

# Gender Instruments, Laws, Policies and Guidelines: A Tool for Human Resource Managers in Kenya

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## Abstract

The need for effective workplace policies and procedures has never been more important in today's changing workplace. This is driven by changes to legislation, regulation and codes. Organizations policies must be in line with the national laws, procedures and policies, and since nations subscribe to various international laws and guidelines, these should accordingly be integrated in organization policies. Through a review of existing literature, this study examines important legislations that address gender issues at the work place with an aim of informing Human Resource Managers charged with the responsibility of managing a diverse workforce. It argues that an understanding of the existing as well as changing patterns of national and international gender framework forms a strong foundation for an all inclusive and gender sensitive organization.

**Keywords:** Gender, Workplace, National policies, International instruments

## 1.0 Introduction

The case for gender equity and equality in the workplace has been debated for many years. Different basis have been put by the various proponents, but in essence, when viewed as a whole, the arguments focus on the benefits at three levels, the individual, the enterprise and the national level (Helen, 2012). At the individual level, the case put is that gender equality is a matter of fairness and equity. At the enterprise level, there is correlation between better gender diversity at the top of organizations and improved financial performance (Helen, 2012). Moreover, accommodating women's needs in the workplace means employers benefit from increased productivity and efficiency, higher morale and job satisfaction. The 2009 Kenya census put the ratio of men to women at 1.00:1.01 which shows that ideally women should make up approximately 50% of the talent pool at all levels of organizations. At the

national level, the arguments are essentially economic. According to the World Economic Forum (2011), empowering women means a more efficient use of a nation's human talent endowment as it enhances productivity and economic growth. Full utilization of female talent is therefore critical to a nation's competitiveness and growth of the economy.

It is the realization of the benefits of gender diversity that the laws, policies and guidelines have been developed to bring in the contribution of women in the limelight, not only at the national levels but also from the international arena. Some of the gender guidelines have no legal backing and as such calls for goodwill of policy makers and implementers to consider them as they protect the rights of the 'weaker' gender in a given scenario as well as help organization in reaping the obvious benefits.

## **2.0 Literature Review**

### **2.1 Understanding Gender**

Gender refers to a set of qualities and behaviours expected from a male or female by the society, the social attributes and opportunities associated with being male or female, the relationship between men and women, attributes, opportunities and relationships socially construed and learned through socialization process (EngenderHealth 2005). The National Commission on Gender and Development (2009) defines gender as the state of being woman or man in a particular society or culture; the social characteristics ascribed to men, women, boys and girls. Society teaches expected attitudes, behaviors, roles, responsibilities, constraints, opportunities and privileges of women, men, girls and boys in any context. This is called learned behavior, also known as gender identity.

Gender is learned through the process of socialization. It is not static or innate, but evolves to respond to changes in the economic, social, technological, political and cultural environment. People are born female or male (sex), learn how to be girls or boys and then become women or men (gender). Gender roles unlike sex are created by society and thus are socially determined learned and vary among cultures. In many cultures, men are accepted as natural leaders while women as supporters and followers. Also differences and inequalities between men and women result to variations in assigned activities, access to, and control over resources, as well as decision making opportunities

Since gender role expectations has culturally relegated women to the house-hold level, they have limited access to communal resources, are under-represented in public decision making bodies, have limited bargaining power in labour markets and often lack opportunities to improve their social economic position (Bryan and Varat, 2008). Deliberate efforts to bring them to the limelight are therefore essential.

In Kenya, women experienced social, economic and political inequalities in relation to men throughout the colonial period where education and paid labour used by settlers was given to men (Mueller and Mulinge, 2001). This resulted to underrepresentation of women in paid labour. Even after independence, the role of women did not seem to get into the public life. For example, women representation in parliament remained negligible between 1963 to 2007. The constitution of Kenya (2010) however, has expressively recognized the need to get women in employment and public participation. This principle is clearly stated in Article 27 (8) that the State shall take legislative and other measures to implement the principle that

not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Article 81 further reiterates that not more than two-thirds of the members of elective public bodies shall be of the same gender.

Although the government of Kenya recognizes the importance of providing equal opportunities for all its citizens, Kenya is ranked among the ten most unequal countries in the world and the most unequal in the Eastern Africa region (Kihara, 2005). In education, disparities are not only reflected in students admission but also in the recruitment and promotion of academic staff and managers in the university with women forming a small percentage in all cases (Onsongo, 2011).

Since Kenya is a signatory to many international instruments such as the Convention on all Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action, the Millennium Development Goals (MDG's), the UN Security Council Resolution 1325 (UNSR 1325) among many others that advocate for women representation at all levels of decision making, the country must continue to deliberately put strategies to engage women in the workforce particularly in the public sector. An understanding of the concepts of Gender Disparities, Gender Mainstreaming and Gender Based Violence are essential in dealing with gender issues in any context.

## **2.2 Gender disparities**

Gender disparities in terms of opportunities, security, and participation have become important issues for developing economies, and in particular for Africa (World Bank, 2010). This is the reason why gender equality is now among the aims of most poverty reduction strategies and also one of the United Nations Millennium Development Goals (MDGs). In the context of gender inequality, gender disparities in labour markets are especially important. Literature show that in a number of African countries women are less likely to be in paid jobs, are disproportionately concentrated in informal and precarious employment and are usually paid less (ILO 2002, Nordman 2009).

Various factors have been identified to explain the causes of gender gaps at the labor market. For example, according to the World Bank (2010) differences among individuals, especially in human capital in terms of education and training play a major role. This is mainly contributed by the fact that women have less available time to work in the job market because of their domestic shores. Besides, women lack access to credit, which is probably strongly influenced by their relative inability to control collateral since men own or otherwise control a larger share of capital than women. This contributes to the lesser incomes of women which lead to inequalities not only at the labor market but also within the household in terms of decision making power.

## **2.3 Gender mainstreaming**

Gender mainstreaming is an organizational strategy aimed at bringing a gender perspective to all aspects of an institution's policy and activities, through building gender capacity and accountability. It is a strategy that has strong roots in the Beijing Platform for Action (1995) that requires governments and other actors to promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes. With gender mainstreaming strategy, gender concerns are seen as important to all aspects of

development, for all sectors and areas of activity and a fundamental part of the planning process. According to Hazel and Sally (2000), political as well as technical skills and goodwill are essential to a mainstreaming strategy, with organizations using mainstreaming tools like gender training and introduction of incentive structures which reward efforts on gender dimensions.

In Kenya several efforts have been put to mainstream gender. For example, the National Poverty Eradication Plan (1999-2015) is a long term strategy whose overall goal is to reduce poverty by 50% by the year 2015. The plan recognizes the multidimensional nature of poverty and aims to strengthen capabilities of vulnerable groups identifying women and girls as key in this class. Gender Responsive Budgeting also recognizes the different gender needs and aims to bridge the gender gap. The National Policy of Gender and Development (2000) provides a basis for the government to underscore its commitment to advancing the status of women through addressing any existing imbalances between men and women. The need for the policy arose from the government's realization that without directly addressing gender concerns, tremendous resources aimed at national development would continue being lost.

### **3.0 Summary of the Legal Framework Guidelines**

#### **3.1 National Laws**

##### **3.1.1 The constitution of Kenya**

The Constitution of Kenya 2010 is the major advocate of gender equity, expressively bringing on board the youth, women, minorities and marginalized groups into the mainstream of employment. It poses to be one of the best equity and non-discrimination documents that has entrenched the minimum ratios of representation by gender and of persons with disability on all elective and appointive positions in Kenya. Article 81 (b) provides a one third requirement for either gender in elective bodies giving women of Kenya at least 1/3 minimum in elective and appointive public bodies. Article 27 (3) states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Stressing on the need for inclusiveness, article 21 (3) provides that states organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, person's disabilities, children, and youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities

##### **3.1.2 The Sexual Offences Act**

The Sexual Offences Act (2006) was enacted in response to curb the escalating cases of sexual violence and harassment within and beyond the workplace. The Act prohibits all manner of sexual offences and makes provision for all sexual offences, prevention and protection of all persons from harm arising from unlawful acts. Of importance to an employer is Article 24 (2) which provides that any person who being a law enforcement officer takes advantage of his or her position and commits any sexual offence under the Act commits an offence of abuse of his position of authority and is liable to imprisonment for a term of not less than ten years.

##### **3.1.3 The Employment Act**

Article 5(2) of the Employment Act (2007) provides that employers should promote equal opportunity in employment and strive to eliminate discrimination in an employment policy or practice. The Act (Article 5/3) furthers prohibit harassment on gender basis among other

dimensions. Singled out among areas of discrimination is recruitment, training, promotion, terms and conditions of employment and termination of employment.

The Employment Act further outlaws any form of sexual harassment at the workplace. Article 6(2) provides that an employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment. The sexual harassment policy should be brought to the attention of every employee.

The Employment act also makes provisions for maternity and paternity leave. Article 29(1) provides for a three months maternity leave for female employee and reinforces this further with Article 29 (7) that no female employee shall forfeit her annual leave entitlement on account of having taken her maternity leave. A two weeks paternity leave is provided in the Act.

### **3.14 The National Gender and Development Policy**

The need for the policy on Gender and Development Policy (2000) arose from the Government's realization that without a coherent and comprehensive overall framework for guiding the different sectors and agencies involved in development, tremendous resources may continue to be lost unless the thrust of mainstream development directly address gender concerns. The policy recognizes the need to adopt equity as a goal and its achievement through the removal of any existing disparities between men and women. Among the key areas of the policy concerns are the economy, law, political participation, education and training, health, poverty and sustainable livelihoods.

### **3.15 Millennium Development Goals**

The Millennium Summit of September 2000 adopted the UN Millennium Declaration from where the Millennium Development Goals (MDGs) evolved. The MDGs are eight international development goals that the 189 UN member states, Kenya included, agreed to achieve by the year 2015. Among the eight is goal number three, promoting gender equality and empowering women. Other goals relate to poverty eradication, education, health, environmental sustainability and global partnership. Kenya started implementation of MDGs in September 2002 and the MDGs based planning was launched in 2004. In its efforts to achieve the goal of promoting women, the government requires institutions to streamline gender in all its activities and actions. Gender mainstreaming means the public policy concept of assessing the different implications for women and men of any planned policy action, including legislation and programmes, in all areas and levels.

#### **3.1.6 Kenya's Vision 2030**

Kenya Vision 2030 is the country's development blueprint covering the period 2008 to 2030. The Vision was developed through an all-inclusive stakeholder consultative process, involving Kenyans from all parts of the country. It is based on three "pillars" namely; the economic pillar, the social pillar and the political pillar. In particular the economic pillar seeks to achieve gender equality and empowerment of women.

The 2030 vision for gender seeks to particularly increase opportunities all-round among women, youth and all disadvantaged groups. Specific strategies to achieve this includes

increasing the participation of women in all economic, social and political decision-making processes, improving access of all disadvantaged groups (e.g. business opportunities, health and education services, housing and justice); and, minimizing vulnerabilities through prohibition of retrogressive practices (e.g., female genital mutilation, child labour) and by up scaling training for people with disabilities and special needs. Human resource management policies need to accordingly respond to gender equity to contribute to achievement of the Vision.

**Linkage between MDGs and Vision 2030**

The Ministry of State for Planning, National Development and Vision 2030 has linked the vision with the MDGs as illustrated in the table below:

<b>Pillar</b>	<b>Aim/Objective</b>	<b>Goal No.</b>	<b>Millennium Development Goal</b>
<b>Economic Pillar</b>	To maintain a 10% economic growth rate annually	1 3 8	To eradicate extreme poverty and hunger To achieve gender quality and empower women To build Global partnerships for development
<b>Social Pillar</b>	To build a just and cohesive society that enjoys equitable social development in clean and secure environment	2 4 5 6 7	To achieve universal primary education To reduce child mortality To improve Maternal health To combat HIV/Aids, Malaria and other diseases To ensure environmental sustainability
<b>Political Pillar</b>	To strengthen rule of law and ensure good governance in the country		Millennium Declaration that developing countries will spare no effort to promote democracy and strengthen the rule of law, respect internationally recognized human rights and fundamental freedoms, including right to development

Source: [www.planning.go.ke](http://www.planning.go.ke)

**3.2 International Instruments**

**3.2.1 The Beijing Platform for Action (BPFA)**

In 1995, women representatives from 180 United Nations Member countries, Kenya included, gathered in Beijing, China, for the Fourth World Conference on Women and signed the Beijing Declaration and Platform for Action, a document containing issues and concerns of the world’s women. In the Declaration was an item that there should be nondiscriminatory treatment of women and men in economic and other matters. The document recognized the lack of gender perspectives from governmental decision making particularly in educational systems as a challenge to women. It asked organizations, including trade unions to push governments to commit themselves to numerous actions including researching gender issues and taking appropriate actions to address them. Although the Beijing platform is not binding and has no mechanism for redress, implementing its recommendation would be an effort for Kenya to enhance national development in line with Vision 2030 and other national instruments.

### **3.2.2 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**

CEDAW (1979) is the United Nations instrument for human rights of women. It has been applauded as the first instrument in the United Nations history that is dedicated specifically to the human rights of women globally (National Commission on Gender and Development, 2010). The Convention defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Thus CEDAW considers violence a form of gender discrimination that seriously inhibits women's ability to enjoy rights and freedom on a basis of equality with men. Countries that have ratified the Convention, Kenya being among them, are legally bound to put its provisions into practice. Recognizing and appreciating the provisions for the instrument by various institutions would definitely enhance the country's efforts in its compliance effort.

### **3.2.3 International Labour Standards**

The International Labour Organization is a United Nations agency founded in 1919 to regulate international labour standards in the world. ILO pursues its vision based on the premise that universal lasting peace can be established only if it is based on social justice. It aims to promote rights at work and encourage decent employment opportunities. In its gender policy, ILO supports a two-pronged approach to gender mainstreaming, that is, systematically analyzing and addressing in all initiatives the specific needs of both women and men, and targeted interventions to enable women and men to participate in and benefit equally from development efforts.

## **4.0 Conclusions**

The study has examined the meaning of gender to clarify its distinction with sex, terms that have frequently been confused. National instruments that address gender have been examined and the benefits accrued from their implementation highlighted. Although there is no penalty to organizations that fail to incorporate some of the guidelines, organizations that comply are likely to reap from its superior image to not only the government but the general public. International instruments have too been explored, and their interaction with the national guidelines elaborated.

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