

**REPORT OF THE GENDER FORUM HELD ON THURSDAY, 28TH MAY
2009 AT THE NAIROBI SAFARI CLUB (LILIAN TOWERS) HOTEL
FROM 4.00-6.00 PM**

**TOPIC: “AN INTRODUCTION TO THE INSTITUTIONAL REFORM
AGENDA: PROPOSAL FOR POLICE REFORM IN THE JUSTICE, LAW
AND ORDER SECTOR”**

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Background

An Introduction to the Institutional Reform Agenda: Proposals for Police Reform in the Justice, Law and Order Sector, is part of the Kenya reform agenda broader issues which the Gender Forum is engaging on this year. This is as a build up on the dialogue and interventions that began last year after the signing of the agreement on the Principles of Partnership of the coalition government that stopped the violence which erupted after the post election disputed results. The forum has so far focused on gender specific legislative reforms. The subsequent forums will concentrate on aspects of institutional reforms, to start with reforms in the rule of law sector- (judiciary, police, prison) and thereafter discussions on electoral reforms which include parliament, public financial management reform with emphasis o gender budgeting, public sector reform and constitutional reform. The last series of forums will evaluate the post election reform institutions which are the Special Tribunal on Post Election Violence, The Truth and Reconciliation Commission -TJRC and the National Cohesion Commission.

Prof. Macharia Munene of United States International University- USIU set the stage for the key speaker of the day. He gave the historical background of reforms in Kenya and the reasons why people demands for reforms. He also highlighted the effects of reforms if not well thought out and being carried out by people with the wrong motives.

Dr. Murunga brought out issues of history, political reforms and gender issues in the police reform agenda. He noted that the stumbling block to police reforms have not been the police themselves over the years, but the regimes of the day. The regimes have used the police force to achieve their objectives from the public by coercion. Kenya being a patriarchal society, women have been left out in the police force and the few are out done by their male counterparts in the forces. The police force mishandles gender issues like gender based violence and rape.

The forum brought out the complexity of the police force which is crucial if any meaningful changes will be made and implemented to professionalize the forces for public service.

Introductory Remarks

The HBF Gender Programme coordinator, Wanjiku Wakogi invited the participants to the forum. She reminded the forum participants that this year's forums were to focus on reform agenda. She introduced the topic of the day and the presenters, Prof. Macharia Munene from the United States International University (USIU) and Dr. Godwin Murunga from Kenyatta University. She then invited Prof. Munene to set the stage for the main speaker, Dr. Murunga.

Presentations

Prof. Macharia Munene – An Introduction to the concept of institutional reforms

Prof. Munene introduced the debate by raising some critical questions for consideration in the debate on institutional reform. His presentation sought to ignite reflection on the rationale and process of reforms in order to ensure that there is clarity in the principle behind the reforms agenda that Kenyans seek, as well as an appreciation of the divergence between Kenyan's expectations and the realities on the ground.

He began by explaining that the concept of reforms is not new in Kenyan history. He gave the example of the constitution of Kenya, whose demand for reforms began in the early 1990s. He however posed the question of whether it was the document that had a problem, or whether it was the people that were administering the document that had a problem. The document needed good people to implement it, and it is thus important for there to be both a good document as well as good people to implement the document.

Why call for reforms?

People call for institutional reforms due to inadequacy or the feeling that something is wrong. Rarely however do we change the people, we normally focus on the institutions. We have been

complaining about the police, judiciary, parliament, universities and politicians for the longest time. There is a call for change or reflection on what we want changed.

What is being reformed?

It is important for us to ask ourselves whether it is the philosophy that informs our country that needs reforms, or whether it is the structure (institutions) that need reform. If it is the philosophy (i.e. the mental process that changes the way we think) then we need a lot of work and thought as well as deep reflection. We must ask ourselves if it is the entity called Kenya that we want, and if so, then also ask ourselves who is a Kenyan? What are the rights of Kenyans? Are these rights applicable to all? Are they applicable collectively? If it is the structure (institutions) then this is a mechanical issue. We can call experts to fix the problem. This view presumes that the philosophy is okay.

Prof. Munene also encouraged a reflection on the directional push of the reforms agenda. He asserted that if Kenyans themselves are calling for the reforms, then that is fine. He however noted that donors (development partners) are similarly calling for reforms in this country, making demands and calling for action. He urged for caution and due consideration, and posed the question of whether they are doing it for Kenyans or for other interests.

Regarding the process of institutional reforms, Prof. Munene urged participants to consider the following questions; Are they the problem or are they a representation of the wider community? Who is doing the reforms, who are calling for them and for what purposes? Are they going to be conducted by the people who messed up with the institutions? If the people in the driving force are questionable are they likely to come up with something good? If the political elites are in charge of the process, are they in touch with general public? Do they mostly speak and not do? It is important for the elites to be in touch with the public agenda otherwise a funeral of the reforms is likely to follow when the elites are detached.

He concluded by indicating that some countries have been lucky to have genuine people implementing the document they were entrusted to implement, i.e. the constitution.

Dr. Murunga - Police Reform Agenda

Dr. Murunga highlighted that his discussion would raise a few issues about the history, political processes, and gender *viz a viz* police reforms. He began by posing that the main stumbling block to police reforms is the state and not the police. It is not in the interest of the state and political class to institute reforms because the police are the tool for silencing and oppressing others, yet we invest in the state to institute these same reforms.

The process of demanding for institutional reforms has historically proceeded from an activist and confrontational context. However, he noted that there is now need for dialogue instead. There are two general sources for the demand for institutional reforms in Africa.

The first is donor driven that is neoliberal in nature, and which has argued that the problem has been the centralization of power. Everything has been blamed on neo-patrimonialism which is top down and intended to benefit and legitimize bourgeois rule and create a conducive environment for investors. The state is supposed to play the role of a night watchman to secure the preceding environment. The role of police here is to raid any groups resisting reforms. This type of agenda supports development feminism. The second is a nationalist driven agenda. As a general source for the demand for institutional reforms, it aims at altering state/society relationships.

The two tend not to have faith with gender equity or the empowerment of women. They lead to state feminism (feminist based provisions determined by the state). The key alternative to these two is to have a state where people have control over their leaders.

The police force – historical perspective

Dr Murunga noted that the police was a child of colonial suppression and subjugation. By 1920 the police had a sketchy history. Coercion tended to prevail during the colonial period. The police force tended to focus on settled and urban areas; all others were under native laws. This dual system became a problem of professionalizing the force in 1930. The conflict in the period 1930 - 1960 was with professionalizing the force on one hand and the need to retain state centered policing on the other. In the 1950s there was an attempt by the colonial administration to reform the police. This was because the home guards were using excessive force and murdering the Mau Mau fighters.

Dr. Murunga cautioned that the Kenyan state is notoriously patriarchal and women are socialized to be significant to the men dominated society. Men focused on regime building at the expense of nation building. By taking the institutions of trade unions, judiciary and police the attempt to centralize power were all meant to control the resources from the majority of Kenyan men. The police force thus simply reflects the state. Women have historically been recruited to the police force but they adorn a masculine mask. The training has been inhumane. Furthermore, the female presence in the force is overshadowed by the sex ratio and the fact that few women ever rise to senior positions of leadership. Police he said, have a horrible way of addressing gender issues like gender violence and rape. These crimes are committed with impunity, the most recent being in the post election violence in 2007, 2002, 1997, 1992 and during the referendum in 2005.

The police force needs to acquire a feminine face. There are many incidences of military/ force of brutality against women. He gave an example of the recent case in Mt Elgon where the military raped a woman as she was not pregnant. Rape was also used as a tool against men. The Waki commission drew this relationship to cite the increased level of gender violence during the post election violence in 2007 and early 2008. The force has been privatized and only those who can afford to get the service.

He therefore argued that it is important to undertake reforms in the police force. But before then Kenyans need to ask themselves if there can be police reform without state reforms. They also must inquire whether the police can have a gender impact without having a critical mass of women in the force.

Previous police reforms have been lukewarm. Those concerned with gender have focused on the establishment of gender recovery centers and proposed having female officials in the force. But, all the reform procedures have been cosmetic though they nevertheless indicate that the political class and police have realized their irrelevance.

Two things are needed to ensure a legitimate police service. First, police reforms must be based on a genuine reform of the state. Second, the reforms in the police force must be spearheaded by an independent force from within the security sector. There is need to create autonomous space for a professional unit to spearhead reforms independent of the state and its political class.

He concluded his presentation by emphasizing the need for concerted efforts towards a culture of constitutionalism and an independent force to give security to those who needs it most, women and children.

Plenary

Following the enlightening presentations by the two panelists, the participants then took the opportunity to air their views and voice their concerns on the topic of discussion, raising the following pertinent issues:

Kenyans need to reclaim their sovereignty, there are two set of laws in the society one to protect the rich and the other to oppress the poor. Participants questioned if mass action would be appropriate in reclaiming their sovereignty? Bearing in mind that rights are not given on a plate, there must be a struggle well fought to avoid deaths. Enemies of mass mobilization and conscious creation are there.

There is need for a genuine renegotiation between the society and the state to get a service oriented police force. It is important to embrace the force. There are those who do their work, but there is a culture in place in the force which has its history.

Some of the leaders in power are very ignorant and dishonest yet they think they know. However there are some who are good and honest. The whole process is political and if the politicians are not genuine it is a waste of time as we cannot avoid them. The influence of foreign power cannot also be ignored, like in the case of the 2005 referendum.

Kenyans are ready to give bribes to the force. As a society we have failed in providing the force with necessary equipment to carry out their work. The issue of the force being well educated is historical as they needed to act without reasoning as long as they are well built to beat up. If the quality of education is improved it will help. The curriculum needs to be reviewed for them to be humane and inculcate the right philosophy.

The need to dismantle the entire neo colonial mentality on the perception of the police force was strongly felt by the participants. There is need to create conscious on how men/society perceive women and realize importance of supporting women. Feminism in general has not been interested

in dominating men. It has provided room to mobilize for change that embraces women involvement in a more just society.

A lot of similarity was drawn between the women who have made it in politics and those in the police force. However there are women who have succeeded without being masculine. A better society could be established without universal sisterhood of women and brotherhood for men. Women need to be themselves.

How will be able to disengage from foreigners? We should avoid getting to the situations that make us slaves to the donors. They are good as long as they respect the sovereignty of Kenya. Let us not be naïve that every donor means well.

The forum raised the need to examine the penal code as the country engages on the reforms. Some laws need to be done away with while others require synthesis and made public.

Participants wondered what ate up the people in government as most of them came from the civil society where they seemed committed to change. The problem is that most of the people are recycled from the former regimes.

The participants felt that negative masculinity was being challenged instead of the methodologies and formations used. The model for a different approach however existed and what lacked is the willingness to implement. Sources about crime can be done through dialogue and not coercion.

It was noted that as Kenyans we have been taking part in running down our institutions. Society has forwarded the unemployed youth to serve in the police force and in return they bring in their frustrations to the force.

Conclusion

Wrapping up the edifying discussion on police reforms, Wanjiku Wakogi thanked the panelists for their informative and thought-provoking presentations and invited all participants to attend the next forum which shall be communicated in due course.