



Prof. Sally Kenney, a gender and justice expert and a professor at NewComb Institute of Tulane University in the USA, arrived in Kenya and sat with the KWJA on the 8th of August 2016 and gave a one hour presentation on “Breaking the Glass Ceiling in the Judiciary.”

REPORT ON THE KWJA
SESSION WITH
PROFESSOR S.
KENNEY

Milimani High Court
Building
Monday, 8th August, 2016

“BREAKING THE GLASS CEILING” PRESENTATION by Professor Kenny

Prof. Kenny, a gender and justice expert and a professor at New-Comb Institute of Tulane University in the USA, took us through her presentation “Breaking the Glass Ceiling in the Judiciary, in which she highlighted the plight of women even those in leadership positions and how it is still a challenge to acquire those positions regardless of the merits they have. She also shared a few insights on the idea of the “Glass Ceiling” one of which was that - **those who complain about the glass ceiling should keep in mind that glass can be shattered if one strikes it hard enough and long enough** and that that is our task to figure out. She also borrowed from the words of one of the congresswomen who said that “the idea of the glass ceiling is an inapt one because it’s not a glass ceiling it’s just a thick wall of men.”

Among the numerous points to note in her presentation include:

- The concept of women & leadership
- Equality in the justice system for all
- The reality that women are always being thought of as the other / second sex and that whatever deals with women is not given as much value as those that deal with men even in instances when it’s the same issue being dealt with by both. This was borrowed from a quote by Simone de Beauvoir.
- The need to acknowledge the similarity in both genders and not discriminate – borrowed from a quote by Sheryl that says “I want every little girl who is told that she is bossy to be told that she has leadership skills.”
- Instead of using the term “glass ceiling which is what we are used to, we may consider using the term “Labyrinth” which is a kind of a difficult maze but some people actually do get through that maze.
- It’s not enough that justice has to be done but that it also has to be seen to be done and also;
- The mandate, objectives and work of an initiative called the **Infinity Project** which she is part of which include educating decision makers on the importance of diversity, raise awareness in the legal profession about why gender diversity matters, demystify the process, keep the numbers of women judges in the public eye growing and publicize them and also celebrate those who support gender diversity.
- The work of a group called **‘Courts Matter’** which isn’t really based on gender but is also doing great work. It’s made up of people who care about voting rights, equality, and money in the campaign trains in

elections. They have been trying to call attention to the broken judicial selection system where there have been so many vacancies and were involved in getting two women to serve in the D.C. Circuit Court of Appeals though it seemed like they weren't going to be confirmed.

- President Obama has done more than all the previous presidents combined to create a diverse and representative Judiciary. He is also the first American president to appoint the first Native American federal judge to the bench. Additionally to his good work with relation to judicial nominations and appointments he also has a campaign called "**It's On Us**" to stop sexual harassment on campus.
- UN Women support for the increase in the numbers of women in the judicial system and their plan to help develop a system that helps track the progress of women globally.

In her presentation, Prof. Kenny highlighted a few cases where there has been an inclination to criticize positions given to women because of their gender.

1. Hon. Lady Justice Bernette Johnson, the first African American Chief Justice, who hails from the state of Louisiana, went through a criticism phase where she met the required qualification for being appointed to the position of Chief Justice in the State of Louisiana, but when it came to her appointment it was questioned whether the requisite terms of qualification, which is having served the longest term, were applicable. She went ahead and fought for the position and got it.
2. There are only four women in the US Supreme Court and the plan is to increase those numbers
3. Hon. Chancellor Liz Truss has also been criticized for not being a lawyer despite the fact that 2 of her male predecessors also didn't have legal qualification.
4. In the 8th Circuit Court of Appeal, Judge Murphy and Judge Kelly are the only 2 female judges total 62 judges and their positions also didn't come without a fight.
5. Lady Justice Brenda Hale is the only female Supreme court Judge despite the numerous vacancies that have been available since her appointment.
6. Hon. Lady Justice Hale was the top performer on every exam but when she was nominated people acted like it was some kind of special preference/affirmative action.

7. The consideration of the first woman judge to the US Supreme Court brought up questions on whether she was being appointed because she is a woman

Prof. Kenny also noted in her presentation that there are no personal solutions to social problems just accommodations. The **Power Break Even Rule** has also been a concern because it has been a wrong belief that there's a scarcity of opportunities for women and so we all need to fight for the available ones and so we don't support each other.

She also took us through a few of the arguments that she has made in her book. Some of which included;

- The belief that somehow naturally and inevitably, in the fullness of time as women take up their rightful positions in the legal profession, their numbers will rise and they will take up positions in the upper niche of the judiciary. Her argument is that **there is no relationship between the number of women and the legal profession or their taking up of positions in the upper niche of the Judiciary** because
 - o In the case of the belief that women can't win elections in the southern part of the US women have successful in being elected into judicial office and so we need to borrow their strategy and possibly use it in the political spheres as well.
 - o In the cases when there being no one monitoring or challenging those mandated to give equal opportunity to all, we can be misled to believe that the situation is doing well if not better. And so there is need to monitor the situation, for instance, the advancement of women in leadership so that those in the positions can be held accountable for their work and opinions.
 - o There's nothing inevitable about progress because it is reversible meaning there have been cases, not just in the US but also globally where positions previously held by women were thereafter given to men.
- We should make arguments that are not based on women's difference from men and we need to be more creative and not think that the

strategies that got us from 0-1 (zero-one) are going to work and get us from where we are to where we want to be.

Supreme Court Lady Justice Brenda Hale said that “the issue is not whether the presence of women makes a difference, but what their absence means.” Composition of the judicial system also matters as has been seen in some instances such as;

- o The US jury system traditionally comprised of an all-male and all white membership and anyone facing a criminal trial would question the fairness of the jury if in case the defendant was either a woman and / or an African American.
 - o In France women judges have been seen to be relegated to family law and make up the higher percentage of family law judges. Some of the men who have appeared before them have started to see that a gender imbalanced court may not be a good idea.
- **Why is the progress we think we have made is so slow and difficult?**
- o Borrowing from the words of an author by the name Simone de Beauvoir in her book “The Second Sex” who says that **women are always being thought of as the other / second sex and that whatever is associated with women is devalued**” Prof. Kenny stated that the context of this changes across cultures, classes and history e.g. in the former Soviet Union when women became doctors the profession wasn’t as highly valued anymore and in a case where the little girls were asked why they don’t play soccer, they said the boys don’t pass the ball and even when they score the boys don’t cheer for them. These cases highlight the fact that just by being a woman/ a female you don’t get as many opportunities and when you do and are good at it there’s not much acknowledgement/ recognition as compared to that given to men.
 - o **“I want every little girl who is told that she is bossy to be told that she has leadership skills.”** The same character when shown by men it is referred to as leadership skills but when it is shown by women then it is portraying bossiness. We are advised to be more like men in terms of character but when we do we are not being as feminine as we should be.
 - o Studies that have shown **why the progress by women tends to be slow** include (i) that which stated that women are more likely to be interrupted by their male colleagues during an

argument (ii) that which studied the treatment of women lawyers by judicial ethics panels. It argues for the support of women for public office on the basis of women being different from men, and their higher moral standards and the minimal likelihood of women being corrupt. This increases the standard to which women are held accountable when they do break ethical codes of conduct hence being a disadvantage to women despite seeming as it is blowing the horn for them.

- Cases of **implicit bias or double standards** and explicit bias that exist in all of us but operate on the unconscious level. For instance
 - o In the orchestra the selectors would say that they don't care what the person looks like they only care about the sound of the music but at the same time they would state that women aren't as good musicians as men.
 - o In the Lord Chancellors' department, Hon. Chancellor Liz Truss has been criticized for not being a lawyer despite the fact that 2 of her male predecessors also didn't have legal qualification
 - o Following the American politics leading to the election in terms of debates and mood there has been clear and explicit bias by Donald Trump against women.
 - o With respect to how we can think of the different forms of discrimination, Prof. Kenny borrowed also from Marylyn Frye who talks of micro-aggressions in similarity to a birdcage where each individual wire doesn't seem like much but together they build/make a cage. Also the case where in a boardroom, a lady makes a comment or gives a great idea and her colleague acknowledges it but says that maybe she could have let one of her male colleagues make the suggestion. According to Prof. Kenny we should counter these forms of discrimination with charm, humor and mild condescension.

- The **need to mobilize**. As strategies to mobilize, Prof. Kenny suggests:
 - o We shouldn't delude ourselves that the strategies that individuals have used to respond to micro aggressions are going to solve the problem and should therefore realize that as Gloria Steiner puts it, **"there are no personal solutions to social problems just accommodations"** and **coming up with the "right report" or the "correct argument" isn't in itself going to transform the system or the judicial composition.**

- o **Getting women to support other women.** Until we can sort out this issue and get women to support one another, we won't be able to make any progress.
 - The idea of the **Power Break Even rule** (the conflict between women) which shows that in most cases women will support each other when they are at the same level but when one breaks through to the next level she gets attacked by those who didn't go through. The idea of scarcity of opportunity has been engraved in us so much so that we believe that only one or few of us are going to make it through the labyrinth and not all of us and if the one(s) who make it through aren't better than us then we will criticize and not support them.
 - The 8th Circuit Court of Appeal has only 2 female judges (Judge Murphy and Judge Kelly) out of the total of 62. The 3rd nominee might not get a vote because the Republicans have reservations about President Obama's nominees.

To finalize her presentation, Prof. Kenny recommended that we borrow the theme of President Obama's campaign called **"It's On Us."** This is because IT IS ON US to create a diverse, inclusive and gender equal judiciary system.

Q&A SESSION

Members applauded Prof. Kenny for her presentation, commended her for the good work that she is doing and for coming to join and encourage the women judges and judicial officers in their work. A number of questions, comments and suggestions were raised and they included aspects of the members' experiences in the past, the present and the possible strategies of how to deal with and advance the inclusion of women in the justice system because of their merit and capacity, and without discrimination in terms of their gender.

Among the issues raised in the Q&A session included:

1. Sharing experiences from other jurisdictions for example England where men judges said that there aren't many women judges because enough hasn't gone through the system though at a point there were more women law students but after a few years there were only 30%

women. The **situation may have changed by now but the attitudes haven't changed**. From this experience it was clear that there is need to figure out how to go about dealing with/tackling that kind of situation and also a need to come together and work collectively.

In response and support of this view Prof. Kenny said the main reason why she is happy to work with associations like the National Association of Women Judges and the KWJA and others like them, is for that very reason – coming together for the good and advancement of women. She highlighted some cases to show the need for collective work between women. These included:

- Sherrie Booth, who's the wife to the Prime Minister of England, said we won't make any progress until he leaves office.
 - If the wife of the Prime Minister could say that then the situation is very challenging
 - Lord Chancellor Derrick said he would appoint more women to the justice system but he didn't want to lower the quality of justice.
 - The head of the women's bar council said that the Lord Chancellor is great and when asked why it was noticed that the Lord Chancellor had arranged for her to take her tea in a tent near the queen.
 - How are women ever going to make progress if we can be bought off with promises of having tea closer to people of high status?
 - Lady Justice Kale was the top performer on every exam but when she was nominated people acted like it was some kind of special preference/affirmative action even though she excelled in every task as well as the case of the first woman judge to the federal bench, Lady Justice Florence Allan, being considered to serve to serve on the US Supreme Court brought up questions on whether she was being appointed because she is a woman.
 - If we can get to the point where people are judged based on their merits and not on the basis of gender & affirmative action.
2. Another participant noted that the Kenyan Justice system is going through a selection of the next office bearers of the Chief Justice and Deputy Chief Justice positions. She said that the strategy we should have used is having more women judges apply for the two positions

(10 candidates for each position) and that the female judges kind of **locked themselves out of the race** for the Chief Justice position by positioning themselves/ applying mostly for the Deputy Chief Justice's position.

In response Prof. Kenny shared the sentiments of Lady Justice Ginsberg when she was asked how many women should be in the Supreme Court and she said nine because they've had all men for 200 years why not have a Supreme Court led by an all women bench for the next 200years. She also echoed the sentiments towards Hilary Clinton with regard to her choice of a running mate.

Additional ideas from Prof. Kenny were that

- a) We already have the strategies we need and that we need to make a resolution to collectively think about and use them and the knowledge that we have strategically.
- b) She reiterated that we shouldn't necessarily wait until the vacancy is open, we should prepare and be ready for it even before the seat(s) fall(s) vacant because the vacancies are no surprise, we know they'll come through all we need to do is prepare for them in advance. The system is so murky and dirty that if we wait for the vacancy to be announced for us to express our interest in the position we find that the slot has already been filled. The candidates may need to prepare by having strategic planning and preparation which may include finding out and knowing the kind of questions that are going to be asked of you and getting or papers ready.

Prof. Kenny shared that she had done an analysis on the best selection system for women because she was asked about it many times and her statistics indicated that as much as any can be good and any can be bad there's an exception where in the US State Court women like it and work better when selection is done in order of seniority. The other courts have different provisions on their selection system.

3. Another participant commented on **how to deal with chauvinism and chauvinistic attitudes towards women especially when it comes to selection for positions** for instance the currently vacant positions of Chief Justice (C.J) and Deputy Chief Justice (D.C.J). She pointed out that the reason why most women judges may have not applied for the C.J. position could have been because of the kind of dirt/malice that tend to be brought up if they tendered their interest and how badly the women candidates would feel about themselves at the end of the process.
- She also said that when a person, mostly a woman, is undignified for putting in their candidacy for a position it seems like the **position is / has been preset** to be filled just by men and something must be very wrong with the **women who are threatening the status quo**. In her opinion, the top job should be given to a woman because it would be a great thing to have a woman sit at the helm of the judiciary and also we have had men for a long time and it is time to give a chance to a woman.
- She added that **women have traditionally been brought up to think less of themselves and to negatively compare themselves to other women**. The idea that women are their own enemies is one perpetuated by men in order to ensure the women remain divided and confuse the possible unity among women which may make them a force to be reckoned with and hence threaten their positions in leadership. She said that as women we should support one another and let the best candidate for the position we are applying for take it because we are the same, we are in this together and that our unity and support for one another will demystify that wrong belief that we are our own enemies. She supported the idea and process of preparing and coaching the candidates and said it would be a good idea as it would place them at a higher standard and the panelists will have no reason but to appoint women for those and many other positions.
- To finalize she noted that the US could learn from the Kenyan context with regard to the senate's inaction towards appointments or nominations of judges.

Professor Kenny responded by saying the possible reason as to why there haven't been nominations or appointments of judges is because of the two parties' reservations about their strategies with regard to who will take up the presidential office and their possible nominees/appointees. In response to the participant's comment about chauvinism and malicious scrutiny Prof.

Kenny noted that through her research and activities she has realized that **there's conflict in every group of people regardless of composition** (all-male, all-female and even mixed groups). She also said that **people have shown unwillingness to put themselves through scrutiny and fight the risks.**

She shared the words of Eleanor Roosevelt's which say that **"If you want to be a woman in politics you have to have the skin of a rhinoceros"**

One of the ways to grow the skin of a rhinoceros is to dare to compete and be the alternative better candidate for the position otherwise the field will be left to be taken up by people who don't have as much passion for the cause which is Justice and Equality as we do.

4. Another participant echoed the sentiments of the previous speakers by saying that women, **through the new constitutional dispensation, have been given more opportunities to compete with their male colleagues for positions of leadership.** A case in point when the opportunity came there was a number of women candidates. The only issue may be that the merits of the women candidates need to be acknowledged and highlighted as greatly as that of the men instead of going unnoticed as has been the case. She said that there are a few factors candidates have to consider before applying for the position, for instance, the issue of age limit and what example she would like to set with regard to mentoring and being an example to the younger women on the possibility of acquiring leadership positions based on merit rather than gender. In her opinion, she is happy that many applied for the positions a fact that shows & speaks volumes and that it has been noted that more women should apply for such positions. She also said that we need to keep that going and apply when positions like these come around. We need to **fight through the murky waters and help each other scrub off the malice placed on each other.** People will come at us with all the murky questions, focus on our social lives e.g. divorce and lack of children/family rather than your merits, but that shouldn't derail us it should in fact strengthen us and we should expect more women candidates in the future. She said that in addition to the rhinoceros skin, we should also grow porcupine skin with quills/spikes on it. **It all starts with one step** and that one step will show the men and the community that we are there and ready for the opportunities. In conclusion, said she is grateful and

ready to lead in that position if given the opportunity and if she isn't given the opportunity the message will have been sent out that women also merit the position and advised those who are behind her to start working towards attaining that and such positions.

Prof. Kenny supported the participant's sentiments and said that she is living proof that one can go through the murky nature of the system, the criticism and come out of it clean. She also said that people are often horrified by public criticism.

There **are public double standards** that have been used to criticize women when they're nominated or appointed to public office. For instance, Lady Justice Sotomayor was criticized and found unsuitable for office because she was divorced, childless, had diabetes and that she was too mean. President Obama's acknowledgement of her compassion and empathy for others was also used to criticize her and render her unqualified to be a judge because she was too emotional.

Prof. Kenney said that we can also **work with the voice of organizations and associations who share ideals & objectives as well as journalists in voicing, and stopping the gender double standards by also highlighting the aspects used against women which are also common amongst men in office**, for example, health issues, marital & family situation, children & their welfare and age.

5. A participant also commented by first wishing all the judges who have posed their candidacy all the best and said that we need to fight and grow the thick skin. She shared her past experiences in her legal practice through which she found that the men tend to move ahead faster than the ladies. In the political scenario women are criticized for campaigning when they are "meant to be at home taking care of their husbands and children."

In her opinion, **there's need for a culture change because these days women have been sexualized**. For example, when companies are advertising cars, the women they put in the adverts are conceptualized in a sexual way in order to attract buyers to the woman first then the car the woman is advertising. Also, according to a research in one of the dailies when a woman is seeking a job, the less revealing your dress code the less likely you are to get the job and if you are already employed in a company, to get what you want or to get ahead you need to dress in a certain 'sexualized' way.

This opinion was seconded and echoed by a few other participants who collectively agreed that as women we have always been taught and advised to be conservative in our dressing especially in interviews.

Prof. Kenny said this is **a classic example of a double-bind** where if you agree to be sexualized then you're not taken seriously intellectually as a professional and if you are asexual then you're not properly/sufficiently feminine. The only solution to this problem is pointing out the gender double bind.

6. A participant in her comment asked Prof. Kenny to help us brainstorm on the issue of the **"Power Break Even Rule", how to work on demystifying it and what it takes to actually get women to support each other into places of impact.**

In response, Prof. Kenny said that we can start by surfacing the issue and endorse each other for the available opportunities. We should also accept that, **regardless of the composition of the group, in all we do there are always going to be conflicts and we're going to have to talk about them and work together to figure them out.** She advised that we should also find a way of dealing with male stereotypes that look to divide and confuse the unity among women and highlighted the sentiments of one Gale Avens who said in a few words that **'we should realize that if she wins we win'**.

In addition to this Prof Kenney said we need to realize that **there's nothing natural about forming an association of women judges,** we don't just come together and form alliance just because we are women **it takes, finding solidarities, accepting the required hard work and the likely conflicts** that the alliance may experience at certain points in time.

7. The **need for self-acknowledgement and acknowledging the risks we are about to take as individuals before seeking approval and support from others was also highlighted.** It is important to assess the self in terms of self-belief, self-confidence before demanding or asking for others for their support.
 - She also raised the aspects of culture and the political environment that we find ourselves in as women as **avenues that pose hindrances to the advancement of women in the different fields.** She said that the social environment has been manipulated to have women believe that they can't make it just by the fact of their gender. We need to live above and beyond these cultural beliefs and

practices that have been set upon us and be put or put each other on an equal platform with the men.

- She reiterated the idea of the **bird cage which brings out a few elements, such as protection, oneness, collectivity, security and shielding**, that we need to borrow. In the bird cage, one wire isn't enough but when the many wires come together and work collectively they become strong and protect whatever is within the cage. For us to move ahead further and faster, we need to shield and stand with each other because we will definitely be attacked. She also added figuratively that there's no mud that can stick on you without water and if it does it's because you allowed it to do so. She emphasized that we need to think about the idea of a bird in a cage because it is a strategy that will help us win. "Together we win, Divided we fall".
- In conclusion she said that as much as we may think of it as a myth, it may be possible that women are enemies of themselves when it comes to practice. **So we must support and shield each other because it is our duty on all aspects in life be it moral, legal, psychological, social, economic or political.** If one of us has applied and gets the C.Js position we should support and shield her, by our words we must be her ambassadors and defenders in and around every environment we find ourselves in. It is what we give that comes back.

Prof. Kenny responded in support by saying that **there's a misconception that we must be at a certain perfect level in order to compete with men & other women and so we procrastinate our interest in positions and opportunities until such a time that we can clear our flaws and get to the better/perfect level.** She highlighted the gender gap in political ambitions where it is said that women are more reluctant to ask for money and/or put themselves forward for a position as if one is born with or without political ambition. It is common knowledge that women have traditionally not been seen to be fit for leadership in public office and the society has psychologically manipulated them not to even think about it. She also said that we could start by giving ourselves the chance to run for the said opportunities because **acknowledgement of the self will and should translate to acknowledgement of each other as individuals and as a group.**

8. The KWJA Chairperson thanked everyone for their opinions and also thanked Prof. Kenny for her insightful presentation. She said that the one thing she finds to be very strange is **the level of hypocrisy**

especially when it comes to the idea of women empowerment and women movements because in our conversations and in our laws we always talk about equality. **It's an idea that cuts across globally but when it comes to implementation the action and zeal to see it happening is slower or non-existent.**

For instance, in Kenya we're having a bit of a hard time with the implementation of the two-thirds (2/3) gender rule. The law is very clear but implementation is becoming a problem because it has taken so long to be effected. She believes that there's a group, most likely the male legislators who are set on making sure that it is not implemented because it may pose a threat to what they are used to and so they ensure they put stumbling blocks that hinder any action that goes towards its implementation and thus our advancement.

- She seconded the views shared that **as women we need to come together, support each other as that is the only way we will be able to move forward and overcome these global problems.**

That underscores the need for us to hold each other up not just nationally but even globally. She commended the presentation for showing us that even in the US women are fighting the same fight and that we should not give up.

- Her other concern was that **we should be aware that sometimes instead of shattering the glass ceiling we put it up ourselves and thus we end up locking ourselves out of opportunities** like in the case of the position of the C.J.s office where we may have concluded that the society is not ready for a woman Chief Justice.

- In conclusion, our honorable chairperson Hon. Lady Justice Okwengu advised us to think about it and see ourselves as more courageous, more adventurous and instead of putting up the glass ceiling we should find ways of moving up and above it. She also said that Prof. Kenny's presentation has given hope to the fact that as women we face obstacles but they're not insurmountable obstacles we just need to chip away at them and we will break the "Glass Ceiling".

As members of KWJA we are thankful to Professor Sally Kenney for the wonderful presentation and encouragement she gave us towards forwarding our vision and mission as an Association and women in the Judiciary.

Shukran!!!