, they were revenge missions. Regarding the two-and-a-half year old girl that I spoke about, the family had separated. The mother left the children with the husband. What was mentioned to us, because we did not engage with him directly, was that he got tired and wanted to teach the woman a lesson. The same applies to the one-month old baby. This was a step-father. This happened when the woman was outside washing clothes and had left the baby in bed with her husband, and they had, had a quarrel. So, most of these are revenge missions. Unfortunately, it is the helpless and weak who bare the pain who mostly happen to be children. I am not saying that this is what happens in all the cases, but for these two particular ones, I am sure about that.

We offer family therapy not for the perpetrator at this level, but the other members of the family, because the trauma is not just on the survivor. It is especially on the persons also living with the survivor. So, we have family therapy sessions and at times they join in group counseling sessions. South Africa is very strong on psycho-social support for the perpetrators, but first you must understand whether this is a medical or mental health case. Not all perpetrators actually have mental health issues. It is simply criminal issues. But for mental health issues then they have programmes that focus on the wellbeing of

the alleged perpetrator. But in our cases when there are criminal offences, then we strongly recommend that they face the due process of the law.

When it comes to the discussion regarding centers of excellence and ensuring that the services are accessible across the country, I am glad that Coast General Hospital actually has a wing that looks into GBV issues. There is also the Rift Valley Provincial Hospital and Moi Teaching and Referral Hospital in Eldoret. We have re-engaged with them differently and supported them in the establishment of those centers. The earlier call for collaboration and coordination of the sector is that a lot is happening. We have some excellent success stories, but it is uncoordinated. So, a lot of things are duplicated. Organization A is doing the same thing as organization B. So, at times, we also need to challenge ourselves. I am glad that Dr. Makanyengo is speaking about the form because GVRC also has a tailor-made tool kit that we use, because we realized that there were gaps between both the PRC and the other form. But, again, we do not talk a lot. So, it is also an avenue for us to begin engaging more strongly and share what is on our tables, to be able to strengthen the mechanism that supports and deals with issues of violence.

On the issue of societal trauma, Presiding Chair, I am glad that you talked about that. This is because, specifically, I remember we went to West Pokot at some point and they said that many people have gone and engaged with them and left. What happens when they are not there to offer them that support? So, I salute this specific group of women because they have come together and formed some sort of psycho-social support group made up of women who now offer support and therapy to survivors of the violence. They may not be especially skilled or professionals, but they are doing it in a very local level and it is a first step to something great. We should look at strengthening that kind of a mechanism and extending it to all other parts, so that it is sustainable and a community owned system. That would work because again as we mentioned, it is difficult to be in every place. One of the other things that we do encourage is supervision for care givers, where all the persons who engage with survivors at one time or another, go through supervision, just like my colleague has mentioned. I just want to share with this forum.

I know that we have been told: “You are really strong because you handle this,” but I am telling you that it is very difficult. There are days we go home and have no energy. I have colleagues who have told me: “I cannot take this anymore.” So, it is everyday walking through the pace. It is just getting a bit of energy and support from the mechanisms that exist. So, we want to recommend especially the police - and we had engaged with them at some point--- Nobody bothers to ask: “How are you handling this?” When they bother to ask, there are no resources to support them. For the Government health facilities, again, nobody asks them: “How are you dealing with this?” This child that I talked about was referred to us from a provincial hospital. So, you can imagine that they dealt with the child immediately this had happened. They were the first contact. I am not sure that they have received any form of therapy and it was really a tough incident. It was a very difficult case to deal with. So, those are some of the comments that I would add when it comes to the support mechanisms, to support persons dealing with GBV.

I hope that I have covered all the questions that were asked. Once more, thank you for giving us the opportunity to just share with the forum. We wish you the very best in your task, which we know is difficult. All the best and well done.

**The Acting Chair** (Commissioner Namachanja): Thank you, my sisters. Yours is a calling. Our part is just to pray to God to give you the energy and wisdom to continue. God bless you all.

As we wait to invite the next speaker, I would like to check if Dr. Nyokabi is in the room. Thank you, Doctor. I know that you were among the first people to arrive. You will be next. After that, we shall have Accord and then the Women Enterprise Development Fund together with the Kenya Women Finance Trust. Are those also in the room?

Thank you so much. Then, we shall have the National Legal Aid Programme. Do we have them in the room? We are hoping that we have officials from the Ministry of Gender, Children and Social Development. We would like to finish before we break for lunch.

Welcome, Madam!

**Prof. Nyokabi Kamau:** Thank you very much. I am Prof. Nyokabi Kamau. I was asked to come and give some recommendations on issues of women participation in leadership; both political; elective and non-elective positions. This is because I think this Commission has listened to a lot of stories on how women have been violated. I think there is no doubt that the women struggle for equal sharing of power in leadership positions with men dates back many years ago. Although we know that women have managed to hold significant positions at different times, the dominance of men has prevailed over the years and that is clearly a violation. But even when women have played significant roles in leadership, their contributions often get glossed over, distorted or misrepresented in what sometimes is recorded as history. We know that, that is the history that we read. So, sometimes, this makes a lot of girls to grow up not believing in their own capacity to actually lead. This is because the stories they have heard and continue to hear to date are that women are not capable leaders.

Therefore, I am trying to give just some recommendations to different groups.

I will start with an individual woman because to take up a position of leadership, that is elective positions and unions, in particular. We know that many unions in Kenya are very male dominated and so, women issues do not get heard there. So, I will talk to individual women who are thinking about what recommendations we can give to women who are thinking about taking up positions. Then, I will give some recommendations to women who are already in leadership positions and then the civil society and the Government, because the Government has a role to play in this. Then, I will give some recommendations to us as a society of parents of socializing agents. This is because we are talking about issues of gender. We know that gender is constructed and, therefore, society has to de-construct some of the issues that we are dealing with here. I think some



of the things that we have heard is an individual woman clearly having a very clear motivation as to wanting to be a leader. Right now, as we deal with the new Constitution and provisions therein for women to take up leadership positions, what we are seeing is a lot of women saying: “I am taking up the position because it is provided for in the Constitution. But there is no very clear agenda and issue that the woman is going to deal with. I think that gender alone cannot...

*(Loud consultations)*

**Commissioner Shava:** I am sorry to interrupt you, Professor, through the Chair. There is a lot of noise in the room, which is destructing the presentation that we are trying to hear. I would request that consultations take place outside the room. Thank you.

**Prof. Nyokabi Kamau:** Thank you for that. I think that it is very important that all women who want to take up leadership positions know that gender alone cannot be the selling point, but rather what they will intend to do differently and better. Therefore, it is important that women have to invest a lot of time articulating their agenda. There has to be a preparation for that and I will come to the recommendations to the Government. You have to prepare yourself financially and undergo a lot of training. There is no way you are just going to wake up one morning and say that you are going to take a leadership position without the skills required for it. I think women, sometimes, take it for granted that because their positions are available, they will take them up.

I think preparing is important. Know the area where you want to be a leader. Sometimes even within your own organization, it is very important to know who your allies are; who are your opponents and who the neutrals are. I think you need to know this in order to lobby and in order to know who can support me and who can be against me. Map the area around you. Even when you are seeking a promotion within an organization, you have to know which people are likely to support your promotion and which people are likely to be against it. So, women need to be very focused on this issue.

Again, women have to network and this is very important. I think this can be organized so that women come together and form networks where--- I know FIDA has been doing that recently for women who have been applying for these jobs in the commissions that are coming up. So, they call women and ask them, “How do I prepare for the interview?” These are practical things that we all have to do so that you do not just appear for an interview unprepared and think that you are going to make it for the position. It is competition! When you talk about leadership, it is competition and the best candidate gets the job. Again, network amongst yourselves and get to know who can help you to gain the skills in order to get the positions that you want to get.

Let me go to women who are already in positions. I think there are those women who have already made it – women like the lady commissioners here; we have women parliamentarians; we have women CEOs – I think it is upon them to actually support us. I think there was a question that was asked to Maendeleo ya Wanawake here early in the

morning; what are they doing to mentor young girls? I think we need to see a lot of clear and national structure of mentoring. For political parties here, I think it is important that political parties in particular – here I am focusing on issues of political participation for women – that they have a very clear mentoring system for young women. When we look at parties like the ANC, it has a very clear structure. When Rukia talked about the fact that she joined Maendeleo ya Wanawake (MYW) at the age of 19, I do not know how many of the young women are joining MYW at the end of 19 today? Is there a structure of recruiting young women and mentoring them? Is there a structure for working with university students? Is there a structure for working with school clubs even at primary level so that young girls can develop the skills of leadership and there is a youth wing that develops and mentors young women? I think political parties need to do that and I have a deliberate plan for that. Even organizations need to have that deliberate plan for mentoring young women. If it is a private organization, is there a deliberate way of reaching out to the young people so that they mentor them? The women in positions of leadership do have that responsibility and they need to work together. I think of this starting small and it can grow into a national mentoring programme where we know that for people who are interested in leadership positions, this is where I can go.

I think many of us now have heard of the Leadership College in South Africa; people go for leadership trainings in the west. Why do we not have a national mentoring programme where young women who want to become leaders can go to? Again, the women who are in leadership need to use the media purposely to showcase their achievements. I think this is very important because men are very good at this. I think as young girls, we are taught not to blow your own trumpet, but I think you just have to use the media in a way that you will say: “This is what I have been able to do in the years that I have been a leader.” Purposely engage the media. Again, we need to recommend that the media must adopt issue-based reporting. I think this is an area that our media has to deal with.

When I look at our society of voters and our society of people who promote, I find it important that we need to judge candidates for political office or people seeking for promotion for what they stand for and their accomplishments rather than their pedigree, their ethnicity and whether they are rural or urban. This is something where a lot of civic education is actually needed. We need to target chiefs and religious leaders so that we do not just say that because they come from that family, then they are capable leaders. Because many women may not have that pedigree and the few women who make it then have that pedigree, I think it is important that a lot of civic education is focused on that. We train media, we train local leaders and we train religious leaders because these are the people who are interacting with communities all the time.

We need to become a society that nurtures and does not tolerate violence, whether targeted at women or anyone else. Just when I was coming to this place, I asked a guy; “why do you not let me cross the road?” Because they never let pedestrians cross the road, he told me; “you cross first and you cross with the road.” I mean, we are a society that tolerates rudeness. These are people who have gone to school. What are we educating our people? We tolerate too much violence because the people can tell you

anything in the streets and you take it. So, we need to nurture a society that does not tolerate violence, whether targeted at women or anyone. We should avoid normalizing violence in our day to day interactions and discourse. Here, again, I am saying that, as a Commission, when you make your recommendations, target again the media a lot because it is a very critical area. You have heard a lot about the media, but they are normalizing violence in their discussions every day. That is a normal thing to do; that is a normal discussion to have. I think that is an area that you need to recommend that the Commission that regulates media must be very keen on; that we cannot normalize violence and do business as usual.

To the NGOs and the civil society groups, I think it is civic education and more civic education. I do not know how much I can repeat that. Is it ten times? But people need to be educated that women can be and have been capable leaders. I think it is also important for civil society, for universities – I come from the university fraternity – to understand that when you carry out research, especially on women achievers, then this research gets disseminated to the communities because, again, the people will choose others if they think they can do the job. So, that is also important and I think civil society organizations must hold Government accountable for the promises they make to their people. For example, like now we have a 30 per cent provision for affirmative action for positions of leadership, but nobody holds the Government accountable. If you go round just doing an audit, you will find that, that has not been achieved across the board. I think it is not just the Government, but also the private sector; that 30 per cent of senior positions must be held by either gender. So, we must hold the Government accountable and we should not just sit and talk.

I think to those who socialize, gender is a very socializing thing. I will repeat this because it is not something that we are born with. We are either born with “xx” or “xy”; becoming a woman or becoming a man is really a socializing thing. So, I think like now, you can recommend we are reviewing our curriculum. We keep reviewing our curriculums but we do not go into issues of when people finish school, what have they learned about being a woman? What have they learned about being a man? What have they learned about the roles of a man? What have they learned about the roles of a woman? This is because these things seem to be there. Rukia gave an example here of how a woman is serving the man under the tree and the man under the tree is the one planning for the security of the community, the woman is not even expected to be under that tree. Why can we not deconstruct that? Which are the avenues to deconstruct that? The avenues to deconstruct that are schools, religious institutions and chief’s *barazas*. We have a lot of avenues where we can deconstruct femininity and masculinities. So, there is need to transform those stereotypes that are retrogressive; that still make us think that women are not capable leaders.

I think it is important that the Government really provides a conducive environment and it must be seen to fulfill its international, regional and local commitments to gender equality. I think so far there has been some progress in this area, but our Government still has a lot to do to show its commitment.

I want to go to the issue of post election violence that made this Commission to be formed, amongst many other violations. We still have a lot of cases that this Government has not shown any commitment to actually follow on, especially gender based violence issues. So, I think that is an important area where we can have laws in place but if our Government does not follow up and implement these laws, then, it is as good as not being there.

I want to then talk about the progress we are seeing currently. I am skipping a lot because of time and I actually have to go somewhere. Already, we are seeing some progress and I am excited whenever I look at the Political Parties Act and what it is doing and how people are running helter-skelter to make sure that they meet some of the conditions like affirmative action. So, women have to be in political parties; an issue that was not the case without that act. We now know that party lists are helping because women are going to be automatically nominated into the senate, for example. This is a very good thing. I know there are people like women's political alliance and I know they have been working on formulas; you know the zebra system where the first nomination would be a woman. Therefore, if it is only one nomination slot, then that slot goes to a woman. These are just ways of increasing the numbers. So, things are happening; there are tough laws already proposed. I was just reading about the proposed laws in yesterday's paper. If those laws are actually passed and implemented because the laws can be there and they can be as good as nothing, they are going to help because with limited spending for campaigns and reading campaigns of hate speech, bribery, propaganda... I think we are already beginning to see a field that is going to be a bit leveled and more comfortable for women. But I think I would like to recommend very strongly that these laws are implemented. I will repeat that again.

I want to end there because of time and then leave it to you to ask me questions.

Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you, Daktari. Judge...

**Commissioner Chawatama:** Thank you very much for your presentation. As we went round the country, we listened to many women talk about different issues, including the challenges that they are facing in either being elected as Members of Parliament and even in the councils. Some of the challenges have come from strangers and, surprisingly enough, many of the challenges have also come from families where the families are not supporting the women in their choices. We heard some very successful stories. I recall one young lady in particular who wanted to be a councilor and the mother said no because the mother was interested in her getting a husband. So, she had to pretend that there was this man who wanted to marry her and that this man, I think, had agreed that she could stand as a councilor, but they had no relationship whatsoever. But now her mother has turned around and is very proud of her.

We also heard of a woman who could hardly talk; she was so choked up with pain because of the lack of support from her husband who even attempted to turn her children

on her and said things that are so degrading, but one of the things that she told us was that she won her children's respect and her children saw her heart and they did not disrespect her the way her husband had intended. So, the challenges for women going into leadership are real.

I am also glad that you talked about the issue of mentorship. In many cases, you remember one particular gentleman – he may have been in Mt. Elgon – who I asked. He talked about his grandfather and land and how bitterness was passed on from generation to generation. So, you worry again what are our generations passing on to other generations? The women who have offered themselves into leadership, what are they saying to the coming generation? Are we being role models? Are we impacting their lives? Are they seeing positive steps that we have taken?

I think one of the things that you wanted to address – that was your fourth point – was parents. One of the things that we have found in many families is the rise in poverty. The men are unemployed and are now abusing drugs and other things like alcohol and they tend to veer towards violence. Then what is happening is that even where the women would like to make something for themselves, the man sees that as a challenge. They are really bringing the women down. And as I said earlier, most of the women we have talked to are the bread winners in their families. We thank you for your recommendations. The training that is required, the skills and those are some of the things that we will mention and, of course, mentorship.

I listened to a lady who was the Prime Minister in one of the islands – I cannot remember which specific island – who said that the mark of a successful woman leader is not your success alone, but it is how many other women you have managed to carry with you along the way. So, I do not know. Dr., in your case, you spoke very passionately. How many women have you impacted or carried away and, maybe, you could tell us about one or two in particular.

Thank you.

**Commissioner Dinka:** Being the only male member in the Commission but, fortunately, I totally agree with what the doctor has said; that there have been all kinds of discrimination and wrong perceptions about women by men. But I think the most important thing is what the women think of themselves. So, while efforts must be made and continue to be made to raise the consciousness level of the men folk, I think also women must, among themselves, make sure that their own assessment of themselves is the right one because in most cases, in most countries, women are the majority and yet, when the elections come, even in areas where the women traditionally are very active, they go and vote for the men even when there is a woman candidate. I have tried to talk to some women about this and asked them why they do that, and so far I have not received any satisfactory explanation. I even asked some of the ladies themselves that we talked to during the public hearings in the provinces or in the counties and, still, it was not very clear. I can understand areas like the north east, for example, where women sometimes may not even go out and vote, but in areas where women go out and vote;

where women are actually active in politics and so on, with their own organizations and so forth, why is it that they do not support their own most of the time? Sometimes they do.

What do you think should be done on that score in terms of civil society doing its bit, the media and is there something that the Government can do?

What you have mentioned about the curriculum, I think is important that these things must be introduced to young children at that age that women and men--- It is a matter of chromosomes that the same human beings must have the same opportunities and challenges. I do agree completely with you, but if you could just try to explain to me from your experience as a professor, why is it that women do not, as a matter, of fact, vote for women?

Thank you.

**Commissioner Shava:** Thank you very much, Prof. Nyokabi Kamau. As my fellow Commissioner said, I would also like to recognize the work that you do and congratulate you on your continued engagement for the benefit of women with the forces of patriarchy which is all around us. We cannot all be professors, we cannot all be at the highest levels of academia, but I think that women, wherever they are, are fighting the same battle; they are just using different tools.

So, we thank you very much for your contribution today. I would like to associate myself with the remarks made by my fellow Commissioners and I have no questions for you, but I look forward to the responses that you will give to the questions posed.

**Prof. Nyokabi Kamau:** Thank you. Let me respond to the question by the lady Judge, who I have mentored. I wish they were here to speak for themselves because I have really mentored many young women. Indeed, I have been a university lecturer for the last 20 years. I started teaching at the university in 1992. So, it is 20 years this year. It has been a long time and I know that those young women, who are now mothers, come to me and say: "It is because of my relationship with you; being in your class, that I am what I am." A young man comes to my class and, in fact, many of them finish their BAs and say: "I want to do masters in gender, where can I get masters in gender?" Or, "I want to do a PhD in gender, where can I get a PhD in gender?" They are all over the world. I travel the world; I find them in Canada, US, UK and South Africa. I have had many students pass through my hands and I take it upon myself that since I teach gender, that no man or woman can pass through my hands and not leave more empowered. That is something I do on a daily basis, and I mean men and women. I try to transpose masculinities also through my own life and I did not say that in negotiating domestic work. I have students who tell me "Mwalimu, I think that every good woman must make breakfast for her husband" and I tell them "Well, my grandmother could do that, but I cannot because on a normal day, I always leave earlier than my husband. He is unemployed. Where do I find time to prepare breakfast for him?" I do not have time to prepare breakfast for him. So, we have negotiated and it is very clear in my home that the house help who helps us is

not helping me; she is helping us. We pay her a good pay for the work that we cannot do because the children are in school, he is unemployed and he has a business to do. So, this is something I have made very clear and we do not talk about it. He does not tell me “where is your house help?” She is not mine; she is for us because if she leaves, someone has to do that job.

So, I think it is just in everyday conversation, make this something that you never utter a word that belittles a woman; that makes a man feel that he is more important because there is nobody who is more important than the other. We just have different roles that we play in life, and these roles keep changing with context and time. So, this is what I have done in mentoring and I do it everywhere I go. In all my writings, if you can get them, it is very clear and very apparent.

So, I hope that I have answered your question; but they are there. I have a lot of lieutenants who can talk.

Why do women not support women? That is a question I hear very many times and that is almost a psychological question. An oppressed group oppresses itself. I think that is the basic answer I could give for that question. When we had the xenophobia in South Africa, the black South Africans were targeting other black Africans; they were not targeting non-blacks. I am one of the people who have settled in the US from Africa and I can say that the worst enemies are actually African Americans. These are stories that we hear and they have been documented. When you have been an oppressed person, you tend to oppress because you have grown up believing that people like you are not good enough. And we know that for someone to be your leader, they need to be very good. So, clearly, women have not yet believed that women are good enough. But we know that there have been exceptions to that rule, and that is why we have got very many women who have been elected into positions of leadership. We have the likes of Martha Karua, who is on her fourth term in Parliament. We also have Beth Mugo, in her third or fourth term in Parliament. We have very many places where that is not necessarily the rule. So, when there is a lot of civic education and women who represent themselves as able leaders that can change. But that takes time and it takes each one of us; everybody who gets airtime to talk – if you get airtime like this and you are addressing people – then let people know that gender cannot be the reason why you deny someone leadership. But, then, that depends on the way we treat women and how we portray them wherever we go. How do you portray women in the media? If you always portray them as people who are crying; people who do not seem to be stable, then that is not the quality of a leader we want. So, again, it is really about vetting the images that we have of women. Even the billboards that we see around – some half-naked, half-dressed people – those are not the kind of people we have in mind as leaders.

So, I think it is a lot of factors at play that contribute the reason why women do not support their own. But they can and they have done it. So, it is a question of all of us; it is a concerted effort that everybody, particularly Government, has to do a school system. We know that when the Government has an agenda, they use the school system; so they sing it like the national pledge or the loyalty pledge. When you have an agenda – we went to the National Youth Service and it was a Government agenda. So, it must be a

Government agenda that equity is central; it is a core value of this Government. If it is not, it can be done through schools. So, we have to do that that is what they have done in China. So, you have a core value and equity must be our core value and it can be realized through the school system because a lot of our people do pass through the school system. That can help us change perceptions.

I hope I have answered your question.

**The Acting Chair** (Commissioner Namachanja): Thank you, *Daktari*, I think after this Commission I would like to sit as a guest student in your class.

*(Laughter)*

We have enjoyed hearing you, we could continue but, unfortunately, time is not on our side. Please, kindly give us your paper so that we ensure we capture the recommendations you have well.

Thank you so much.

So, I would like now to invite Mary and I would like to ask our leaders from the Ministry to continue being patient because the reason why we put you last is so that you can listen to all these issues and views so that when you are participating in it, that you respond to them. So, please, be patient, you will come last.

Thank you.

**Ms. Mary Nzioki:** Thank you very much, honourable Commissioners, for giving Agency for Corporation and Research in Development (ACORD) this chance. My name is Mary Nzioki, I am a Partnership Development Officer at ACORD and my role is primarily that of raising money from the donor community and also fostering social capital around the issues of women's rights and particularly gender.

But, today, I take on a hat of the development worker; you know, like engaging the TJRC on what we have done and, particularly, giving recommendations that have been drawn out of our work. So, we are actually looking, at what are the repair options for human rights violations that have been meted against women and girls in Kenya? It is not just linked to the 2007/2008 post election violence, but even in the historic injustices that have taken place.

ACORD is a Pan-African organization working in 18 countries across the continent. So, just a brief caption of why we feel like we have something to contribute on the issues of reparations. We have worked for over 30 years on the issues of women empowerment in countries across this continent and, more particularly, in the last five years, we have focused on sexual gender-based violence as a key entry point to engaging whether it is political spaces and especially empowering women because we know that this is a critical issue that affects most of the African countries that we are working in. These are



countries which are in conflict and there are some which have come out of the conflict and so the impact exists.

Our four thematic areas of engagement are linked to food security, gender and women rights issues, mitigating the impacts of HIV/AIDS and peace building and conflict resolution across the continent.

Narrowing down on sexual violence which we hope to import more on, our key focus has been challenging the issue of impunity on women's rights violations. So, those are linked to social gender-based or in broad terms, gender based violence and even on issues of land where we are talking about dispossessed women and what we can do about it. Then there is the whole issue of bringing the perpetrator to book, especially for sexual violence crimes.

Commissioner Dinka asked who this perpetrator is. What are they thinking? What drives them to do what they are doing? My very honest answer to you is that, the perpetrator, especially in the arenas of conflict, is extremely elusive for very obvious reasons. I mean, we are talking about a breakdown of law. We have different players, you know, taking on this form of abuse. So, we are talking about Government troops; we are talking about people who are supposed to be actually managing the conflict and bringing about peace and security to these women and children, who are the most vulnerable. Those are the peace-keeping units; whether it is the UN or the AU. We are also talking about the communities themselves; the men in these communities, whether it is the militia groups or just communities. If we take the IDP camps that we have established in Kenya, who knew that I could rape my fellow woman here or a child and then so what? What will happen? There is no order here, so no one will uphold justice.

We have also worked towards restoring the health and livelihoods of women, especially in this context because we know the impact that comes with violence and disorder linked to conflict. Poverty, like we said, has a woman's face. I loved the lady from Maendeleo ya Wanawake who presented at the beginning who said that there are those who gain from conflict and there are those who do not gain; there are those who suffer and there are those who enjoy the conflict. But for a woman, a woman will never enjoy conflict because she is vulnerable at all times. So, when women have been subjected to these forms of violence, it is very important to actually have a form of reparation or reinstating her back to her livelihood because most of the times when you are violated, there is the whole issue of stigma. We are dealing with African patriarchal societies where things like chastity are over rated to the point where even when I am violated, I am supposed to remain chaste. So, there is a contradiction and paradox there. So, what happens to this woman or girl who becomes a sex slave or who is abducted or, you know, whatever to her and she is gang raped in front of her family? The natural response to that family and that community is actually to ex-communicate her or to stigmatize her in such a way that her normal life cannot continue. So, it is critical then to, you know, among other issues, at least enable her to have the livelihood and to support even the child that is born out of this conflict.

We recently engaged on restoring women's participation in constitutional and electoral processes. I must mention here that Prof. Nyokabi has actually been a partaker in that process where we are now partnering with a major donor. Well, we want to see women in Kenya coming out to be elected, having the community electing women, first and foremost, the women themselves. This was a very pertinent question you asked; why do women not vote for women? I liked her response because even for me, it enabled me to understand the way we think even as women. Why are we our worst enemies? Why do we not see quality when we see that women have to go the extra mile to explain themselves for us to feel that they are valuable enough to be elected? So, that is something we are working on currently, linked to clearly what is now the next possible crisis – the election of 2012/2013.

I will give a very brief case study on one of our biggest programmes that we have just walked out from, and that is a big Dutch Government funded programme where we have worked on sexual violence in the Great Lakes Region. We do not treat Kenya individually because we understand that conflict is cylindrical. We are talking about movement across borders; we are talking about communities which straddle borders, and that is why it is very critical for any development agency not only to deal with conflict but to also deal with contextual issues and to link them to other regions. Because what are we learning from the other countries, whether it is Burundi or Rwanda? How can they even inform this particular process? How can they enable us get over the ethnic hangovers that we have had that cause such major mayhem in our country and enable us to proceed?

So, our key areas that we have made some good successes on has been impacting or changing the culture and the practices on sexual gender-based violence. They may not be very big. I mean, every day we are reading in the newspapers that there have been changes in Kenya and then we hear that, now, people are arming themselves. So, there are a bit of mixes and matchings. But one thing we have learnt is that, the community must be the central point for this process of changing culture. Society is at the community and here, when we talk about community, we are talking about urban communities; we are talking about grassroots communities. So, it does not matter where this community is, but the fact is that the perpetrator is there and so is the victim. And then we have the society surrounding us. So, how they respond to this crime is also very critical. I mean, do we have the two goats or the two chicken businesses going on? And then do we have the stigma continuing to such a level that we will not be able to table these crimes that are taking place because no woman or girl is going to subject herself to that process of going through a legal system or going through a patriarchal community system where I have to sit with elderly men and explain such an ordeal. How does that happen? Our societies do not have women in these contexts. So, the issue here is sensitizing our patriarchal systems that, one, sexual violence is a very gross human rights violation. I think that is critical because from whichever society we are coming from as Africans, it happens. It is really sad that a few things may happen here and there, but it can happen and it does happen because we have been trained as African societies to know that women are simply collateral the way you have goats and cows. That is why this violation is not such a big deal.

So, our entry point has been to sensitize these communities on the fact that this is a gross violation; it has impact and there is a way you deal with it; there is a justice system. So, even using the community systems to link with the systems of justice, whether it is the police or the legal aid processes has been critical. We also form watchdog initiatives in the community where even men become the reporters on these crimes. You know someone was violated last night. So and so's daughter was violated. This is serious. We need to report this to the police as much as we are reporting this to the traditional leaders. We should build community capacity because we are an agency with only very many employees. We work in projects for very long time. So, we have to build a community's capacity. We have trained what we call "change makers" who are primarily leaders, whether political or just community leaders – people of high esteem in the community. Interestingly, many of them have been men. So, that has actually led to a lot of the success.

Something else we have done is to facilitate a form where women, as sexual violence survivors come together to form support groups.

The reality on the ground is that much as we would love to have all the psycho-social and medical support, most of the time it does not exist at that level. We link counseling and self-initiative to the livelihood project management.

We focus a lot on strengthening the institutions and mechanisms of justice so that the rule of law takes effect and there is punishment of perpetrators. In so doing, we have worked closely with the judiciary, the police, and the army. We realized that there have been insensitive responses. For example, when a woman is raped and she goes to a police station she mostly likely will have to deal with a man who does not find it a big deal. So, we need to institute systems that facilitate reporting and management of sexual crimes. These institutions need to understand that they are protectors and they must remain the protectors. They cannot cross over and become the perpetrator. We have been advocating strongly for reparation funding across the region and particularly in Kenya. This has been quite a force to reckon with because the legal system does not support this. There is nothing strategic. We have the international protocols that obviously institute this. In Kenya, we have not formulated stringent structures of policy that define how this would take place. I think the TJRC is a good entry point for this.

A lot of our work has been based on two of our primary research. One is the judicial audit. What is the legal framework in Kenya on issues of sexual violence or gender-based violence? We need to know what our entry points are. More recently we undertook research on the available mechanisms for protection and reparation of sexual gender-based violence victims. We have used these as tools for our advocacy at national and regional level.

We are working on these cases. We know that they exist and they are very gross. What are we proposing? What do we feel should take place? There are different areas of reparation that need to be looked into. For it to be holistic there is the issue of restitution.

This means bringing the survivor back to where she was before. This touches on issues of liberty, legal rights, social status and family life. There is also the issue of compensation. What are we going to do about economically restoring this person on issues we have already assessed the damage? For instance, mental harm may not be measurable, but it could still be compensated. There is the whole essence of loss of opportunity. Your husband has been killed or the existence of orphans. What happens to these people? There is the whole loss of social relationship due to stigma and disengagement from where you initially came from. There is also the issue of rehabilitation on the medical and psychological aspects of repair and that of non-repetition. What do we do to ensure that this does not happen again?

In line with that, there are things that we must keep in the centre. We must know that the Kenya Government has a duty to protect all the citizens including those who have been violated sexually. They have ratified the regional protocols and so they must make sure that they are domesticated. They have a duty to due diligence and ensuring that they protect citizens, investigate and punish.

In this final report that you are preparing, we envision, possibly, the following: The TJRC should recommend that the State establishes a national reparations commission by an Act of Parliament. It should be gender balanced and have people of high repute. They should be vetted through public forum and their appointment be ensured by the Head of State and the Prime Minister. We have a very good system that the Government has instituted. We have different institutions that can work and support the implementation of a very good reparation programme. We have the Gender Commission, the KNCHR, the DPP, the Judiciary, the police reforms, the AG's Office, the upcoming National Land Commission and the Ministry of Education.

After formation of this body, the critical thing is the domestication of the international protocols which are very strong on issues of reparation. We need to ensure that in Kenya we are instituting what we have signed up as a State.

With regard to securing justice for survivors, what we have found interesting is the fact that a lot of the women, over and above the cash issue, want the perpetrator to be put in jail. Someone has to pay for the gross violation that they have undergone. In terms of establishing a system of ensuring prosecution the Government should acknowledge the crimes and have a formal apology. That is the starting point. Could we also have the National Reparation Commission, the DPP, and the Judiciary along with the police ensuring that sufficient evidence is collected so that perpetrators are arrested and put on trial? My colleague from FIDA mentioned about the loopholes that exist.

There is the whole issue of formulating new laws that address the legal gaps that currently exist. I think we have made major leaps and bounds in the last few years especially with the Sexual Offences Act on issues relating to women and child violence. The legal framework does not look at some critical form of abuses, for example, domestic violence, wife disinheritance, marital rape, etc. Reparation has to be a responsibility of our Government.

With the establishment of the Commission, there will need to be a trust fund because compensation must be meted out for the survivors. The trust fund should have 70 per cent of its funding from the Government. We cannot have an open clause stating that the Government will support it. We could have other systems of inputting money into this fund. One could be liquidation of assets from persons who have been convicted of the crimes. We could also get funding from well wishers. The other day we put up a fund for the starving Kenyans. I think Kenyans are willing to engage on issues like this if we can engage them.

We are thinking of the need to establish a specialized gender health care unit with sub units all over the country. The Nairobi Women's Hospital is extremely overwhelmed and so is the KNH. These are institutions that are underfunded, given the gravity of the issue that we are dealing with. We are talking about psycho-social support and specialized gynecology from the Government. These are women with horrific wounds and ailments and so they need specialized cares. We also need ante-natal services and reconstruction and plastic surgery because a lot of these people are maimed. Critical also to this issue is DNA testing. We do not have that system in Kenya for the management of evidence.

We have had a lot of dispossessed communities. We talk about IDPs, but nothing seems to happen. How can we ensure that the women IDPs are restored back to property whether it was their original land or not? Their property needs to be recovered or they are given new places to stay. That is critical. We can see that happen through the Reparation Commission who can work closely with the National Land Commission.

There is the need for the Reparation Commission to partner with the Ministry of Education. We need to educate children who have been born out of sexual violence crimes. It could be the Samburu women who were raped for 26 years by the British soldiers and so we have adults who have no parentage and no support. There are women who gave birth during the post election violence and they need to be catered for.

There is need to establish a State-managed data bank where the Gender Commission will co-ordinate this with the civil society. There are organizations working with the violated women. How are we documenting this evidence? The essence of the data bank is that we cannot have appropriate responses if we do not know the numbers, gravity, and follow up. We need to find a central location that will inform our future documentation, processes, policies and institution. That will also tinker a bell to Government when we see how big or gross the issue is.

On data collection there is the essence of training women organizations working particularly at grassroots on the need to document and manage evidence. To enhance data management and Government response we need the Gender Commission or a prime civil society organization undertake an annual gender-based violence index where you assess, follow-up, monitor what the Government has done to manage those violations. Having such an accountability check is critical because it creates an entry point to push for the issues that need to be tabled or improved.

The other thing is addressing the issue satisfaction and guarantees for non-reparation. We are talking about responses from the whole country. We are highly ethnicized and we need to have initiatives that will ensure that at some point we leave our ethnic differences and remain Kenyan. We stay at that level. The media is a critical tool for this. As Nyokabi also mentioned, the media is a very powerful tool, but how are we engaging them? How responsible are they in managing issues such as post-election violence or sexual or gender-based violence?

The Gender Commission and the KNCHR should establish an independent national impunity monitoring unit. That is linked to the point we had above. We also need to establish community policing units in partnership with the police. This could be done locally at the county level where we have communities supporting a system. The police can only do so much. How far can a community engage responsibly so that we are not killing and harming people in society on suspicion, but managing and reporting crime?

I will leave it at that. I thank you for giving me time to air that. I know everybody is extremely hungry and tired. I will leave it there for the Commissioners to air their questions or comments.

**The Acting Chair** (Commissioner Namachanja): Thank you Mary. We have your paper here so we shall have very few questions for you in the interest of time because we have four more presenters.

**Commissioner Shava:** Thank you, Ms. Nzioki for your presentation. We have properly understood you and the wealth of information that you have presented. I only have a few comments. When you are speaking about restitution in terms of reparations you talked about restitution of a woman to her former place. Of course you recognized the Nairobi Declaration that this is not necessarily in case of sexual and gender based violence that women face. This is not necessarily enough. In those cases, there must be restitution of that woman. For example, a previous speaker talked about the generational perpetuation of the violation which has been suffered so that if one woman has had no education her children and grandchildren are likely to go even further downwards in that cycle. We need to take that into account.

With regard to the issue of non-repetition, this Commission recognizes that we cannot progress to reconciliation without justice. That is even reflected in the name of the Commission. So, we agree with you that the justice component is very critical. Although our accord is focusing on cultural change, in the society we also recognize that legal reforms also play a part in cultural change which is a slower process. However, cultural change can also follow legal change – once the law is there then people will have to comply.

My final point is with regard to marital rape of which you correctly said that it is not recognized as a crime. While it is not expressly recognized as a particular crime in our laws, the good news is that it is not specifically excluded either. I think that for organizations such as FIDA they can do some sort of a test case in terms of public

interest litigation. This might help us to move that agenda forward. In case of divorces in our courts, arguments have been adduced as to what marital rape looks like. However, there are those in the society who believe that the term should completely be excluded from our vocabulary. There are women who undergo horrific experiences. A test case could bring that out. As a research organization in collaboration with FIDA, you could help us move that agenda forward.

**Commissioner Dinka:** Thank you very much for your succinct and lucid presentation. I have no real question to ask. My only concern is that you have presented a lot of recommendations which are very good, but there are certain things that will take time not only from the view of implementation, but also from the point of view of resources of the country. We advise that patience must be exercised. Thank you very much. You have been very helpful to us.

**Commissioner Chawatama:** Thank you very much. I agree with Commissioner Dinka that your presentation has been excellent. I enjoyed listening to your presentation. I would like to know whether or not you are in a position to share with us the researches that you have conducted, one of them being on the national judicial audits and the other one on national studies on available mechanisms. I enjoyed your presentation. Thank you very much for your presence today.

**The Acting Chair** (Commissioner Namachanja): I do not know if you have any response to any of the observations, Madam Mary.

**Ms. Mary Nzioki:** Thank you very much for your responses. Commissioner Shava, I have enjoyed the input and affirmation on these issues. Commissioner Dinka, clearly time and resources are very important. Most critical is the whole issue of Government goodwill to be able to undertake one or all of these recommendations. Commissioner Gertrude, we do have the researches right here. I can leave copies with Nancy. Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you so much. We look forward to further networking.

I will now invite three presenters from the Kenya Women Finance Trust (KWFT), and the Women Enterprise Development Fund (WEDF). We shall start with Mr. Onyango who is representing the Permanent Secretary from the Ministry of Gender, Children and Social Development. After that somebody from the WEDF will continue and then we shall finish with KWFT.

**Mr. Protus Onyango:** Thank you, Madam Chair. I am here to represent the Ministry of Gender, Children and Social Development. I will be speaking on behalf of the Permanent Secretary, Dr. James Nyikal who is unable to be here with us today.

We were asked to report the total amount of the Ministerial budget and what proportion of that budget is targeted towards gender. The Ministry of Gender, Children and Social

Development this financial year, 2011/2012 received a total of Kshs8.6 billion. This is money that was to be divided among all the departments of the Ministry namely the Department of Children, the Department of Gender and Social Development, and Administration. Out of that allocation, Kshs10 million was set aside for gender mainstreaming activities. That amount is very small and it is not enough to carry out the gender activities that we had planned in our strategic plan for 2008-2013. As a result, the strategic plan will end in 2013 without us implementing most of the activities that we had planned to fast-track gender mainstreaming activities. It is, therefore, our plea that the Exchequer gives the Ministry enough finances to facilitate implementation of gender equality and women empowerment activities.

There are critical activities we had planned to implement during this strategic plan on gender equality and women empowerment. These include carrying out civic education on gender provisions in the Constitution. The Constitution has very good provisions to impact the lives of women, but many women in the rural areas are not aware of these provisions. It remains the mandate of the Ministry to educate women in the rural areas and in the poor urban settlements so that they understand those constitutional provisions and how they can benefit from them. We had budgeted for Kshs7.4 million to carry out this civic education, but this money was not given.

We had planned to open rescue centres for girls and women survivors of gender based violence. The previous speakers have talked largely about the negative impact of gender-based violence and sexual violence against women. The Ministry is aware of this. We planned to open regional rescue centres in all the eight regions, but we have not been funded by the Treasury to open up the rescue centres.

We also planned to enhance the campaign against Female Genital Mutilation (FGM) which impacts negatively on girls and women. It also impacts on the socio-economic rights of girls and women and therefore it denies them a livelihood. When women are forced to get married at the age of 10 after undergoing FGM, they start giving birth very early and so they are ushered into the vicious cycle of poverty. We feel very sad and we wish we could do something as a Ministry. What we could do is to intensify campaigns targeting community elders who are custodians of culture to change the culture that subjects girls to this retrogressive practice. We need finances to do this.

Much as the civil society and some UN agencies have assisted us, that assistance has not been much and therefore the efforts of Government have not been felt as we wish they should out there.

The second issue we were to report on is whether there are social funds administered by the Ministry. Yes, the Ministry has social funds that are already being rolled out and they are impacting very positively on the lives of vulnerable Kenyans. For example, we have the cash transfer to the elderly. It is a Government fund targeting older persons; men and women, aged 65 years and above and who have no other source of income. The programme is currently being rolled out in 44 districts. It is on a pilot basis. For every district where it is implemented, you will find that not all the targeted men and women



are receiving the cash. Being on a pilot basis, in a given district we also select one division and one location where only 70 elderly men and women are selected based on the poverty index. They are given Kshs1,500 every month. The funds are administered through the post office. The beneficiaries have been given a special ID card which they go with to the post office and they are given their money.

We also have cash transfer for persons with severe disability. This is also a very important fund that seeks to improve the lives of persons with severe disability. It enables them to earn a healthy and reasonable living. One of the caretakers of person with severe disability is registered by the Ministry against the person who is severely disabled and he goes to the post office to receive that money. The program is not covering the whole country because it is on a pilot basis. The moment the Treasury will give us enough funds to cover all persons with severe disability that the Ministry has registered then we shall be able to reach all the targeted persons.

Similarly we have cash transfers to orphans and vulnerable children. These are children whose parents have died and they do not have any reasonable source of livelihood. They have been registered and individuals who have volunteered to take care of them are given that stipend by the Government to assist them provide uniform, foodstuff and so on.

The Ministry has a revolving fund for persons with disability. This is a small-scale revolving loan where persons with disability who have some skills get some money to invest in entrepreneurship activities like tailoring, selling cereals, clothes and so on. This enables them to improve their livelihood.

The cash transfers I have mentioned have impacted positively on the targeted persons. When we carry out monitoring and evaluation, the reports we receive reflect that the targeted persons are really happy and they feel that, for the first time, the Government has touched their needs by directly giving them cash money to purchase their basic needs.

Recently the Government through our Ministry also started the urban food subsidy programme. It is on pilot basis. The Government recognizes that there are people in urban areas who have no source of livelihood. They could be in Kibera, Mathare, Mombasa, and Kisumu and so on. The Ministry is piloting this programme in Mombasa. It will give out a cash stipend for purchase of food or for engaging in entrepreneurship activities aimed at improving nutrition at the family level.

The Ministry also implements a programme called Grants to Self-Help Groups. Here, all the registered groups are targeted and the money is given out per district. Each group that qualifies in a given year is given a maximum of Kshs50,000 either to start a new entrepreneurship or to boost existing businesses. As you are aware, the Ministry also implements the WEDF. My colleague here who is the CEO of WEDF is going to tell you more about it.

We were requested to explain the structural relationship between the Ministry and the National Equality and Gender Commission and who is responsible for implementation and monitoring.

The National Gender and Equality Commission is a national commission mandated to oversee gender equality programmes in Kenya. This commission is independent and reports to Parliament. Initially the commission was part of the Ministry but today it is a constitutional commission. It does not report to the Ministry but our roles are related where the Ministry implements activities and projects but the National Gender and Equality Commission monitors and advises the Government on all issues related to gender equality and women's empowerment. Next, we were required to report on the role of the Ministry on ensuring that issues affecting women, children and persons with disability are addressed, considering that they cut across Ministries. I want to report that the Ministry in charge of gender collects data from all the sectors and the relevant information is sent to the National Gender and Equality Commission, with a copy to the relevant authority that is concerned. Then it is the National Gender and Equality Commission that will advise the relevant authorities and also advise the Government if there is need for legislation or starting a new national programme to address the issue at hand. For example, on the issue of gender domestic violence (GDV), we recently carried out a national survey on the prevalence of GDV and forms of GDV in this country. We are now at the stage of disseminating this report and we are sharing the report with the National Gender and Equality Commission; the commission will come up with a strategy on how best the Government can deal with the problem of GDV.

Five, the Ministry was required to report on the issue of CEDAW, being the Ministry that spearheads preparation of periodic reports to the committee on elimination of all forms of discrimination against women and what the status is of implementation of the recommendations. The recommendations emanating from the last CEDAW meeting was in Geneva in February 2010. The recommendations are disseminated to Government and Non-Government authorities, especially the key civil society organizations and the National Gender and Equality Commission. Again, as I have reported, the commission will monitor to see to what extent implementation of those recommendations has taken place. I want to say that the current National Gender and Equality Commission just became a constitutional office the other day following the promulgation of the Constitution and they may not have done much by way of monitoring and implementing their oversight role and reporting to Government. They need to be given some time to develop their structures properly to improve their capacity even to carry out surveys and to put in place report mechanisms so that these things can be tackled appropriately.

Madam Chair, I would like to make a few recommendations by way of ending my presentation. One, is that the Ministry of Gender, Children and Social Development needs to be adequately funded by the Exchequer to enable it to implement activities that promote gender equality and women's empowerment. As I reported, there is a lot we have in our strategic plan but we are able to accomplish very little due to inadequate funding. We appreciate the support we get from the United Nations (UN) agencies, but that support again is not enough, and more so in relation to the mandate of the Ministry to ensure that there is gender equality and women's empowerment; this cannot be relegated to players from outside Government. We feel, as a Ministry, we have to play our role in its funding.

Second and last, Parliament needs to pass legislation giving authority to gender officers to intervene and assist in prosecution processes where there are cases of gender based violence. As at now, so many cases of gender-based violence take place and they are reported in the Press. The Ministry of Gender, Children and Social Development and her staff need to be playing an important role in intervening and assisting the police and courts in giving evidence, but we are not allowed by any legislation to do that. So, we wait for the police. The only thing we have done is to assist in opening the gender desks with support from FIDA Kenya and UN women; these gender desks again need a lot of support from us as a Ministry. We need legislation to enable us to work together with the police who man the gender desks, and who give evidence in cases of gender-based violence. We would like to support women and children victims or survivors of gender-based violence, but we need to be covered by law. Thank you Madam Chair.

**The Acting Chair** (Commissioner Namachanja): Thank you so much, Sir. Since you indicated that you have another meeting, I will find out from commissioners if they have any questions or clarifications before you leave. Yes, Judge.

**Commissioner Chawatama:** Thank you for finding time to appear before us and for your presentation. Based on some of the things that we have heard out there, there are certain questions raised especially when you talk about the payments that you give to the elderly. I think it was not clear who made the selection and how; this is because we have heard from a lot of elderly people that some of them have not even had money, and a whole lot have not benefited from the funding. How do you make sure with all this cash that you are giving out--- How do you ensure that it reaches the people that you intend it to reach? I think those are the two questions that I wanted to ask. Thank you.

**Commissioner Dinka:** Thank you very much for your presentation. It is very straightforward and clear. I just wanted to be sure about the budget. Did you say Kshs8.6 billion or million?

**Mr. Protus Onyango:** Billion.

**Commissioner Dinka:** What is Kshs10.6?

**Mr. Protus Onyango:** It is Kshs10.6 million.

**Commissioner Dinka:** Out of the Kshs8.6 billion?

**Mr. Protus Onyango:** That is correct.

**Commissioner Dinka:** Why is it so small? I mean, it is not even 1 per cent.

**Mr. Protus Onyango:** Can I react immediately?

**Commissioner Dinka:** No. You can write it down and you can take the questions together; but the total budget is Kshs8.6 billion but the amount for the Ministry is Kshs10.6 million. Is that so?

**Mr. Protus Onyango:** Yes.

**Commissioner Dinka:** Okay. Thank you. I have no further questions.

**Commissioner Shava:** Thank you very much, Mr. Onyango for your time and presentation. I would echo what my fellow Commissioner Chawatama said, that concerns have been expressed to us in the field as to access by the elderly to the cash transfers that you talked about; there is also concern over orphans and vulnerable children. In this regard, I would ask: What follow up mechanisms do you have in place to ensure that these monies are put to the correct purpose, because we have heard from young people who said that the money comes to the family but it does not apply to them; these children are in servitude; it is the owners of the homes and their children who are the beneficiaries of these funds; these children continue to be downtrodden! What follow up mechanisms do you have? Do you work with the Department of Social Services? Do they pay visits to the children? What do you have in place to ensure that the monies are correctly applied? In connection with that, I would ask: Do you have any programme for refugee children? As you know, sadly Kenya has got refugees. We visited the refugee camp at Kiriyaadogo, and found households headed by children and they faced particular difficulties; if they want to go to school, they must first make sure that they have worked on their plots and done some agricultural activities to ensure that they have food to eat. They have to wash their clothes. They have to have money to buy their clothes. So, they are involved in all kinds of things and trade to try to earn a livelihood. So, they are vulnerable and they are Kenyans.

Since they are refugees, I wonder whether your Ministry has any particular redress for them. Then there is a comment with regard to the revolving fund for persons with disabilities and who have particular skills. It is encouraging to hear that there is such a thing in place, but I must comment that the picture that we saw out there was not that rosy. We heard somewhere in the central region - I cannot recall whether it was Murang'a or Embu - we heard from people with disabilities that they keep on filling forms and sending them off and nothing ever happens year in, year out; they were feeling very frustrated. I wonder whether you have a reaction to that. Those are the two questions I had.

**The Acting Chair** (Commissioner Namachanja): Commissioner, it was in Embu where we were really bashed because we were representing the Government. I have one question. Could you share with us the proportion of the children's budget and that of persons with disabilities?

**Mr. Protus Onyango:** Thank you, Madam Acting Chair. On the selection process of beneficiaries for the cash transfer for the elderly, after a given district has been selected, we work with the Ministry of Planning and the District Development Officers (DDOs) to

choose the division that has a very low poverty index. Of course, in every district we have good areas and bad areas. So, when we go to the bad areas, again the same process takes place at the household level to establish who among the families has an elderly person, who is really in need and has no source of financial support. So, after the homes have been mapped out, then we take the 70 worst cases in a given location. There has been a lot of pressure from Members of Parliament that this fund should spread to all the districts and constituencies; we as a Ministry are in total agreement. We need increased support from the Exchequer.

As to how we ensure that the money reaches the targeted elderly persons, the Ministry is in partnership with the Kenya Postal Corporation, the Post Bank and, as I reported, the elderly persons have registered with the Post Bank. They have been given identity cards. So, at the end of every month they go and sign a form with Post Bank, which keeps very good records. They give us a feedback every month to indicate how many elderly people per given district have received the money, and we are able to know how many have not received the money. Then using our officers and the chiefs, we find out what has happened to those who have not received the money. They have died or they are completely incapacitated – they are not able to reach the post office to draw their money. Those who have died are replaced, using the same process of the poverty index, by the next needy elderly person. That next needy elderly person could be a woman or a man. So, that way we are able to ensure that the money reaches the person who is supposed to get it, and that it is not going to the wrong hands.

On the question as to why the proportion of the money being used on gender equity and women's empowerment is very little, I am not able to competently answer that question but the total funding to the Ministry is small; much of the Kshs8.6 billion I mentioned goes to these cash transfer funds to the elderly, orphans and vulnerable children, persons with disabilities and as grants to self-help groups. After those funds have been steamed off, the activities of gender equality and women's empowerment are funded from what remains for recurrent expenditure. Somehow it has been very little any way. We are complaining even at the Ministry level that this amount needs to be increased. So, we have launched campaigns at the senior staff meeting in the Ministry and we are taking out the campaign to the Treasury to ensure that these funds are increased. It is the mandate of the Ministry to ensure gender equity and women's empowerment, and that the activities in respect of that mandate have to be financed.

On mechanisms for following up funds to OVCs, we have district children officers who are responsible for the day-to-day monitoring of these funds; so far, they have not reported to us cases of families getting money and not assisting the individuals who are actually targeted, the OVCs, but that does not mean that there are no cases. We are happy when we come across those cases and then we are able to take action. It could be that the child is in the wrong hands. There are people who pose as relatives and, therefore, protectors of the child when actually they are not giving that protection. If such a case is found, then that child is withdrawn from that family maybe to a children's institution, where the child can be cared for better and taken to schools. You see, it is not the wish of the Ministry to have children put into children's institutions. Children are better off in a

family environment. So, if there is any counseling such a family can be given, it will be given to see that the child gets the support that is intended. Regular monitoring can be done to that family to just ensure that the child is benefiting. Talking to the child on a regular basis also helps to ensure that the child is benefitting or to discover that there is no way of helping this child in the present establishment, and then a transfer is necessary.

With regard to persons with disabilities, I was asked as to why some people have made regular applications. There is a difference between the National Fund of Persons with Disabilities which is handled at the Office of the President. This is a fund that has been there for the last over 20 years. I worked in the districts for some time and I am aware of these kinds of applications that have been made on an annual basis, but the responses have not been positive; the fund is overwhelmed by requests for support. As for the fund administered at the Ministry, we have very clear registered cases district by district. So, even if a case is not funded this year, then the subsequent funding will address that given case. Those are the issues that I was to respond to.

**Commissioner Shava:** Through the Chair, what about the question with regard to refugee children?

**Mr. Protus Onyango:** Madam Chair, as of now the Ministry does not have a fund to address the needs of refugee children. For a long time it has been assumed that the United Nations High Commission for Refugees (UNHCR) addresses all the problems of refugees, but it is true, as you have said, that there are refugees who are even living in Eastleigh here, who need support through a different Government mechanism. We are aware of this problem and we are trying to come up with a programme that will address the case of refugees – children, men and women. Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you so much, Sir. I wonder if you answered my question on the proportion of the total budget that you were allocated for children and then for people living with disabilities.

**Mr. Protus Onyango:** The proportion of money going to children's activities or services is about one third of the overall budget that comes to the Ministry. Actually, the Children's Department gets the lion's share of that budget. The proportion going to persons with disabilities is much smaller. It could be less than one eighth of the total budget; this small amount goes as cash transfers to the persons with disabilities and those ones with severe disabilities.

**The Acting Chair** (Commissioner Namachanja): Thank you so much. I think that is it from us. Thank you for your patience. You can now go for your meeting as we continue; as we prepare to hear from Kenya Women Enterprise Fund, Kenya Women Finance Trust, I am aware that we have two more speakers who will come after this team; these are somebody from the National Aids Legal Programme and somebody from the Women Political Alliance. Thank you. Continue Sir.

**Mr. Wainaina:** Thank you hon. Commissioners for inviting the Women Enterprise Fund to come and participate in this discussion. There are a number of issues that we were required to address in our presentation, namely how the fund is administered, a breakdown of the total amounts disbursed to the 47 counties since inception, the civic education on the fund, the staffing, whether we have achieved gender equality and there are recommendations on how the fund will be administered in the new devolved set-up. So, my presentation which has already been circulated to the hon. Commissioners will be very brief. It is important that we try to understand and appreciate the rationale behind the setting up of this fund. It was basically to address the issue of marginalization of women in economic development. It has been documented and I do not want to repeat that women have been excluded from the mainstream economy and this fund was established specifically for the purpose of correcting that imbalance.

Addressing the third Millennium Development Goal (MDG) that is gender equality and women empowerment, some earlier speakers alluded to some of the challenges that women have had in trying to become active participants in economic development, the issue of ownership of productive assets that are required by financial institutions for one to access financial resources; an example of this is a title deed. There was the issue of access to loans. The prices were an issue – the interest rates charged by commercial banks and the requirements, or the other structural arrangements in the financial institutions make it very difficult for women to access funding. In terms of access challenges, the high transaction costs, the low financial literacy, the distances that women have to travel to be able to access the providers of those resources--- We are aware that, for example, commercial banks and micro-finance institutions are profit oriented, and they only open branches in those places where it makes economic sense for them to do that, meaning that those Kenyans who are from far flung areas – both men and women - do not stand a chance of accessing services from such institutions. So, we had to address all those challenges and this fund is supposed to promote gender equality and women economic empowerment by addressing all those challenges. We are in enterprise development and communication to women. We know the majority of them are in rural areas; we impress on them that agriculture is also an enterprise but it has got to be done differently. They have got to move from subsistence agriculture to commercial agriculture for them to really get out of poverty.

So, in the design of our programme, we had to address those issues; for example, the issue of equality of access. These are the issues the Constitution is trying to address through devolution. There is this concern of equity and equality of access. We addressed that by making the constituency – the parliamentary unit of representation - our lending unit or our unit of resource allocation. So, when the fund was established at the end of 2007 every constituency in Kenya was allocated Kshs1 million regardless of its population. After some time that amount was enhanced to Kshs2 million. We then moved to Kshs3 million. When we got to Kshs3 million, we said that we had got to be concerned about sustainability of the fund. We said any graduation from level that would be driven by good repayment records and the demand for those resources.

So, every constituency started at the same level but four years down the line, as the statistics that I have already circulated will indicate, there are some constituencies that have taken Kshs9 million while others are still at Kshs1 million. Those constituencies that have consumed less cannot complain about unavailability or discrimination. The resources are there and it is up to them to come forward and access them. On the issue of interest rates which is the cost of borrowing, our lending is really subsidized. One component that we lend to women who are organized into groups, the so called *chamas*, through the constituencies, has zero interest. So, there is no interest on that money. It has a grace period and is repayable within one year. So, the price of money is no longer an issue for Kenyan women. They only pay 5 per cent administrative fee which is a one off, and this money is not supposed to be paid upfront. It is deducted from the loan amount. So, you do not have to have any money to get a loan from the Women Enterprise Fund. You only need to be organized. On the issue of title deeds and ownership of productive assets, we do not require women to give us anything. No title deeds, logbooks or anything. The only thing that we ask of Kenyan women is: Are you a woman of good character? So, our lending is character-based and we tell women that whereas you complain that these economic resources are owned by men, if you are a married woman, your husband has no control over your character. So, if you are not able to access our resources, then you cannot blame your husband. It is up to you because you have to be a woman of integrity. Can you be trusted to borrow and repay the money? That is one component that we take through the constituency. It has been able to promote equality in access. We are the only Government programme that has customers in 210 constituencies. So, in terms of promoting access, we have customers in Wajir, Turkana and Lamu; in the 210 constituencies we have women customers.

Now, through that lending that is constituency-based, we have been able to lend Kshs649 million and the statistics are there. In terms of the repayment, we have been able to achieve a national average of loan repayment of 75; what women of Kenya have demonstrated is that there is no one particular region that has been endowed with entrepreneurial special skills and integrity is not a confine of urban or rural women. Our best borrowing constituency in terms of repayment is in Wajir. Our best constituency in borrowing is Wajir East. Many Kenyans may not be able to believe that because you would think that it would be Nairobi. That is not the case, meaning that if the resources are available to women, women are ready to make a difference in their lives.

The other lending component is through finance intermediary partners. We realized that as a fund, we had our own inadequacies in terms of structure. So, what we did on a competitive basis was that we recruited commercial banks, SACCOS and NGOs which are in microfinance to become our wholesalers. So, they act as a wholesaler. We lend money to these partners and we have one of the three partners throughout the country. So, there is no county in this country without a financial intermediary partner and they are selected on a competitive basis. We advertise in the papers. We follow the procurement process and the biggest challenge that we have had in, for example, North Eastern Province is getting credible institutions coming forward to partner with us, but we have not given up. We are now going out to selectively seek out those partners that can become our retailers. So, we lend money to them at 1 per cent and they retail it to women



at 8 per cent on a reducing balance. So, if you compare 8 per cent and the current market rate which is 25 to 30 per cent, then Kenyan women are very lucky, because that is the cheapest money that you can get in the Kenyan market. We give two conditions to those partners. One, that they cannot charge more than 8 per cent; Two, there are no other hidden charges and they can lend up to Kshs2 million. The reason why we have capped the amount is because this fund is about assisting women who have previously been excluded from accessing resources. So, you cannot tell women to come for Kshs10 million because a women who needs Kshs10 million is better off going to a commercial bank. The amounts are low because we are targeting Kenyan women who are above 18 years. There is no upper age limit provided you are still productively active. Through those partners, we have been able to disburse Kshs1.3 billion and those partners have been able to reach about 66,000 Kenyan women.

In terms of managing the fund, we have an advisory board that provides policy guidance on how to manage this fund and this advisory board has 11 members, seven of whom are women. So, in terms of leadership, what an earlier presenter, Prof. Nyokabi was saying, this fund is led by board members, the majority of whom are women – 64 per cent. We have a secretariat in Nairobi and regional offices. We have officers in every provincial headquarters; these are two. We have a total of 45 officers, 27 of them are men and 18 are women. So, 62 per cent are men and 38 per cent women. So, the one-third requirement has already been achieved. To serve women better, we recruited volunteers – one volunteer in every constituency. Those are local people who are able to communicate in the local language and their mandates are to mobilise women to come forward for this money, assisting women to fill the loan application forms and training women. All our volunteers have been taken through a Training of Trainers (TOT) programme in business skills. So, we have 210 volunteers, the majority of whom – 52 per cent - are young ladies. So, in terms of gender, the fund has complied with that requirement.

Since inception, we have received Kshs2.3 billion from the Kenyan Government. We rely 100 per cent on Treasury funding and we have given loans amounting to almost Ksh2 billion, meaning that we utilize much of the resources for the purpose for which the fund was established. Over the four years of operation, we have been able to reach 439,000 women, meaning that in terms of promoting financial inclusion, moving women from the periphery to the mainstream of the money economy, we have been able to achieve that and we want to drive that number up. In recognition of what this fund has been doing, last year we were honoured when we were picked us the winners of the MDG Award 2011 for achieving MDG 3. We were identified as the best institution in the implementation of the third MDG. We have also been able to train women, 37,000 of them, in financial literacy. I have indicated that we used volunteers; we realized that getting consultants from Nairobi to go and train women would have taken maybe 1,000 years to be able to reach all the women in 210 constituencies.

We are also supposed to assist women in marketing their goods and services. We have been able to take some women to East African exhibitions in Kigali and Dar-es-Salaam; during the Agricultural Society of Kenya (ASK) shows we make sure that we enable women to come and exhibit their products in our stand for free. In terms of sensitizing

Kenyans, I think it has been an issue that many women will tell you that they have not heard about this; I have indicated that we have women customers in every constituency. So, we have been addressing this using the media. We have been to virtually all the vernacular radio stations. Using the chiefs, we have partnered with the Provincial Administration. So, in many locations where the chiefs are based, you get chiefs with our loan applications forms because these forms are available for free. You can download them from our website. So, we have democratized availability of the loan application forms and we work very closely with the Ministry in charge of Gender. The Ministry has offices in all the districts. So, it is a major partner. These loan application forms are available across the country. Using public *barazas* and the media, we have been able to communicate the message about the fund.

In terms of the challenges that we face - this is a bit unfortunate - areas with the highest poverty index also happen to be areas where the loan repayment is poor.

There are cultural issues that women still have to consult their men to apply for a loan, the fear of borrowing because of what people have heard of being repossessed and the negative propaganda. This fund was launched in 2007 which was a campaign period and there are some retrogressive leaders who said that this is Government money which is free. Trying to counter that has not been easy.

On the issue of insecurity, we have funded some groups keeping goats and raiders strike. Last week, I was in Samburu to address the issue of poor loan repayment and women were telling me while shedding tears why they should pay their loans to the Government, if the same Government stole animals from them. They said that when the security people went to mop up illegal guns, they took all the animals; these are the animals they bought using our loans. The same Government is out there empowering people and at the same time dispossessing them. I have picked up that matter with the Provincial Administration because it is serious. This is a flagship project and all Government departments must be reading from the same page.

There is also the challenge of low financial literacy. We have really gone out of our way to simplify our loan repayment form, but it is in English. We do not require women to fill a business plan. You just apply, give us your ID and organize yourselves in a group. That is a challenge but our volunteers are assisting us to do that.

In terms of devolution, we were ahead because the challenge we were supposed to address is equality of access. Our resource lending is constituency based just like the CDF. So our money is at the constituency and we have recruited volunteers who are constituency-based. We have a loan committee in every constituency that is localized. We have Maendeleo ya Wanawake, the Ministry of Gender, the Provincial Administration, YEDF and somebody from a financial institution. We have decentralized the selection of women groups and the loan approvals. We have also heard the cry that the amount of Kshs50, 000 is little and in the coming financial year, we want to double the amount that is available. The first loan will be Kshs100,000 and the highest amount to successive borrowers will be Kshs1 million.

On the issue of security and weather related issues, we are exploring the possibilities of procuring weather-based insurance products so that when women invest in agricultural related activities and there is drought or floods, they are compensated if they lose their produce.

Our recommendation is that this fund was established as a semi-autonomous agency under the Ministry of Gender, Children and Social Development through gazettelement of regulations. So, if you get a Minister for Finance who does not like Kenyan women, he or she can wind up the Fund. So, we would like this Fund anchored in an Act of Parliament so that it gets legal permanency. That will also enable us to engage likeminded development partners for fundraising. We still have to carry out civic education and trying to change the mindset of women. Women must make up their mind that they want to be different because we have resources on the table. That is because in some areas, the demand is negligible. That is something that, as Kenyans, we have to work together so that womens' minds are changed to overcome the fear of borrowing. The men are also threatened that women are getting empowered and this has to be addressed. Otherwise, I rest my case.

**Commissioner Shava:** Thank you, Mr. Wainaina for your presentation and the documents that you have given us. One of the questions that came to us was that “when the WEDF comes to the district level, you realize that in the committee, there are no women who can talk about the money”. What is your reaction and which committee is this?

**Commissioner Dinka:** Thank you, Mr. Wainaina, for your presentation. There is a lot of disparity within the constituencies in terms of money disbursed. Is that based on demand or it is based on population?

**Commissioner Chawatama:** With the kind of work you are doing, there is discrimination. It is also intended for all the people. I am glad you have talked about insurance because of some acts of God and people being unable to pay because of certain things that have happened beyond their control like PEV. There were many miserable people! Of that Act of Parliament, are you suggesting that you would want to be separated from the Ministry or what sort of independence are you talking about and how will that assist you?

**Mr. Wainaina:** Our desire is to become independent of the mother Ministry; to become a parastatal although our long term vision as articulated in Vision 2030 is to grow to become a women's bank. We have already worked with the Kenya Law Reform Commission and developed a Bill which is at the AG's and it is taking too long. Although we rely on the Treasury, we told them that when we are an independent legal entity, development partners like UNIDO and DFID do not want to deal with an institution whose capacity is not clear. It also gives women confidence that this vessel for gender equality and women empowerment will be here tomorrow and not just a campaign gimmick. It is a long term mission for this Government.

On the issue of discrimination, I have demonstrated that the requirements for accessing this money are easy. You only need to be mobilized and organized in a group, register with our Ministry at Kshs1,000, fill in an application and if you do not know how to do it, we have recruited volunteers from the local communities. On the issue of the membership of the self help groups, it can be 100 per cent women or it can have some men in the group but it must not be more than 70 per cent men and they cannot hold any leadership positions. The only committee that we have at the constituency level is called Constituency Women Enterprise Fund Loan Committee and one of the mandatory member is a representative from Maendeleo ya Wanawake. They are all women. It is made up of five members although they can co-opt another.

With regard to resource allocation, I indicated that when this Fund was established in 2007, every constituency was allocated Kshs1 million, then to Kshs2 million and then to Kshs3 million. After that we said that we want to be sustainable and every additional resource allocation will be driven by loan repayment. So, a constituency must achieve a 50 per cent loan repayment for us to continue funding because this is a revolving fund. That has assisted us to improve loan repayment. So we are driven by a good loan repayment and demand with a gracious period of three months before repayment. There is no financial institution in this country that does that. So, we have incentives in this thing and some aggressive women have repaid our money within the grace period. The biggest enemy of Kenyan women is the woman who will fail to repay the loan because they are drying up the funds and denying the next woman an opportunity to access the resources.

Thank you!

**Commissioner Dinka:** Do you charge interest?

**Mr. Wainaina:** This component is available to groups and the one available equally in all the constituencies has zero interest. Women of Kenya cannot get a better deal!

**Commissioner Chawatama:** You talked about the draft Bill that is with the Attorney-General's Chambers. I do not know whether there is anything wrong with having a copy so that we can decide whether we like what we see and possibly maybe recommend for its being speedily enacted. Is there something that would stop you from legally having a copy of the draft Bill?

**Mr. Wainaina:** I will be glad to do that! It is not late to give us some input.

**The Acting Chairperson (Commissioner Namachanja):** Thank you Mr. Wainaina. We now know that there is money out there for women because I am sure if I asked the audience how many of them have benefited from that fund, there may be none from here. So reach out to them! Please share with us the documents we have asked and in case of anything, when we work on recommendations, we shall get back to you. Thank you for coming.

Last but not least, karibu Ms. Wambua!

**Ms. Mercy Wambua:** I work for the National Legal Aid and Awareness Programme (NLAAP) which is a programme under the Department of Legal Affairs in the Ministry of Justice, Constitutional Affairs and National Cohesion. We were asked to come and give insight on the programme. The NLAAP is a programme that was started in 2007 under a gazette notice but officially launched in 2008. It is operating on pilot basis to try out the best models that the Government can adopt in provision of legal aid in the country. The need for legal aid is because of the expense incurred by litigants to hire private lawyers and the complex laws we have and the few and limited cops. This is also because of long distances to access the courts and many other reasons including illiteracy. So, the need for legal aid is enormous in Kenya and the Government recognizes that there is that need. We have six pilots projects; in Eldoret, Kisumu, Mombasa, Nakuru and two of them in Nairobi. They operate on different thematic areas under the direction of the civil society organizations that have been there for long and providing legal aid. In Nairobi, the two projects we have; one deals with family issues and it is facilitated by FIDA Kenya and the other deals with children in contact with the law and we are facilitated by CAN. In Kisumu, it is operating on the area of paralegals and we have the Kenya Community Paralegal Association that is piloting it. In Eldoret, it is operating on alternative dispute resolution mechanism and it is piloted by the Moi University, Faculty of Law. In Mombasa, we are trying the module of provision of legal aid in criminal cases especially robbery with violence cases and it is facilitated by Christian Legal Education, Aid and Research (CLEAR).

Since 2008, the Government has learnt many lessons and since there is no legislative framework to support legal aid, there was the need to come up with a legislative framework and we now have a draft legal aid policy and a draft Legal Aid Bill in place. Both the legal aid policy and the Legal Aid Bill are in draft form and there is need to have them finalized so that when the legislation is there, then it is very easy for the Government to allocate funds and put in place the proper modules that will address the enormous legal aid need in the country bearing in mind the socio-cultural economic circumstances that Kenya faces.

Currently, the funds that the programme is operating on are purely from the Government because it is the responsibility of the Government to offer legal aid to its people. The money comes from the Ministry of Justice and so it limits the programme's activities. To compliment that, we get support from donors especially in the process of the development of the policy and the Legal Aid Bill. The criterion of cases that the project handles depends on the criteria that the facilitating organizations that we are working with use, but there is need to have very clear criteria for eligibility on who should be accorded the legal aid. For instance, for FIDA Kenya, the first criterion is that one must be a woman and they also have a mean and merit test and thereafter get advice on particular cases. On the means test, it is difficult because if we say that we put a cut off of maybe the people who live below a dollar a day, you ask yourself then, how many people are living like that. Is it only an issue of income because you could have other assets? So,

in the policy formulation and the Bill, we are saying that there is need for a very clear cut eligibility criterion in place for the legal aid scheme.

In a nutshell, we do not have a legal aid scheme yet for the country but that is going to be established through the legislation that I have talked about. For now our projects are to run for three years and after that, we expect to roll it out throughout the country through a National Legal Aid Scheme. In the draft legislation, it is hoped that legal aid will be according to the poor, vulnerable and marginalized, including women. Children are automatically covered; anyone who is below the age of 18 and in criminal cases, despite all the other criteria that will be used, it is already very clear under the Constitution that where substantial injustice will be occasioned for lack of legal representation, that must be a criterion. The other consideration will be public interest litigation. It is also proposed that the country adopts a mixed module of delivery because of the economic status that will include the Government hiring lawyers to represent litigants in court in both civil and criminal cases where they cannot hire lawyers for themselves after meeting the eligibility criteria. It is also proposed that we use paralegals and alternative dispute resolution mechanisms which have proved an effective mode for family disputes than the trial process in court. There is also the need to use traditional justice system which is recognized by the Constitution together with the support and partnership with the civil societies that are currently providing legal aid and the use of the university law students in legal aid and lecturers for research.

So, what should be done to have the formation of the scheme? There should be further funding and we are aware that the political goodwill is there. In the meantime, we have received views from citizens that it is good to have the project at the county level. That is all!

**The Acting Chair** (Commissioner Namachanja): Thank you very much Mercy. We will ask you a few questions for clarification.

**Commissioner Chawatama:** I cannot believe that you do not have legal aid. To have deprived poor people of justice all this time is not right. There are many things that have happened including the establishment of the Supreme Court and so many other things and yet, the people who have been crying out for justice, who do not want the luxury of pilot projects but want to see a little thing done so that they can access justice is quite sad. A lot of things that you have said are things that those involved in the justice system have already come across. So, I do not know how perfect the legal aid scheme that you want to put together will be, and whether it will not have challenges. It will have them but it has to go on so that it can be strengthened. We need to talk a bit further so that maybe we can help as a Commission to speed up the process of establishing this legal aid because of the cry that we have heard from the people of Kenya with regard to access to justice. Just the mere fact that they cannot afford to go to court is criteria enough. It almost makes me think that justice is a luxury. We will talk further to see where we can step in so that our recommendations are sound. But we compliment you with the efforts that you have made and I know you are also just as frustrated and having talked to us is almost like a burden being lifted off your shoulders. So we will do the best we can.

**Commissioner Dinka:** Thank you for your presentation and the recommendations that you have made. You mentioned that you have six pilot projects to run for three years after which the National Legal Aid Scheme will come into force. Right now, are you only supporting women or men also if they fulfill the requirements? Everywhere we went out of Nairobi, we heard about legal litigations that could not begin because people have no money either to pay lawyers or court fees and mostly, it is on land issues. Someone from Nairobi takes a piece of paper, the title deed and evicts 20 families from a piece of land which they have been tilling for hundreds of years and even some of them referred to it as ancestral land. After they have been evicted using the police officers, there is nowhere to go to and they have been advised by so many people to go to court but they cannot afford. What do you do in that case? As you are presently constituted, can you help those guys? If not, is the Bill being debated and enacted going to cover cases like that? Otherwise, to them, it is of no help because most of the things that we heard are situations like the one I described. I have no further questions.

**Commissioner Shava:** Thank you, Ms. Wambua, for your presentation. I have really been enlightened. I know that there has been an initiative to develop a legal aid scheme in this country. However, I was not very sure how it was rolling out and what stage it was. I think it is really very critical work. I congratulate you for your input and persistence in what might be quite difficult circumstances. You said, for example, that the current budget is very little. Those were your words. My first question is how little?

Secondly, you said that the project will run for three years and then the legal aid scheme will come into play. When did the three years start running? When is it that we can expect to see the legal aid scheme become a reality in this country? The third question is what input have you had from the Law Society of Kenya, the International Commission of Jurists and the Council of Legal Education on the provision of pro bono services by lawyers? Is there any idea that has been put on the table to make this a requirement for lawyers to get their practicing certificates or for law students to graduate? Have those kinds of discussions been taking place because that is the human resource. It is people who are lawyers. Who is supposed to provide these services? It is those lawyers. So, is there any move towards making this in some way mandatory, so that we can also put that into the pot of resources for the provision of free legal aid?

Finally, just an observation; you talked about alternative dispute resolution and a previous speaker, I think it was Prof. Nyokabi, spoke about how traditionally those mechanisms have not been friendly to women. They have not been inclusive of women. Women do not sit in those councils of elders. Therefore, the level of understanding of what it is that women are facing and what would be appropriate responses or intervention are undermined. So, when you say that you are embracing those, I hope that you are taking into account things, for example, that have been done in Rwanda where they revived the traditional justice mechanism of the *Kachacha*, but they adopted it to modern society. I hope that you will also make recommendations in that manner and not trying to take us back to the past whereas we are living in the present.

**Ms. Mercy Wambua:** I will start with the last. As to whether the LSK has made some input in any way and the use of pro bono lawyers, actually the National Legal and Awareness Programme has a national steering committee. The LSK, ICJ, FIDA Kenya among other Government institutions sit with the national steering committee. Above that, we have had very interactive sessions with the LSK, especially.

Currently, we have a pro bono lawyer scheme that is being run by the programme and the LSK where lawyers volunteer their time and they are even representing litigants in court on behalf of the programme. The Government has allocated a small token of appreciation for the lawyers which again was an agreement between the civil society organizations that we are working with and the LSK that the lawyers be given Kshs10,000 upon conclusion of a case. It is little money, but it was supposed to act as a token of appreciation just to cater for the fuel cost from the office to the court. Among other incentives that we have come up with is training. We do train the pro bono lawyers on various areas of law and other issues to act as incentives for them. So, yes, we have a pro bono lawyer scheme.

As to whether the legislation is proposing that it become mandatory for lawyers to offer pro bono services, it is an issue that is still on debate, but it is being considered although with some kind of rejection from the LSK. However, we are still trying to have a negotiation. It is considered that we have arrangements to have provision of pro bono services, included as a condition, for you to be able to get a practicing certificate for the following year by acquiring continuous learning education, CLE points. So, somehow it is like making it mandatory, but not very clearly mandatory.

On the issue of the traditional justice system I agree with you that some of the traditional justice systems and the procedures that are used at that level are really repugnant to law and justice and not actually helping the women. In recognition of that, we are proposing that there is need to have interactions and engagements with them and have even the ones who sit in those panels trained on legal issues, especially the ones that pertain to children and women. We have had several forums with the leaders, the traditional justice system in the whole country. We have had talks with them on the need as to why they need to include women in the decision making process of those organizations.

As to how long the three years is supposed to run, it is supposed to run after the launch in 2008 although there was some delay in rolling out the pilot. So, I can say basically the operation of the National Legal Aid really began in 2009. So, by the end of 2012, it will be felt. The target of the Ministry is because of the new Constitution that gives the right of legal representation, especially in criminal cases and capital offences cases. There is need to have and the Ministry recognizes the need to have this Bill actually finalized before June this year. We hope we will be able to achieve that before June, this year.

The programme supports both men and women. In the other pilot projects other than the Nairobi one, that deals with family issues. We are being facilitated by FIDA in the other pilots. All the litigants can either be men or women, boys or girls. So, yes, we are supporting men.



He has asked about how little the funding that we have currently is. I might not be able to give you the exact figure right now, but it is between Kshs8 million and Kshs10 million for a whole financial year to run the six pilot projects which is really not enough.

The other activity the programme has been engaged with is training of paralegals, especially in Kisumu where we are using paralegals in access to justice. We do train community paralegals. We have trained close to 250 paralegals in Kisumu and at the community level. They are able to engage the citizens. They are given the basic legal knowledge and also direct them in case of a problem. They can assist in this and this other way. We have also trained several mediators who are also trying to solve disputes through mediation, through the court mandated mediations, especially in the Eldoret pilot project.

I believe I have been able to tackle most of the questions.

**The Acting Chair** (Commissioner Namachanja): Thank you so much Mercy. In our hearings throughout the country, we have come across really poor people, especially women who have lost their land for just not being able to afford paying the lawyers or even the information on how to go about it. So, as you have observed we need to really decentralize this up to the county level because it is really at that community level that people need such support.

Thank you so much for what you are offering so far. I think those are the only questions that we had for you.

**Ms. Mercy Wambua:** Thank you. Probably, I forgot also to mention that we also train litigants to self represent themselves in court which usually complements the pro bono lawyer scheme. We do draft pleadings for them where we feel like someone can talk in court. We prepare pleadings for them and train them one on one on the court procedure. After they go to court, they come back and tell us this is what has happened. What do I do? Then we guide them until the finalization process. The good news is that we have been able to get success stories, especially in family cases, children custody and maintenance. Those are cases that self-representation can easily help litigants.

**The Acting Chair** (Commissioner Namachanja): Thank you so, much. With Mercy's input, we have come to the end of our hearings.

On behalf of the Commission, I would like to thank the speakers who have spoken before us today: Rukia Subow from Maendeleo ya Wanawake, Anne Ileri from FIDA, Grace Wangeci from Gender Violence Recovery Centre. Dr. Mark Anyango from Kenyatta National Hospital Dr. Nyokabi Kamau, Mary Nzioka from Agency for Co-operation and Research Development Accord. We have also heard from Mr. Protus Onyango who represented the Permanent Secretary, Ministry of Gender, Children and Social Development. We have also heard from Mr. Wainaina from the Women's Enterprise Fund and lastly from Mercy.

Let me also take this opportunity to thank the public and audience who have stayed up to now. It has been a long day. Thank you so much for coming to hear the issues related to women. This Commission is expected to come up with a report on historical injustices and we did not want the issues of women left out. So, we really appreciate your presence. Thank you, Nancy and the entire team for facilitating this dialogue between Kenyans and the Commission. I would like also to salute the Commissioners for sitting this long without a break because we realized that if we broke maybe some of you will be encouraged to leave. So, we wanted you to stay to the end with us. So, thank you so much and God bless you. Our regional co-ordinator to whom I would like to hand over the programme now will share with you when we shall have Nairobi hearings, so that you could also participate in this process.

**Ms. Nancy Kanyago:** I want to thank the audience for being with us during the entire hearing. I would like to invite Jemima to pray for us to close the hearing.

*(Closing prayers)*

*(The Commission adjourned at 4.20 p.m.)*