

## Entrevista con Ann Njogu



Ann Njogu, activista keniana por los derechos humanos de las mujeres, estuvo en la inauguración del XXIX Curso de Derechos Humanos del Institut de Drets Humans de Catalunya, donde le preguntamos sobre la situación de los derechos humanos en Kenia y, en general, África.

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**-Ms. Njogu, thank you for having accepted this interview for the “Huri-Age” Bulletin. Let me start by asking how would you define the human rights situation in Kenya?**

-Between December 2007 and March 2008, Kenya faced its worst political, governance and human rights crisis yet. Unlike in the previous general elections since 1992 when the ruling Party used politically motivated violence to diminish the vote of their competing Political Parties in the opposition as a strategy of rigging, the post election violence went beyond the control of the political system and degenerated to a state of total breakdown of Law and order. Three months of a political stalemate fertilized by the contested presidential election results, undermined the foundation of the nation, the economy and extensively created a climate for the violation of citizens' rights.

Kenya's constitution has always failed to cover the nakedness of all the citizens and only padded and secured the comfort and security of a few privileged citizens. The constitution had

established a government that was unresponsive to the rights of the poor and the majority of the weak citizens who are mainly women, the youth and children. This enduring legacy had created and fertilized a culture of impunity, the abuse and disregard of the institutions of the state, lack of accountability and a culture that disregarded international norms and standards of governance and Human rights protection and promotion. From this cultural context, the politics of exclusion had taken root. Kenya's politics of exclusion were powered by the winner takes-it-all, first-past-the-post electoral system that made elections a life and death affair where the losers also lose all in the political system. This paradigm had been legitimized by the then expired one-Party- state constitution that had failed the interests of Kenyans but promoted the interests of the ruling class, particularly those in the ruling party and in public office.

The said constitution arrangement had engendered the capture and instrumentalization of state institutions by the elite. State institutions like the cabinet, Parliament, the judiciary, the police force, the military as well as other social institutions such as the media and religious organizations had since independence come under the total and stifling elite capture. The outcome of this elite capture of state institutions was a fractured political and social system that was completely incapable of effectively governing the state and nation. State institutions are neither neutral nor competent to govern and are therefore largely resented by the public and its officials; who are seen as a new breed of occupying forces who are far removed from the struggles of the masses of the people.

The following human rights continue to plague the country :- Extra judicial killings, torture, rape and use of excessive force by police and the military; Illegal and unlawful renditions of the Kenyan people; Official corruption and impunity; harsh and life threatening prison conditions; arbitrary arrest and detention; arbitrary interference in the home; prolonged pretrial detention; executive influence on the judiciary; restrictions on freedom of speech, assembly, and of the press; forced return of refugees and societal abuse of refugees including killing and rape; violence and discrimination against women including female genital mutilation (FGM); child prostitution and labor; trafficking in persons, including recruitment of child soldiers and minor Internally Displaced Persons (IDPs); interethnic violence; and lack of enforcement of workers' rights.

Other rights including right to health, water, education inter alia continue to be threatened if not out rightly violated. Impunity and corruption that is ingrained in the ruling class continues to be a leading cause of the human rights violations. The massive inequalities that exist also exacerbate an already bad situation. Unlawful and illegal renditions of the Kenyan people by state organs are not unusual.

This was the case in the Mohamed Hamid Suleiman rendition to Uganda on suspicion of being involved in the twin Uganda bombing. In deciding the matter Justice Muchelule said that anti-terrorism action cannot be invoked to justify rendition of Kenyan suspects to Uganda. He further declared that the arrest, detention and rendition of the suspect to Uganda to face charges was illegal and that the suspect was Kenyan citizen who was immune to expulsion from the country for any reason thereof.

In yet another case in the High Court of Kenya, Justice Warsame reprimanded the Head of

State for allowing the police to rendition suspects to Uganda to face charges in direct contravention to the Bill of Rights inherently enshrined in the new constitution and against the Rule of Law. To date, the Kenyans are yet to be brought back to Kenya. One of them is a leading human rights activist, Alamin Kimathi who had been at the fore front of demanding that the Government respect the rights of Kenyans. He now faces over 70 counts of murder over the said bombings and is the subject of a current international outcry.

After years of struggle and advocacy for a new constitution, Kenyans went to the referendum and voted for a new constitution on 4th August, 2010. On the 27th August, 2010, the said new constitution was promulgated and is now the supreme law of the land. Under the same, the sovereign power of the people is centrally anchored throughout the document and categorically lies with the people. The Values and principles which Kenyans want to be governed under are enshrined therein and include equality, participation, inclusiveness, transparency and accountability, rule of law amongst others.

The said constitution has extensively enumerated the key human rights that inherently belong to the people and which meet the international standards as enshrined in international treaties and covenants that Kenya is a signatory to. Kenyans also changed the system of governance (from a total authoritarian executive to parliamentary democracy. The same has also provided for devolved governance all the way to the newly created counties thereby making it possible for Kenyans to participate and be involved in the running of their governments not to mention the ability to set agenda on priorities.

In the New Constitution, it is expected that state institutions that have hitherto served to oppress the people's human rights shall be reformed and streamlined. These include key institutions like the judiciary, the police, the public offices et al. Further, it is expected that the rogue executive shall be reined in once and for all and thereby be accountable and responsive to the people. Within the New Constitution, it is expected that a new culture that respects the rights of the citizens shall replace the hitherto culture and practice that put people subservient to all other interests' particularly narrow and selfish interests of the political class.

### **-What is the Situation of Women's Rights in Kenya and Africa in General?**

Poverty and patriarchy remain two serious obstacles to women's equal rights in Kenya.

Kenya has always been a patriarchal society with the male gender occupying the top of the food chain so to speak and women being subjected to gross human rights abuses. Women have continued to be excluded, marginalized and generally have had their rights violated. This is despite fact that Kenyan women contribute to over 80% of the agricultural work force yet do not own even 5 % of the country's land. In spite of all their hard work that contributes to National growth, most of their labor is unremunerated to say the least. Women make over 60% of the countries poor and who live on below a dollar a day.

Women's rights as regards health are still a tenuous subject as regards access to reproductive rights and maternal health. The Overall Health situation of the Kenyan population is characterized by low life expectancy, high maternal, infant mortality, and high morbidity from

preventable diseases. There is an estimated 414 deaths of mothers per 100,000 live births, with the target in the Millennium Development Goals being 170 out of 100,000. This is in part due to the high burden of unsafe motherhood with wide regional differentials as regards access and quality of Reproductive Health services. This is in addition to social cultural barriers that limit women's access to reproductive health services or information on the same. As discussed above, reproductive health services are neither accessible nor attainable for a great majority of women in Kenya, especially those in arid and semi-arid areas in Kenya.

Women's rights in Kenya have been greatly subjugated over the years and wife beating is prevalent and largely condoned by society. Government statistics indicate that over 30% of Kenyan women are in violent relationships while over 60% of women aged between 15-45 years have experienced sexual violence. However the available statistics probably understate the number of incidents, as society frowns on women who report violence in the family as these are viewed as matters that should be sorted out within the confines of the family. The rate of prosecution of perpetrators of domestic violence also remain low because of cultural inhibitions that view the subject of sex as taboo, fear of retribution, disinclination of police to intervene in domestic disputes, and unavailability of doctors who otherwise might provide the necessary evidence for prosecution. Traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. There is no law specifically prohibiting spousal rape even in the Sexual offences Act that sought to tackle every form of sexual violence against women.

Women political representation remains a big hindrance to the advancement of the female agenda on equality. Women who may want to join politics may be intimidated by violence or other forms of intimidation by their male counterparts to ensure that they do not stand for election, thus ensuring the continued dominance by the male gender in parliament.

In the area of education, great strides have been made in ensuring that both the boys and girls access primary and secondary education. It is however a fact that retention of girls in schools is still a huge challenge due to high rates of pregnancy of girls in schools, FGM and early marriages, preference of boys to get priority over girls in such opportunities in school among other challenges.

The Status of women and girls is expected to change with the adoption of the New Constitution which has very progressive clauses on gender equality and equity. Article 27, (3) of the New Constitution lays a solid foundation on the position of women in Kenya and states that 'Women and men have the rights to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.

The state is also succinctly directed by the constitution not to discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital or health status as well as religion, color age or any other distinction. Under the said Constitution, women will now have equal rights to own, inherit property while accessing and controlling resources. They will also have equal rights on property during, within and after marriage. Women will have equal rights over citizenship and to pass citizenship to their children and spouses unlike in the past when they had no such rights. Under the affirmative action clauses, women will now be able to have critical representation in public offices (both elective and nominated) as the constitution

categorically states that no one gender shall occupy more than two thirds of any elective or nominated office. This will greatly increase women's participation in politics and decision making organs.

The situation in the rest of Africa remains as tenuous as that in Kenya despite many successes in empowering women, numerous issues still exist in all areas of life, ranging from the cultural, political to the economic. For example, women often work more than men, yet are paid less; gender discrimination affects girls and women throughout their lifetime; and women and girls are often the ones that suffer the most poverty.

In South Africa for example, one of the most urgent matters that needs to be addressed is the shocking levels of violence against women. South Africa has one of the highest incidents of rape in the world. In the home it is estimated that one in three married women suffer domestic violence

However there have also been great strides in South Africa on the women's rights. Women's political participation is enshrined in voluntary quotas that enable women to have reasonable representation with a critical mass. There have also been a number of pieces of legislature passed by the South African Parliament that have looked into women's rights, among them being:

1. The enactment of the Labor Relations Act, which recognizes women's rights against sexual harassment in the workplace and their maternity rights.
2. The Employment Equity bill that requires employers to employ equitably across the lines of race, gender and disability.
3. And perhaps the most celebrated piece of legislation granting women the right of choice -- the Termination of Pregnancy Bill is now law. That now allows women to have control of their own reproductive health rights
4. The Domestic Violence Law also seeks to outlaw the practice and these are all steps towards transformative change in favor of women.

Apart from the laws that have been enacted, a Commission on Gender Equality is now running, and is looking into the gender equality and equity across board in South Africa. Some of its findings have been shocking. For example, its findings revealed that a white man is 5,000 times more likely to be in a managerial position than a black woman. This shows that more still needs to be done on this issue to entrench equality and equity between the sexes.

Rwanda has provided global leadership as regards women in political participation and decision making. Women now hold elected office, with more than half of its parliament seats filled by women.

Cape Verde, another African high achiever, has had the highest level of cabinet ministers in the world at last count, about eight out of 10, being a majority women led parliament.

Liberia has had the distinction of having elected the first female African president, Ellen Sirleaf Johnson, who took office in January 2006. This was such an unprecedented occurrence in Africa and is still hailed as an example of the achievements that women can make.

In Eritrea, the struggle to combat the scourge of Female Genital Mutilation that is rampant in the country, culminated in the initiation of community laws banning the practice. On the basis of these initiatives, the government of Eritrea banned the practice in March 2007. Following agitation from the National Union of Eritrean Women, whose efforts to abolish FGM began as far back as the late 1970s - even before the formal independence of Eritrea in 1993 - by the then de facto government, the Eritrean People's Liberation Front.

**-What is your opinion on the African mechanisms for the protection of human and peoples' rights (Commission, Court)? Are they well known in your country?**

-The right of every individual to enjoy the highest attainable standard of physical and mental health and life is an inherent human right as recognized in major human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the International Convention on the Elimination of all forms of Racial Discrimination, among others.

Among the African instruments for the protection of human and people's rights include the following:

- The African charter on human and People's Rights (Banjul Charter)
- African charter on the Rights and welfare of the child
- The Maputo Protocol on Women's rights.
- Protocol to the African Charter for human and people's rights establishing the African Court on human and People's Rights

The African Commission on Human and People's Rights was established by the African Charter on Human and People's Rights which came into force on 21st October 1986 after its adoption in Nairobi, in 1981 by the Assembly of Heads of State and Government of the Organization of African Unity (OAU). The African Commission on Human and Peoples' Rights is charged with ensuring the promotion and protection of Human and Peoples' Rights throughout the African Continent, with its headquarters in Banjul, The Gambia. The commission via the mechanisms in the charter is supposed to protect and promote the rights enshrined therein.

In addition to performing any other tasks which may be entrusted to it by the Assembly of Heads of State and Government, the Commission is officially charged with three major functions:

1. the protection of human and peoples' rights
2. the promotion of human and peoples' rights
3. the interpretation of the African Charter on Human and Peoples' Rights

In its endeavor to fulfill the above major functions, the commission is tasked with doing research and presenting papers on Africa's problems in the field of human and people's rights; formulate and lay down legal principles on human rights, the basis of which member states can base their national legislation; as well as cooperating with other African or international organizations

concerned with the promotion and protection of human and people's rights.

The protocol to the African Charter on human and People's Rights established the African Court on Human and People's Rights in Article 1 of the protocol. The court in essence upholds the mandate of the commission which is to protect the human rights of all member states of the African Union. The jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant Human Rights instrument ratified by the States in the African Union.

While these instruments are available, there is need to create higher awareness and presence in Kenya and the rest of Africa as a whole. There is also need to leverage their provisions by using them more to seek to hold the African Governments to account.

**-As a female lawyer, how do you and your organisation tackle the low awareness of women's real needs and rights in the African society?**

-CREAW has been at the forefront of transformative changes in Kenya. CREAW with other human rights and women's organizations were at the forefront of advocating for the passage of the new constitution. CREAW continues the civic education on the said constitution across the country.

In February, 2011, CREAW demonstrated leadership and formidable presence in the filing of a suit against the government and the Attorney General in particular, to protest the nominations made by the President for the constitutional offices of Chief Justice, Attorney General, Director of Public Prosecutions and the Director of budget- appointments that were not gender sensitive, with none of the nominees being a woman. CREAW led the entire women's movement under the banner of the G10 in filing the now famous Petition no. 16 of 2011 constitutional reference that challenged the Presidential nominations on grounds of their being in violation of the new constitutional values, principles, letter and spirit. This suit led to the landmark decision by High Court judge Mr. Justice Musinga that the said nominations were unconstitutional and a declaration that the same could not be upheld unless and until the issue of gender parity inter alia was addressed.

CREAW seeks to tackle the low awareness of women's real needs and rights through evidence-based programming, research, lobbying and advocacy for reforms. Through all these CREAW has become instrumental in pushing the agenda for the realization of women's rights in Kenya.

CREAW does this through its various programmes, namely: the legal advocacy program, the human rights, research and advocacy program, community empowerment program and the peace and justice program. Through all the above programs CREAW runs projects on human rights awareness; provision of legal advice and legal representation on matters of domestic violence, sexual and gender based violence as well as carry out trainings at the community levels in many parts of the country. CREAW also runs projects that offer training to community educators on various issues ranging from sexual abuse in schools to spousal rape, so that these educators can carry the torch of awareness to the grassroots level in every village or

town across the country.

The peace and justice program for example was instrumental after the 2007 Post Election Violence that had fostered great animosity between ethnic communities especially in the rural areas. CREAM through this program sought to educate women on the role they had to play in the realization on national cohesion after the crisis. In addition CREAM offered legal advice and representation to victims of sexual violence so as to present their cases to the Truth, Justice and Reconciliation Commission for redress and hearing of their grievances.

For more information on the work of CREAM, please visit [www.creawkenya.org](http://www.creawkenya.org).