

# UPR Kenya - Quaker Peace Network (QPN) Africa

Preventing election violence by enhancing women's inclusion and stronger electoral processes-

## Introduction

Quakers in Kenya have been inspired by Quaker Faith and Practice espoused by Early Quakers that is manifest in Quaker Values in Action. This practice involves living the Quaker Peace Testimony, promoting social justice and human rights as well as being stewards of the environment.

Part of the peace building programs in the country have been in the fore front in championing for the rights of the marginalized groups including women and youth, most of whom are victims of cultural, economic as well as political injustice. The work of peace building organizations has become more challenging in the past decades due to changing forms and nature of cyclical electoral violence.

Given the complicated dynamics surrounding the electoral period, and the potential for elections to ignite political violence and harden ethnic divisions, Quakers in Africa took up the role of the witness with a conviction that witnesses play a key role by watching for signs of escalation and calling attention to other parties who can intervene. By documenting their observations, sharing their perceptions, and analysing their own role, witnesses can link to advocacy movements to pressure powerful actors to end violence, promote increased engagement from civil society, and work with the media to encourage a peaceful and just response. The act of witnessing alone can often help prevent violence.

Quakers in Africa have been engaged in Election Observation and Monitoring through the Quaker Peace Network (QPN) Africa. This interest was motivated by the increase in election related violence across that caught most peace building organizations unprepared and hence forced to respond to ensuing crises. Election Observation and Monitoring has therefore been undertaken as a preventive measure with a conviction that the presence of QPN members on the ground before, during and after elections this exercise helps to identify pre and post-conflict strategies. It is from the years of experience that Quakers in Kenya have come across different forms of human rights violations committed during electioneering period.

**For purposes of UPR, the group chose to focus on two vulnerable groups; violence against women and youths who fall prey to political mobilization, recruitment and victimization.**

- 1. Gender Based Violence - marginalizing women and undermining access to civil and political right Issue:** Increased cases of violence against women and girls that are widespread in most parts of the country, prevalent forms include rape, defilement, and sexual assault.

## Positive developments

- 1) The promulgation of the new constitution in 2010, Kenya has been struggling to realise Article 27(8) of the Bill of Rights provides two thirds gender requirement
- 2) The National Gender and Equality Commission is an independent constitutional Commission. It was set up through an Act of Parliament in August 2011 to promote gender equality and freedom from discrimination.
- 3) The two- third gender rule laws (amendment) 2015, an ACT of Parliament to amend various laws; to give effect to Article 100 of the Constitution; to promote the representation in Parliament of women, youth, persons with disabilities, ethnic minorities and marginalized communities in elective and appointive positions and for connected purposes

## Violated laws

1. The Constitution of Kenya – Chapter V- Fundamental rights and freedoms of the individuals

2. The Penal Code: Sexual offenses that include rape (section 139-141), defilement (145-146), Indecent assaults on females (Section 144), Abduction (143 -144)
3. Elections Offenses Act No. 37 of 2016, specifically #10: Undue influence #11: Use of force or violence during election period.

**Root Causes:** The acts of violation result from practices that are deeply rooted into the socio-cultural norms of communities although some are due to individual and random acts of crime, which dehumanize and lower the dignity of women. Most of the incidences of GBV go unreported and therefore are never prosecuted by law and even where they are reported, they are not well addressed due to negative attitude of the police officers who dismiss such cases for lack of evidence. During previous elections women aspirants have been threatened, verbally intimidated, physically assaulted and denied opportunity to freely exercise their democratic rights by virtue of being female. The patriarchal nature of most Kenya's communities inhibits women's access to their political participation (civic and political rights) and feeding into their underrepresentation at the national level (both in voice and in legislation that reflects their particular needs) Majority women who show an interest in running for political positions are stigmatized, often labelled as divorcees or single women who cannot manage their "homes" and therefore cannot be trusted with leadership. In some communities, literacy levels are still very low and men take advantage of their ignorance to deny them opportunity to participate in political processes by keeping their National Identification Cards. Traditionally, women also experience barriers in regions where traditional leaders influence the choice of political aspirants, often favouring men aspirants<sup>1</sup>. Since the promulgation of the current constitution in 2010, Kenya has been struggling to realise Article 27(8) of the Bill of Rights provides two thirds gender requirement. Political intrigue, chauvinism and apathy contributed to the shooting down a bill that would have given women more seats in the House. Male Members of Parliament opposed to the Gender Bill ganged up to boycott the vote.

#### Reference to previous UPR Cycles and the progress made with regard to the issue/problem raised

Issues	Recommendation	Action/Response
Women's rights	Continue to actively implement all these adopted measures, to safeguard women empowerment and promote gender equality	Sustainable Development Goal 5 affirms that 'Ending all discrimination against women and girls is not only a basic human right, it's crucial for sustainable future; it's proven that empowering women and girls helps economic growth and development. This is on the backdrop drop that at least 1 in every 3 women have experienced gender or sexual violence
Rights of the Child, Trafficking, Women's rights	Prosecute the perpetrators of trafficking and sexual exploitation of women and children	
Rights of the Child, Women's rights	Set up special units in the justice and health systems to deal with gender-based violence and discrimination	

<sup>1</sup> A Gender Analysis of the 2017 Kenya General Elections (National Democratic Institute and FIDA Kenya, February 2018).

Rights of the Child, Women's rights	Take all possible efforts to strengthen protection for women and children against discrimination and violence	
Torture and other CID treatment, Women's rights	Ensure that harmful practices and stereotypes that discriminate against women are eliminated	IPOA needs to be given both investigative and prosecutorial jurisprudence to enable its viability to anchor human rights.
Women's rights	Step up efforts to combat all forms of sexual violence against women	
Women's rights	Make further efforts to properly handle the case of discrimination and violence against women, including the prosecution of alleged perpetrators	
Women's rights	Continue efforts to increase the participation of women in elected assemblies	
Women's rights	Continue efforts to achieve as rapidly as possible the threshold of 30 per cent women in Parliament, as recommended by the Kenyan Constitution	
Women's rights	Pursue efforts to fully recognize women rights, their empowerment and participation in decision-making	

Important to note that;

The TJRC Report of 2013 averred that there was the cover-up of cases of violations of human rights by the State, especially those committed by security agencies. The State has however shown strides towards averting future occurrences of similar heinous acts but very little has been done to compensate and retribute victims of post-election violence for violations of human rights.

### Recommendations

1. Take additional measures to counter electoral malpractices to include (echoing the Committee on the Elimination of Discrimination against Women concluding observations in 2017, para 31):
  - a. Establishing meaningful measures to protect women candidates from violence, a reliable and safe reporting system for victims of election-related violence and timely and thorough investigation and prosecution of perpetrators
  - b. Increasing measures to ensure that women can safely vote during elections
2. Take all the measures necessary to fully implement the two-thirds gender rule in the public sector, in both elective and appointive bodies, and expeditiously adopt and implement – without further delay - the Duale Bill (Committee on Economic, Social and Cultural Rights - Kenya, 2016, para 26).
3. Provide capacity-building on leadership skills and campaign financing to women candidates
4. Ensure the effective implementation of the recommendations of the Truth, Justice and Reconciliation Commission, in a manner that prioritizes women's rights

5. Restitution and compensation for all victims of election violence to the last man
  6. Provide the Independent Policing Oversight Authority (IPOA), judiciary, prosecutors, the police and other law enforcement officials on women's rights and on gender sensitive investigation and interrogation procedures in cases of gender-based violence against women, and train them on the prevention of sexual violence and on codes of conduct with regard to sexual exploitation and abuse.
  7. Ensure the judiciary, prosecutors, the police and other law enforcement officials the fully cooperate with the IPOA
  8. Ensure that the IPOA enhances its gender components in its Strategic Plan (2019-2024) to go beyond conducting inspections and making recommendations on improving gender balance in the Police Service towards:
    - a. Ensuring law enforcement entities implement gender sensitive investigation and interrogation procedures in cases of gender-based violence against women
    - b. Ensuring they are trained on the prevention of sexual violence and on codes of conduct with regard to sexual exploitation and abuse
  9. Ensure civic education and gender equity awareness in schools.
  10. Increase opportunities to empower women, including through bursaries for women's access to higher education, the creation of an effective system for enforcing the existing quota systems and the Access to Government Procurement Opportunities
  11. Rescind the limit on foreign funding of non-governmental organizations that currently limits the work of women human rights defenders
  12. Support the National Gender and Equality Commission in executing its mandate beyond the capital city to reach local communities, through for instance mobile teams or assigned focal points in local administrations.
- 2. Youth and Violence**

**Issue: Political mobilization, manipulation, recruitment and victimization of youths during electioneering period**

**Positive development**

1. The Youth Enterprise Development Fund (YEDF) was established in December 8, 2006 through Legal Notice No. 167. It was transformed into a state corporation in May 11, 2007 through Legal Notice No. 63. The Fund focuses on enterprise development as a key strategy for increasing economic opportunities for youth as a way of enabling them to participate in nation building. YEDF focuses on multiple areas, namely to provide capital to young entrepreneurs, avail business development services, facilitate linkages in supply chains, and create market for goods and services produced by youth enterprises
2. The Ministry of Youth Affairs and Sports oversees development and implementation of youth related affairs
3. Enactment of the Youth Employment Authority that will ensure youth access to meaningful skills and employment opportunities hence less vulnerable to political manipulation.
4. IPOA ACT No. 35 of 2011, An Act of Parliament to provide for civilian oversight of the work of the Police; to establish the Independent Policing Oversight Authority; to provide for its functions and powers and for connected purposes

**Root cause**

Unemployment Rate in Kenya remained unchanged at 11.50 percent in 2017 from 11.50 percent in 2016. Kenya's youthful population constitutes 76 per cent of the population, estimated to be about 39 million people. According to the World Bank, Kenya's population of 44 million is growing at a rate of 2.5 per year, and 9 million more job seekers will enter the market by 2025. The World Bank estimates that approximately 800,000 Kenyans join the labor market each year, and only 50,000 succeed in getting professional jobs. A majority of this youthful population therefore remains unemployed at 40 per cent, and 70 per cent of those unemployed are between the ages of 15 and 35. Idle youth are vulnerable to political mobilization and recruitment and this is motivated by economic self-sufficiency. Some groups are already organized with clear coordination structures which politicians would easily tap into for their selfish gains, mostly violent attacks, harassment and intimidation of opponents. The mobilization continues to take a more threatening trend of 'MY BOYS' for almost every politician allegedly meant to them provide security.

Impunity is so entrenched into Kenyan society characterized by failure to bring perpetrators of human rights violations and economic crimes to justice. In many cases, the Government of Kenya has resorted to such mechanisms as task forces, select committees, commissions of inquiry criminal investigations whose findings have never been known and even where they have been shared, nothing has been implemented and thus a waste of public funds. Instead suspects mentioned in the reports are rewarded with state jobs where they enjoy state security. The Kenyan police act with impunity evidenced by the increase in extrajudicial killings. Peaceful demonstrations against electoral process have often been met by excessive force from the security agents including use live ammunition and tear gas and many youths have fallen victims to these violations. The Luo region of Nyanza is normally perceived to be opposition zone and is always affected by electoral violence. The main perpetrators are youths who unfortunately also bear the brunt of it. The Amnesty International report for 2017/2018 elections reported that dozens died in the violence, including at least 33 people who were shot by police and of whom two were children.

### Specific laws

1. Elections Offences Act No. 37 of 2016, specifically
  - #10: Undue influence
  - #11: Use of force or violence during election period
  - #12: Use of national security organs
2. Article 37 of the 2010 Constitution guarantees the right to peaceful demonstrations.
3. Public Order Act regulates the organization of public marches and demonstrations, requiring in its Section 5(2) that the conveners of public meetings or processions notify in writing the regulating officer at least three days but not more than fourteen days in advance, for purposes of ensuring orderliness of the meeting. This 'notification regime' to
4. Kenya National Youth Policy (2018)-Draft

### Reference to previous UPR Cycles and the progress made with regard to the issue/problem raised

Issue	Recommendation	Action/Response
Justice	End impunity for the perpetrators of violence related to the 2007 elections	

Elections, Justice, Impunity	Fight against impunity of perpetrators of violence after the 2007 elections and ensure the follow up to the recommendations of the Truth, Justice and Reconciliation Commission	
Elections, Impunity	Take further measures at the national level to prevent impunity of the perpetrators of the post-election violence	
Human rights violations by state agents	Ensure greater accountability and transparency of police and security forces, including by publishing the results of investigations by the IPOA	
Human rights violations by state agents	Continue to strengthen internal accountability mechanisms for all security agencies, including by investigating and prosecuting members of security agencies responsible for human rights violations	
Human rights violations by state agents,  Torture and other CID treatment	Investigate and bring to justice alleged perpetrators of all cases of torture and use of excessive force by security forces	
Freedom of association and peaceful assembly, Freedom of opinion and expression, Freedom of the press, Human rights defenders	Guarantee freedom of expression, press, associations and peaceful assembly of journalists, activists and participants in demonstrations	

## Recommendations

1. Ensure offenses under the Electoral Offences Act are impartially and rigorously investigated by the Directorate of Criminal Investigation and the Director of Public Prosecution, and that those perpetrators are brought promptly to justice.
2. Ensure Kenya National Youth Policy is being developed in cooperation with civil society actors, particularly those working on election violence and youth, peace and security (UNSCR 2250) to ensure those elements are included in the Policy.
3. Combat hate speech including in election periods and ensure the Elections Act is enforced to the letter by the Independent Electoral and Boundaries Commission by:
  - disqualifying politicians found culpable of committing election offenses, especially with regard to the mobilization and recruitment of youths into vigilantes.
  - increasing the powers of the Director of Public Prosecutions in the initiation of proceedings and the responsibilities of the National Cohesion and Integration Commission, at the same time enhancing its independence
  - Amending its legislation to align it with article 4 of the Convention on the Elimination of Racial Discrimination (Concluding observation from the Committee on the Elimination of Racial Discrimination, 2017, para 14)

4. Reform the electoral structure to ensure electoral integrity so as to safeguard democracy and inclusive governance - the current winner takes it all model is a recipe for a violent trajectory.
5. Explore possibilities for a multi-agency UN electoral oversight body to further support the Independent Electoral and Boundaries Commission and offer investigations into and resolutions of contested results.
6. Ensure local and International bodies conduct validation workshops to discuss sources of enhanced acrimony in their reports prior to finalizing the public report to help safeguard stakeholders from accusations anchored on a single observer report.
7. Increased funding for the IPOA to ensure it executes its mandate and duties to the full. Give ordinances and statutes to IPOA for it to credibly execute its mandate.
8. Ensure full implementation of the recommendations made by the Truth, Justice and Reconciliation Commission and provide proof that remedies have been provided to those affected by the 2007

**Quaker Peace Network (QPN) Africa, July 2019**

**Quaker Peace Initiatives (QPIK) Kenya. July 2019**