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EMERGING PROCUREMENT LAWS AND WOMEN'S EMPOWERMENT: ASSESSING THE COSTS AND BENEFITS OF THE PRIVATIZATION OF THE TELECOMMUNICATIONS SECTOR IN KENYA

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Abstract:
The onset of privatization in the 1980s came with the promise not only of reviving development in the Third World, but also of unleashing the huge potential of the private sector, especially for women. Ever since the 1990s, Kenya has embarked on the restructuring of its telecommunications services in a bid to improve accessibility to all citizens. Yet despite this restructuring yielding significant dividend in terms of social and economic development, Kenya still lags behind other developing countries in term of Gender-related Human Development Index (GDI). This, notwithstanding the fact that gender parity is today considered as a *sine qua non* for national development (UNDP, 1995). Drawing mainly from secondary data, this study seeks to find out how far women have benefited from the restructuring of Kenya's telecommunications sector since the onset of privatization. The basic assumption of the study, drawn from the neo-patrimonial approach, is that the capacity of women to take advantage of economic reforms in telecommunications sector and to benefit both economically and socially has been undermined by the neo-patrimonial nature of Kenya's political system, whereby those who benefit from such opportunities are largely people or groups perceived to be "*politically correct*."

Introduction

The private sector's involvement in the delivery of a variety of public services has become significant in public administration in the modern world (Shafritz, 2005). Public procurement has emerged as a tool for preferential treatments to certain groups (Tangri, 1999; Barkan, 1991; Holmquist, 2002; Gichio, 2014) and for redressing previous cases of social injustices (Gichio, 2014; Akech, 2005). This political use of public procurement to reward social groups is vulnerable to capture by special interests in what is known as neo-patrimonialism (Erdman & Engel, 2007). The concept neo-patrimonialism (also construed variously as patron-client relationships) has been widely used in studies seeking to expose the manner in which elites use public resources for personal gain leading to both economic and political stagnation (Erdman, 2006; Tangri, 1999; Barkan, 1991; Jackson & Rosberg, 1982; Ngunyi, 1995; Holmquist, 2002; Gichio, 2014, Berg-Schlosser, 1994; Kerrets-Makau, 2006).While neopatrimonialism has received attention in economic analyses in Africa, only a handful works focus specifically on the gendered dimension of the developmental governance in public procurement in Kenya (Ngunyi, 1993; Barkan, 1991; Holmquist, 2002; Gichio, 2014, 1982; Berg-Schlosser, 1994; Kerrets-Makau, 2006; Kirton, 2013; Muriithi, 2008; Munyua, 2009, White, 2012).

This contribution examines the impact that public procurement has had on women empowerment in Kenya with specific reference to the privatization of the telecommunications sector. I ask whether or not women have benefitted from this public procurement reform policy and in what capacities. I present the argument that neo-patrimonialism in Kenya's political system undermines the empowerment of women in public procurement, especially in the telecommunication sector. I operationalize empowerment as the effective inclusion of women in public procurement processes in three dimensions: business promotion, employment creation, community development. Query about the impact of privatization on business creation seeks to determine whether or not the privatization has resulted in reduction in the cost of doing business for women, whether or not it has led to expansion in business opportunities for women, whether or not it has increased accessibility of women to credit facilities through increased access to collaterals), whether or not it has contributed to capital formation for women and whether or not the resultant business opportunities opened for women have been for small and medium enterprises or large-scale enterprises. With regard to employment-creation, focus is on whether or not privatization results in high quality employment (occupations that are of higher grade and have the net effect on increasing women's economic independence). The community development criterion as to what extent newly created/ reformed firms doing business with government are bidding for projects aimed at raising the standards of living for Kenyans and more specifically, women. The framework of neopatrimonialism allows one to unpack barriers related to the existence (or the lack thereof) of political connection for women-led or owned firms bidding for government contracts.

Gender issues have emerged to global prominence in the last couple of decades (UNDP, 1995; UN Millennium Project, 2005). Yet, women in Kenya continue to suffer marginalization in terms of access to economic incentives. Efforts aimed at dealing with this marginalization as outlined in national procurement rules and procedures, continue to be undermined by short-term political expediencies. Quite often, public procurement is considered as part and parcel of privatization, given that the latter broadly refers to the transfer, shift or change of control, ownership or service provision from the public to the private sector through a variety of means, including divestiture, franchising, contracting-out, leasing and liberalization (deregulation) among others (Therkildsen & Semboja, 1995; Young, 1991). In principle, the main difference between the two terms is that under public procurement, the private sector provision of works, goods or services is clearly defined by the public authorities that continue to bear the full responsibility for the success or failure of the projects that have been contracted out. Under privatization, the private sector gains full control and responsibility, ownership and management of the said projects works, goods and services (IEA, 2006). However, both terms provide avenues for increased private sector participation in the public sector, leading to higher prospects of productivity through increased competitiveness. In short, both privatization and public procurement are used in reference to liberalization/ deregulation on the one hand and contracting-out, leasing or franchising on the other, both of which do not necessarily include change in ownership. Viewed in this context, public procurement constitutes one of the available means to privatization in some sectors of the economy. This privatization often invites both profit and non-profit organizations to supply goods, services and works to the public sector (Young, 1991; Therkildsen and Semboja, 1995).

The Private Sector and Women Empowerment in Kenya

Deliberate efforts to empower women through the strengthening of the private sector have their roots in the Public Procurement and Disposal Act of 2007 followed by the inauguration of the new constitution in 2010. During the 1960s, the procurement system had no regulation at all. In the 1970s, 1980s and 1990s, it was regulated merely by circulars from the Treasury. Even following the passage of the Public Procurement and Disposal Act of 2007 and the inauguration of a new constitution in 2010, controversies relating to public procurement procedures have not been uncommon. For instance, in 2007 alone (two years after the enactment of the Public Procurement Law), Kenya's Public Procurement Oversight Authority estimated that procuring entities were inflating the cost of services by an average of 60 per cent above the prevailing market price (Gichio, 2014). Prior to this period, the agenda of women empowerment has been largely missing in the public policy arena. The starting point for women's marginalization in Kenya goes as far back as the pre-colonial era, where the predominance of the patriarchal system ensured that women were barred from participating in public affairs. Whereas the private sector was present in the colonial era, the idea of profit motive as we know it today was limited in scope owing to the communal nature of the pre-colonial economy. Hence, the private sector can be said to have really come of age with colonial intervention during the turn of the 20th Century, mainly in response to the transformation of the African societies from largely egalitarian societies to those in which the pursuit of scarce resources began to play a dominant role.

The overall effect of colonial rule in Kenya, however, was not to remedy the gender disparity that was already in place, but rather to prepare even newer grounds for the subsequent gender disparity. In the first place, the land alienation policies which pervaded the entire colonial period proceeded from the basic premise that men were the *bona fide* owners of land and that women's access to land-holdings could only be acquired indirectly through men. If we take into account the fact that land is a major factor of production as well as collateral for accessing loans from financial institutions, it is easy to appreciate the magnitude of the colonial origins of gender discrimination in Africa in general and Kenya in particular. Kenyan men were also inducted far much earlier than their women counterparts into the money economy by the colonial authorities through their integration into cash crop farming. This implies that men had an earlier start in wealth accumulation, which made it far much easier for them to use their already amassed wealth in pursuit of emerging investment opportunities in the post-independence era (Sahle, 2006). This imbalance appears to have been perpetuated by the successive post-independence regimes despite women's active role in Kenya's struggle for independence. This disregard for women is partly attributable to the relative weakness of women's civil society organizations, many of which have tended to limit their activities to such practical gender issues as Female Genital Mutilation (FGM) and Gender Based Violence at the expense of matters to do with economic empowerment (Kirton, 2013).

Moreover, the question of land ownership in Kenya has historically been heavily politicized, with ethnic groups allied to the sitting President being perceived as the main beneficiaries of land reforms. This perception has the effect of leaving women at the periphery of land issues. Even where there are clear legal regimes governing land ownership and transactions (as has been the case since the adoption of the new constitution in 2010), the lack of legal knowledge explains why still many land transactions are settled through customary law, which continues to discriminate against women on land matters. It is thus not surprising that in a country where women's ratio to men is roughly 1:1, registered free-hold land ownership in rural areas is between 95-99 percent for men compared to only 1-5 percent for women (Kirton, 2013; Mulusa, 2008; Villareal, 2008). Women's participation in the private sector activities has also been undermined by their over-representation in such low-paying jobs as casual labor and domestic workers (Suda, 2002). As entrepreneurs, Kenyan women constitute 47.7 percent of Small and Medium Enterprises (SME) owners, which suggests serious capital, technological or human resource constraints for women (Karanja, Mwangi, Nyakarimi, 2014, pp. 34-41; Gichuki, Mulu-Mutuku, Kinuthia, 2014, pp. 1-13).

Other important additional constraints to women's participation in private sector activities in Kenya include requirements for participation in public procurement opportunities. For example, up to very recently, eligibility for tender awards by the government required one to have among other things the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured (Akech, 2005). The problem, however, is that these requirements for qualifying for tender awards by the government lacked explicit recognition of women as part of the marginalized groups in public procurement systems. Thus, according to the Public Procurement and Disposal Act No. 3 of 2005, "the preferences and reservations shall apply to, candidates such as disadvantaged groups, micro, small and medium enterprises; works, services and goods or any combination thereof; identified regions; and such other categories as may be prescribed" (Kirton, 2013, p. 29).

While in policy different groups are eligible for consideration in procurement preferences, men have more leverage through their networking power in the public sector in Kenya. Moreover, whereas most men have been known to climb the economic ladder through political patronage the same is not true for most women who have to work extra hard in order to gain political favors. As of 2007, for example, there were only 21 women (10 percent) in Parliament, yet women make up more than half of Kenya's population. This is a clear indication that women are not being accorded the same opportunities as their male counterparts in the political sphere (Kirton, 2013).Thus, Kenya continues to lag behind other countries in the world on the question of women empowerment. As successive Human Development Reports show, Kenya compares unfavorably with other countries, both within and outside Africa (UNDP, 2013), on women empowerment. It is this realization that has informed the pledge by President Uhuru Kenyatta in May 2013, that 30 percent of all government procurement be reserved for women, youth, people with disabilities and small to medium enterprises in order to equalize economic opportunities for these groups. Whereas it is still too early to assess the impact of this directive on women empowerment in Kenya, it does point to the preceding lack of concern with women empowerment in the privatization process in public policy (Sahle, 2006; Kirton, 2013; Muriithi, 2008; Munyua, 2009).

The Privatization of the Telecommunications Sector in Kenya

For most of the colonial period there was a public provision of services in East Africa, which included posts and telecommunications services. The British efforts to integrate the three East African territories really got underway after the end of World War I, when Tanganyika fell into the hands of Britain under the League of Nations mandate system. This paved the way for the creation of a single postal union in 1933 leading to the creation of the East African Posts and Telegraphs. In 1951, the East African Posts and Telegraphs were succeeded by the East African Posts and Telecommunications Administration, in line with the establishment of the East African High Commission in 1948. The signing of the treaty of East African Community coincided with the creation of the East African Posts and Telecommunications Corporation (EAP & TCo) in 1967 (Smith, 1971). It is this structure the three East African governments inherited following their respective attainments of independence (i.e., 1961 in Tanganyika, 1962 in Uganda and 1963 in Kenya). With the break-up of the East African Community in 1977, the Kenya Posts and Telecommunications Corporation (KP&TCo) replaced the East

African Posts and Telecommunications (EAP&TCo) (UNCTAD, 2008). The main underlying reason for the establishment of the KP&TCo was to provide fixed line telephone services to Kenyans at an affordable cost as per the objectives of the Sessional Paper No. 10 of 1965 on "African Socialism and its Application to Planning and Management in Kenya" (UNDP, 2008). The subsequent inability on the part of KP&TCo to meet Kenya's demands for telecommunications services was largely responsible for the shifts of opinion away from state monopoly in service provision to free market economy. It is against this background that Kenya joined both the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS) in 1994. This membership paved the way to the liberalization of the telecommunications sector in line with the global requirement of universal access to the telecommunications services (UNCTAD, 2008).

In 1991, Kenya liberalized its non-strategic telecommunications networks by opening up the value-added service market. In the meantime, the African Regional Center (an NGO) and Africa Online (a small private company) pioneered in the provision of cellular services in 1992. Shortly after, the KP&TCs established Safaricom as a wholly owned subsidiary in 1997 to offer mobile (wireless) telephone services. The culmination of all these was the passing of the Kenya Communications Act in 1999 (UNCTAD, 2008), whose immediate effect was to unbundle the KP&TCs into three different bodies: the Communications Commission of Kenya (CCK), the Postal Corporation of Kenya (PCK) and the Telkom Kenya Limited (TKL). The CCK assumed a regulatory function of the entire sector, while also bringing on board the activities of the entire electronic media. The TKL took over the provision of telecommunications services from the former KP&TCs, while the Postal Corporation of Kenya remained with the function of the provision of mailing services. The other key feature of the law was the introduction of private sector participation, mainly through the licensing of new Mobile Network Operators (MNOs), Internet Service Providers, and Television and Radio Channels (IEA, 2001).

Since the passing of the Kenya Communications Act, Kenya's telecommunications sector has grown in leaps and bounds. By the early 2000s, for instance, there were only two MNOs (Safaricom and Kencell Kenya), whose total number of subscribers were approximately 200,000 (i.e., half of the total fixed telephone lines, which stood at 400,000). On average, the teledensity (i.e., the number of telephone connections per one hundred people) stood at a mere 1.2. Moreover, there were only some 75,000 internet subscribers in the country (Thioune, 2001). Table 1 below breaks down the spread of telecommunication services in Kenya.

Indicator	2000	2001
Fixed Telephone Lines	310,000	400,000
Cellular subscribers	60,000	200,000
Teledensity (%)	1	1.2
Public Telephones	7,084	7,500
Fixed Telephone Operators	1	1
Cellular Telephone Operato	2	2
Internet Subscribers	55,000	75,000

Table 1: Telecommunications Sector Indicators as of 2000/2004. Source: Thioune R. (Ed). (2001).

Yet by 2014 there were some 31.8 million subscribers to mobile phones compared to 204,400 subscribers to fixed telephone lines (just over half of the number recorded in early 2000s).The mobile penetration rate in Kenya stood at 78.2 percent while subscribers to Mobile money transfers stood at 26.2 million. As per Table 2 below, the subscribers to mobile money transfers were connected through some 103,660 agents spread across the country.

Sector Indicator	Dec-13	Apr-14
Mobile Penetration Rate	76.90%	78.20%
Over-all Growth in subscript.	31,300,000	31,800,000
Mob. Money Transf Subscript.	26,000,000	26,200,000
Money Transfer Agents	92,673	103,660
Fixed Lines	205,856	204,354
Internet Data Segment	13,100,000	13,300,000
The number of Internet Users	21,200,000	21,600,000

Table 2: The Extent of Growth in the Telecommunications Sector as of 2013/ 2014. Source: C.A. K. (2014).

As a result of increased competition TKL's market position has weakened over time, especially with regard to its core duty of providing fixed telephone line services. The same case applies to the smaller Internet Service Providers (ISP) (including the Kenya Data Network, Jamii Telkom, UUNET, Access Kenya, Wananchi Online, Communications Solutions and Africa Online), which, as a result of their lack of the requisite infrastructure, have largely been outcompeted by MNOs (especially, Safaricom, Airtel Kenya and Orange Telkom) (Waema, T., Adeya, C., & Ndung'u, M. N., 2010). Thus, by 2011, increased price competition had led to a fall in mobile phone calling rates by over 70 percent within just a period of four years, leading to a dramatic increase in mobile networks coverage to 96 percent of the Kenyan population. The M-banking has, for instance opened up banking opportunities for previously unbanked Kenyans. M-agriculture has increased the profitability of farming in the rural areas while M-education has made learning easy and more affordable (Deloitte LLP, 2011).

The benefits accruing from the privatization of the telecommunications sector and more specifically, the licensing of private MNOs are identifiable in all sectors of the Kenyan economy. Between 2006 and 2011, for example, the amount of spending by the MNOs on employee wages and benefits more than doubled. The same case applies to spending on tax and regulatory fees and dividends, which benefits cut across Kenya's socio-economic spectrum. As Table 3 below shows, the overall value-addition of the MNOs to the Kenyan economy as of 2011 was estimated at some Ksh. 50.607 billion of which tax and regulatory fees constituted the biggest share.

Value Add	2006	2007	2008	2009	2010	2011
Empl. wages and bnfts	2,630	3,798	4,048	4,932	5,659	5,558
Contractors	34	81	31	28	29	29
Taxes and reg. fees	18,875	23,662	27,217	32,581	38,216	40,831
Corp. Social Resp.	449	310	262	274	354	387
Dividends	1,795	2,400	2,025	3,326	3,802	3,802
Total	23,783	30,251	33,583	41,141	48,061	50,607

Table 3: Value Addition by MNOs (excluding multiplier effect) in Ksh. Millions between 2005 and 2011. Source: Deloitte LLP (2011).

This growth, however, conceals serious gender disparities that continue to manifest themselves in Kenya, despite significant progress having been made in privatization. Owing to limitations of both space and time, focus will specifically be on the impact of the Mobile Network Providers (MNOs) on women empowerment, with specific regard to business promotion, employment creation and Involvement in community projects. Business promotion is important because under government monopoly, access to business opportunities is normally based on political preferences that give men the most advantage. Hence privatization has the potential to unleash the full potential of the private sector through increased competition for business opportunities regardless of gender, religious or ethnic preferences (Holmquist, 2002). Employment creation is important given that privatization (unlike monopolistic regimes) also opens the door for increased competition in the job market as merit considerations slowly begin to replace those based on kinship, friendship or political ties. Involvement in community projects are important by-products of improved business opportunities that result from privatization. The important thing, however, is that there is more competition in terms of involvement in community projects both as a marketing strategy and also as a moral issue (i.e., giving back to the society).

Women and Mobile Network Operators (MNOs) in Kenya

As a result of the privatization in the telecommunications sector, there has been a phenomenal expansion in mobile phone usage given the emergence of Mobile Network Operators (MNOs) including Safaricom, Airtel Kenya, Orange Telkom and Yu Mobile. This has led to significant changes in the lives of most Kenyans and more specifically women. These can conveniently be discussed under three headings: business promotion, employment creation and involvement in community projects.

True to its meaning, privatization in Kenya has had the effect of dismantling to a large extent the grips that the political leadership has on business, i.e., monopoly. Under monopoly, access to business opportunities have normally been based on political (read ethnic) preferences (Holmquist, 2002) which gives men (as opposed to women) the most advantage. Hence privatization of the telecommunications sector, in bringing on board private sector operators) has had the effect of unleashing the full potential of the private sector through increased competition for business opportunities regardless of gender, religious or ethnic preferences. As a result of deliberate government policies aimed at promoting competition in the telecommunications sector through competitive bidding for tender awards, there has been a significant increase in mobile phone usage, with the consumers increasingly benefitting from such high value mobile services as M-banking, M-agriculture and M-education (where M stands for mobile) all of which have had huge spill-over effects into the rest of the economy (Deloitte LLP, 2011). A direct impact of this has been a significant improvement in the lives of women, especially in the rural areas because of increased usage of Money transfer services. Of all money transfer services, Safaricom's M-pesa services appear to be the most successful. By 2011, mobile money transfer - had 15.5 million subscribers, who were connected through some 28,000 agents spread countrywide. As table 4 below show, Safaricom has quickly dominated the market. Airtel Money had only 2.8 million subscribers, who were connected by some 8,600 agents spread countrywide in 2011.

Company	Mobile Subscribei	Market Shar	Date Launched	Subscribers	Agents
M-pesa (Safaricom	17.5 million	69.89%	Mar-07	15.5 million	28,000
Airtel Money	3.8 million	15.20%	10-Nov	2.8 million	8,600
Orange Money	2.1 million	6.37%	Nov-10	120,000	3,500
Yu Cash (Yu Mobi	1.6 million	8.50%	Dec-09	650,000	5,400

Table 4: Mobile Money Transfer Service Providers and their Capabilities as of 2011. Source: Loretta Michaels (2011).

It is hence not surprising that M-pesa has elicited the most academic interest both locally and globally. For example, in a study conducted among the women fish traders around Lake Victoria, White (2012) found that there has been a significant change in the lives of the women traders who used M-pesa services, including increased ability to save money and accumulate more capital for expanding their small businesses. This is because little minimum balance (Ksh. 1) is required for opening up an M-pesa account unlike formal banking institutions, which usually require a minimum balance ranging from Ksh. 100 for the Cooperative Bank (Kenya) to Ksh. 1,200 for Post Bank (Kenya). Moreover, the tedious process involved in the withdrawal from M-pesa accounts acts as a disincentive to spending. M-pesa agents, though more prevalent than formal banking agents, are never within easy reach and even then, they frequently lack liquid cash, especially in the rural areas (White, 2012). The money that has been saved from M-pesa has enabled women to pay for their fish promptly (unlike before the advent of M-pesa) leading to a higher motivation on their part to sell more and on the part of the fishermen to fish more. Moreover, the M-pesa services have made money more secure as the M-pesa PIN numbers for the account holders are known only to the registered users. This is as opposed to liquid cash which can be very easily misplaced or even stolen (White, 2012). M-pesa money transfer services have enabled the women to be more efficient in their businesses as they are no longer required to be physically present in their business premises in order to make or receive payments. In short, their transportation costs have been cut down drastically leading to more profits (for some women, the saving has been to the extent of Ksh. 23,000 per year). As a result, business has become more profitable owing to drastic reduction in transportation costs. This is even more significant for women with large dependent families to take care of. This affords them more time not only to manage additional businesses but also to attend induction courses on management. The net result is more productivity (White, 2012). The same trend appears to be suggested by the impact of MNOs on job creation as previously noted.

The impact of privatization on employment creation generates a lot of controversy given that privatization is usually associated with loss of jobs. For the case of the privatization of Kenya's telecommunications sector, past experiences of neo-patrimonialism (Kerrets-Makau, 2006) ensured that there were a lot of redundant labor and tasks which needed to be disposed of as a prerequisite for improved performance. Subsequent employment policies adopted by the new entrants into the telecommunications sector (the MNOs), therefore, have to a considerable extent discouraged non-merit considerations thereby opening the doors to groups such as women, who had been previously marginalized. Thus, by 2011, the mobile communications industry was employing almost 250,000 people in Kenya, of which, the largest groups were airtime sellers and payphone operators, followed by suppliers of support services, network equipment providers, handset designers and dealers, MNOs and other suppliers of capital items (see Table 5 below). This is as compared to just under 60,000 Full- Time Employees (FTEs), in 2003, an increase of over 300 percent. Between 2005 and 2011, MNOs' contribution to the Kenyan economy grew by almost 250 percent, while mobile related employment increased by some 67 percent (Deloitte LLP, 2011). However, this performance must be considered in the light of the fact that a significant amount of people (i.e., between 11,000 and 14,000) also lost their jobs as a result of retrenchment prior to the privatization of the TKL (UNCTAD, 2008).

Employment impact	No. of employees	No. of employees incl. multiplier
MNOs	4,113	4,113
Network equipment	7,150	8,580
Handset designers and dealers	4,000	4,800
Other suppliers of capital items	742	890
Suppliers of Support Services	31,741	38,089
Airtime/ payphone commission	157,291	188,749
Total	205,036	245,221

Table 5: Contribution to Employment from the Mobile value chain in 2011. Source: Deloitte LLP. (2011, p. 11).

In particular, the MNOs have made enormous contribution to employment generation among women in Kenya. According to Safaricom's *Sustainability Report* (2013), the company was employing some 2667 people by 2013, 1141 of whom were women and 1526 were men (i.e., a gender ratio of 1:1.34). However, most of the women employees are concentrated at the lower grade jobs while the top most jobs appear to be reserved for men (see Table 4 below) (Safaricom, 2013). This is partly a result of the political connections on the part of Safaricom and the sheer lack of a legal framework in Kenya giving preference to firms whose employment policies are gender-friendly during its entry into Kenya's telecommunications sector. The resultant surge in the number of women employees can therefore be considered as having been unintended, the over-riding emphasis having been on rescuing the sector from collapse through the promotion of the private sector involvement.

Job Grade	Staff	No. of Women	No. of Men	Gender Ratio
1	13	5	8	01:01.2
3	35	14	21	01:01.5
4	143	41	102	01:02.5
5	274	75	199	01:02.6
6	555	206	349	0.159027778
7	589	261	326	01:01.3
8	1060	539	521	01:01.0
Total	2667	1141	1526	1.1.34

Table 6: Permanent Employees in Safaricom by Gender and Grade (201/2013 Report). *Source*: Safaricom 2013, p. 73.

Other MNOs' contributions to employment creation have, however, not been as impressive as has been that of Safaricom owing to their relatively dismal performance. Thus, in 2011, only a year after it entered the Kenyan market, Airtel Kenya was forced to retrench some 50 members of its staff in an effort to remain in business (Standard Digital, Tuesday August 30th 2011). Moreover, the company's data by employee and by gender distribution are not clear. Bharti Airtel, whose headquarters is in India, claims to have hired some 1,331 female employees, representing around 10% of its total permanent workforce, as of March 31st 2013 (Bharti Airtel, 2013). Given that it is a multinational company with branches throughout the world, indications are that its share of women employees in Kenya may not depart much from this global figure. Again, its meagre contribution to employment creation among women, coupled with its lack of documentation of its size of women employees, point to serious gaps in the procedures that led to its winning of tender award to provide telecommunications services. However, a complete picture of MNOs contribution to gender empowerment is difficult without reference to their involvement in community projects.

In contrast to its contribution to employment creation, Airtel Kenya appears to be relatively more involved in community projects targeting women, especially in rural areas. Involvement in community projects can in this case be viewed as important by-products of improved business opportunities that have resulted from privatization. Given the increasing salience of gender issues in the contemporary world, such projects have also tended to take on a gender dimension. In March 2013, for example, Airtel Africa entered into a partnership with UN Women in an initiative to promote the empowerment of women and girls. Through this initiative, women farmers would be able to access real time information related to weather, changes in policy environment (such as taxation and regulation), available support services, etc. In this partnership, it sought to empower women farmers through the establishment of a farmer's information system with networks throughout in Kenya.

In this partnership, the UN Women would identify the farmers to be covered under the initiative, while Airtel packaged and delivered the appropriate mobile solution to support their livelihoods and to enhance their efficiency. This was in recognition of the fact that mobile connectivity gives rural communities access to education, banking facilities and opportunities to increase trade. It was also in view of the fact that women provide approximately 70 percent of agricultural labor and produce 90 percent of all food, yet they do not always share equally in the economic benefits of the industry. Under the same initiative, Airtel also undertook to co-finance initiatives and projects promoting the empowerment of women and the girl child alongside those that sought to empower Kenyan farmers specifically (Airtel Kenya, 2014). This is just one example of Airtel's community projects that focus directly on women empowerment. Hence, the benefits accruing from Airtel's entry into Kenya's mobile market go beyond promotion of business among women to also include involvement in women empowerment projects at the community level. In the succeeding section, I explore how neo-patrimonialism has undermined women empowerment in the course of the privatization of the telecommunications sector in Kenya.

Neo-Patrimonialism, Women Empowerment and the Privatization of Kenya's Telecommunications

Owing to the prevalence of neo-patrimonialism in Kenya, the gains that have been highlighted fall short of having a significant impact on the lives of women. One of the most important aspects of neo-patrimonialism which has undermined women's effective exploitation of the economic opportunities deriving from the privatization of the telecommunications sector is the lack of transparency and accountability in the procurement of telecommunication services. Considerations of selfish economic gains and political survival in this case have taken precedence over the question of women empowerment in negotiating procurement contracts/ licensing contracts between government and the private operators in the telecommunication sector. Crucial phases in the privatization of the sector (notably the privatization of TKL and the Privatization of

Safaricom) have taken place outside the law and not been regulated by any clear policy framework. In both cases, civil society organizations have raised concerns about the political influence of international firms and subsidiaries bidding for government procurement in the telecommunication sector (AfriCOG, 2011). This is best demonstrated by the sheer amount of time that it took the Kenyan government to bring to effect the privatization bill. After having been drafted in 2000 and introduced in parliament as a private members bill in 2001 (a clear indication that the government was not interested in following a clearly laid out procedure in the privatization process), the privatization bill was passed into law and assented to by the President in 2005. Indeed, it took another two years for the gazette notice of the law to be given by the then Minister for Finance Amos Kimunya (i.e., in 2007) and a further one year for the Privatization Commission (a critical requirement in the privatization process, to be constituted (i.e., in 1st January 2008). By this time, most of the major decisions on the privatization of the telecommunications sector had either been concluded or had reached a point of no return. In 1999, the Vodafone Group Plc joined Safaricom as a strategic investor with 30 percent ownership through its local subsidiary Vodafone Kenya. The Kenyan government, through TKL retained the remaining 70 percent. This arrangement was guided by the official policy at the time, which limited foreign ownership in any telecommunications company to 30 percent (the question of women empowerment never arose). The subsequent relaxation of this requirement led to the ceding of a further 10 percent of Safaricom's shares to Vodafone Kenya, thereby leaving TKL with the remaining 60 percent. However, there is no evidence that these additional shares were transferred to Vodafone Kenya with the consent of both the parent ministry and the treasury. Neither is there evidence that the same were paid for by the Vodafone Group Plc. In turn, Vodafone transferred the 10 percent that it had been ceded to Mobitelea Ventures in 2002 and then bought back half of it one year later (i.e., after the elections in which the Kenya African National Union presidential candidate Uhuru Kenyatta was defeated).

The ghost of Mobitelea was to rise up again in 2007 (i.e., in the run-up to the 2007 General Elections), when the government decided to sell its 25 percent shares in Safaricom in an Initial Public Offering (IPO). The then opposition party Orange Democratic Movement (ODM) raised the red flag and a bitter exchange ensued between the party and the government. By the time the Safaricom IPO was done in 2008, the questions as to why Mobitelea had been given the 10 percent shares and its actual identity remained unresolved as efforts to do so by the Kenyan parliament's Public Accounts Committee (PIC) hit a dead end (AfriCOG, 2011). According to a letter by Vodafone Group's Chief Executive Officer to the PIC, Mobitelea was offered 25 percent of the shares in Vodafone Kenya (by virtue of which it owned the 10 percent Safaricom shares) by the Vodafone Group as a result of its advisory role as a local partner of the Vodafone Group. Yet Mobitelea's formation came after Vodafone's entry into the Kenyan mobile market (AfriCOG, 2011). Mobitelea's knowledge of the local business environment is also cast into further doubt given its domicile. A check with Guemsey's registrar of Companies in the wake of Safaricom's privatization saga in 2007 revealed that Mobitelea was registered under two nominees (Mercator Nominees Ltd and Mercator Trustees Ltd) on June 18th 1999 in Guemsey, shortly after Vodafone's deal with TKL. However, a closer look at its two nominee companies revealed that they are also owned by more than 20 different nominee companies spread across the globe, suggesting that a lot went into trying to conceal its true identity. The Safaricom IPO was, however, concluded despite objections to it by the Kenyan parliament's Public Accounts Committee (*The African Executive*, 2007).

Likewise, the entry of the second MNO into the Kenyan market in 2000 also demonstrates underhand dealings among politically connected individuals and firms, which does not augur well for women empowerment. Airtel Kenya began its life in Kenya in 2000 as Kenya Cellular Communications Ltd (or Kencell), which was a joint venture between Vivendi France (40 percent) and Sameer Investments (Kenya) (60 percent) as per the prevailing policy at the time. What raised eyebrows here is the identity of Sameer Investment, which was controlled by Naushad N. Merali, one of Kenya's wealthiest investors and former President Daniel Arap Moi's friend. It is rumored that Merali made millions overnight from the successive sales of Kencell's shares first to Celtel, then to Zain. After having bought Vivendi France's 40 percent shares of Kencell for US $ 230 billion, Naushad Merali sold out its 60 percent share to Celtel International within only two hours at a price of US $ 250 million. He then later (in 2008) sold half of his 40 per cent shares to Zain and a further 15 per cent in 2009 (*Standard Digital*, 21st May 2013). Naushad Merali has also been adversely mentioned in Weakileaks based on unpublicized Kroll Report, which was commissioned by former President Kibaki shortly after his election victory in 2003, to unearth the extent of looting of public resources under his predecessor, Daniel Arap Moi. The final report was later shelved owing to its magnitude of sensitivity (KTM Consolidated Report, 24th April 2004). To say the least, Sameer Investments qualification as a local partner of Vivendi France in Kencell casts serious doubt on the openness of the bidding process. Gender considerations definitely took a back seat. However, neo-patrimonial tendencies in the privatization of Kenya's telecommunications sector have also been demonstrated by the apparently privileged position in which Safaricom has found itself.

To some extent, neo-patrimonialism has also been responsible for the fact that there has not been a truly competitive environment in the telecommunications sector, despite the on-going efforts at its privatization. As a result, the monopolistic environment, which characterized the period before the advent of privatization, has been largely maintained. Businesses that have had the capacity to successfully bid for tenders have been those that are politically connected. In this regard, ethnic groups, women as well as religious organization without strong links to power have found it especially difficult to take advantage of opportunities that come with privatization. Kenya's mobile market has been described as a duopoly since the year 2000 largely owing to the presence of only one strong contender known as Airtel Kenya (formerly Kencell, Celtel Kenya then Zain). Yet no other MNO in Kenya appears to have had as tumultuous a history as the Airtel Kenya. Between 2000 and 2003, Kencell grew very fast due to its high quality voice and data network. However, poor revenue and high operational costs led to successive losses forcing Vivendi to sell off its 40 percent stake in Kencell to Celtel International in 2005. Within only one year, Celtel International turned around the fortunes of the MNO (now rebranded as Celtel Kenya). In 2005, for instance, the Celtel attained an after-tax profit of US $ 17 million compared to an after-tax loss of US $ 25 million recorded in 2004 (IT NEWS AFRICA: Africa's Technology News Leader, 12 June 2009). However, its profit margins began to reduce during the successive years leading to its subsequent change of hands once more in 2008 (IT NEWS AFRICA: Africa's Technology News Leader, 12 June 2009). In 2008, Celtel International was bought out by the Zain Group (Kuwait), leading to another change of name from Celtel to Zain. As the holding company, Zain was very profitable. In the year ending December 31, 2008, its revenues had increased by 26 percent (reaching US $ 7.441 billion), its customer base by 50 percent (reaching 63.5 million subscribers) and its net profit by 6 percent (i.e., from that of 2007) to reach US $ 1.2 billion. Zain Group's profits were mainly pushed by growth in Africa where it had the largest presence, i.e., 16 countries compared to only 6 in the Middle East. Nevertheless, it went ahead to sell its African interest to Bharti Airtel (India) in June 2010 (*Standard Digital*, 21st May 2013). Successive dismal performance in Kenya might have been partly responsible for its departure, especially following the CCK's licensing of two additional MNOs (Orange Telkom and Yu Mobile) in 2008, which further ate into its domestic market. Indeed, since its entry into the Kenyan mobile market, Airtel Kenya has persistently attributed its dismal performance to Safaricom's apparent privileged position as well as the Communications Authority's hurried introduction of the new MNO. Moreover, Airtel Kenya's sentiments regarding Safaricom's privileged position has been shared by both the Orange Telkom and the Yu Mobile (*Standard News*, Updated Monday, September 1st 2014), leading to the latter's premature exit from the Kenyan market, (*Standard News*, September 1st 2014) and to rumors of the former's planned exit (*Standard Digital Business*, July 20th, 2014).

Conclusion

The privatization of Kenya's telecommunications sector has yielded enormous benefits not only to the Kenyan economy, but more specifically to women in terms of business promotion, employment creation and community development. However, even more benefits would have been yielded if measures have been taken to reduce the influence of neo-patrimonialism in the economic liberalization process. This includes the shady manner in which privatization has been carried out and the privileged position that has been given to Safaricom as a government parastatal. Some conclusions can therefore be drawn from the foregoing discussions. Neo-patrimonialism is responsible for the fact that the benefits deriving from the privatization of the telecommunication sector accrues, not to the citizens in general, but to either a few politically connected individuals (most of whom are males), hiding behind the names of externally registered companies (Mobitelea), or well-known local investors with strong political connections to the governments of the day (Naushad Merali). Either way, the benefits of privatization have been curtailed from reaching the groups that are really in need of empowerment, unless they also happen to be politically connected. It is, for instance, owing to political connections, that the top most jobs in firms such as Safaricom continue to be monopolized by men, while women are confined to the lower grade jobs.

Thus, the findings of the study by Berg-Schlosser (1994) on the relationship between Kenya's ethnic groups and class differences still holds true today, i.e., that ethnic groups that have been closely linked to the seat of power (e.g., the Kikuyu and the Kalenjin communities) are over-represented among the agricultural and non-agricultural bourgeoisie. Similarly, ethnic groups without political connections are over-represented among agricultural and non-agricultural proletariat. This ethnic division also continues to work against the government's efforts to promote the private sector and women despite its overt statement to the contrary. Effective governance of the telecommunications sector will only be addressed with measures such as introducing more checks on the role of the president and the central government in policy formulation and implementation while pursuing with more resolve an open and competitive and digitized public procurement system.

The 2010 constitution provides a good basis for dealing with most of the issues undermining women's economic empowerment as it specifically guarantees against discrimination on the basis of gender among other differences. Its keenness on women empowerment, therefore, calls for its more judicious implementation by the current and future governments, despite there being perceived lack of political will. The privatization law also needs to be harmonized with the constitution and the current procurement rules as a means of empowering women in preparation for future privatizations. The government also needs to enhance its enforcement of the laws relating to women's rights to inherit land, which currently appears to be overwhelmed by the customary beliefs regarding land ownership that impede women's empowerment. This weak enforcement capacity by the government is attributable to that fact that land remains a vital factor of production in Kenya. Another factor that continues to undermine women empowerment in Kenya is the persistence of gender stereotypes (i.e., the belief that women are less capable than men).

References

African Centre for Open Governance. (2011). Deliberate loopholes: Transparency lessons from the privatization of Telkom and Safaricom. Nairobi: AfriCOG.

African Development Bank and African Development Fund (ADB/ ADF) (2007, October). Kenya country gender profile, ADB/ ADF. Retrieved from www.afdb.org

Airtel Kenya. (2013, May 1). Press release.

Airtel Kenya. (2014, February, 27). Press release.

Barkan, J. (1991). The rise and fall of the governance realm in Kenya. In G. Hyden. & M. Bratton (Eds.), *Governance and politics in Africa* (pp. 167-192). Boulder: Lynne Rienner.

Berg-Schlosser, D. (1994). Ethnicity, social class and political process in Kenya. In: W. O. Oyugi. (Ed.), *Politics and administration in East Africa,* Nairobi: East African Educational Publishers, Ch. 9.

Bharti Airtel. (2013). Annual report 2012-2013.

Brian A. (2009, June 12). End of the road for Zain? IT News Africa: Africa's Technology News Leader. Retrieved from http://www.itnewsafrica.com/2009/06/end-of-the-road-for-zain/.

CAK. (January-March 2014). Quarterly sector statistics report: Third quarter of the financial year 2013/ 2014. Nairobi.

Deloitte LLP. (2011). *Mobile telephony and taxation in Kenya*. Nairobi: Deloitte LLP.

Erdman, G. & Engel, U. (2007). Neo-patrimonialism reconsidered: Critical review and elaboration of an elusive concept. *Commonwealth and Comparative Politics*. 45(1), 95-119.

Gibendi, R. (2014, October 21). Safaricom named country's best taxpayer. *Business Daily*.

Gichio, D. (2014, June). Public procurement in Kenya: cash cow for the corrupt or enabler for public service? *Adili*. 145.

Gichuki C. N., Mulu-Mutuku M. & Kinuthia, L. N. (2014). Performance of women owned enterprises accessing credit from village credit and savings associations in Kenya. *Journal of Global Entrepreneurship Research*, 4, 16. Retrieved from http://www.journal-jger.com/content/pdf/s40497-014-0016-1.pdf

Holmquist, F. (2002). Business and politics in Kenya in the 1990s. Occasional Paper. Centre of African Studies, University of Copenhagen. <http://teol.ku.dk/cas/publications/publications/occ._papers/holmquist2002.pdf>.

Indogesit, W. K. E. S. (Eds). (2014). *The African mobile story*. Denmark: River Publishers.

IEA. (2001, August). Telecommunications sector: In the grip of a monopoly. *A Bulletin of the Institute of Economic Affairs,* 47.

IEA. (006, July 7). Public private partnerships (PPP), practice and regulatory policy in Kenya. *Institute of Economic Affairs* (IEA, Kenya).

IFC. (013). Public-private partnership stories: Kenya: Telkom Kenya. Washington DC: IFC, World Bank Group.

Jackson, R. H. & Rosberg, C. G. (1982). *Personal rule in black Africa: Prince, autocrat, prophet, tyrant*. Berkeley/Los Angeles/London: University of California Press.

Kamau M. (2014 July 20). MPs want to recover billions invested in Telkom Kenya. *Standard Digital Business*.

Kama, M. (2011 August 30th). Airtel cuts 50 jobs as it seeks better returns from Kenyan outfit. *Standard Digital.*

Karanj, J. G., Mwangi A. K. and Nyakarimi S. N. (2014), Analysis of factors influencing access to credit services by women entrepreneurs in Kenya. *Research Journal of Finance and Accounting*, 5(11), 34-41.

Kerret-Makau, M. (2006). At cross-roads: The GATS Telecom Framework and neo-patrimonial states: The politics of Telecom reform in Kenya. (Doctoral Dissertation).

Kiragu P. (2014 September 1). Safaricom, Airtel finally take over Yu Mobile for over Sh. 10 billion. *Standard Digital.*

Kirton R. M. (2013). *Gender, trade and public procurement policy: Kenya, India, Australia and Jamaica.* London: The Commonwealth Secretariat.

Lusak, N. (2008). Information and communication strategies to fight gender Inequalities in access to land in Africa: The Kenya Experience. In IFAO-Dimitra Workshop. Brussels, Belgium: FAO.

Michals, L. (2011). Better than cash: Kenya mobile money market assessment. United States Agency for International Development.

Munya, A. W. (2009). Women entrepreneurs in Nairobi: Examining and contextualizing women's choices. In I. Buskens & A. Webb (Eds.), *African Women & ICTS: Investigating Technology, Gender and Empowerment* (pp. 119-132.). London, New York: Zed Books.

Nyabige, J. (2013, May 21). How Merali made sh. 1.6 billion in one hour. *Standard Digital*. Retrieved from http://standardmedia.co.ke/m/story.php?id=2000084060 .

Ngunyi, G. M. (1995). Religious institutions and political liberalization in Kenya. In P. Gibbons (Ed.), *Markets, Civil Society and Democracy in Kenya (pp.* 121-178). Uppsala: Nordiska Afrikainstitutet.

OECD/ AfDB. (2002). *African economic outlook.* Paris: OECD.

PSCU. (2014). PSCU. (2014). President Kenyatta launches the communications authority of Kenya. *Standard Digital*, retrieved from: http://goo.gl/t6E40T

Safaricom. (2013). *Sustainability report.*

Sahle, E. N. (2006). Gender, states and markets in Africa. *Studies in Political Economy*, 77, 9-32.

Shafritz, J. M. & Russel, E.W. (2005). *Introducing public administration*. Pearson Longman.

Smith, A. B. (1971). History of the East African posts and telecommunications (1937-1967). (Doctoral Dissertation). Retrieved from http://erepository.uonbi.ac.ke/handle/11295/26809

Suda, C. (2002). Gender disparities in the Kenyan labor market: Implications for poverty reduction. *Nordic Journal of African Studies*, 11, 3, 301-321.

Tangri, R. K. (1999). *The politics of patronage in Africa: Parastatals, privatization and private enterprises in Africa*. North America: Africa World Press/ Uganda: Fountain Publishers.

Therkildsen, O. & Semboja, J. (1995). A new look at service provision in East Africa. In O. Therkildsen & J. Semboja (Eds.), *Service provision under stress in East Africa: The state, NGO's and people's organization in Kenya, Tanzania and Uganda*. Nairobi: East African Educational Publishers.

Thioune, R. M. (Ed.). (2001). Information and communication technologies for Development in Africa, *Opportunities and Challenges for Community Development*. Ottawa, Dakar:

International Development Research Center (IDRC) in collaboration with Council for the Development of Social Science Research in Africa (CODESRIA).

Transparency International. (2009). *Global corruption report*. Cambridge: Cambridge University Press.

United Nations Conference on Trade and Development. (2008). *Services and development: Implications for the telecommunications, banking and tourism services sectors in Kenya*. New York, Geneva: UN.

United Nations Development Program. (2013). Human development report 2013: The rise of the south: Human progress in a diverse world. New York: UNDP.

UN Millennium Project. (2005), Investing in development: A practical plan to achieve the millennium development goals. London, Sterling, Va.: Earthscan.

Villarreal, M. (2008). Gender and access to land: The impact of crisis situations. In FAO-Dimitra Workshop (Ed.), *Land access in rural Africa: Strategies to fight Gender Inequality*. Brussels, Belgium: FAO.

Waema, T. C. A. & Ndung'u, M.N. (2010). Kenya ICT sector performance review 2009-2010: Towards evidence-based ICT Policy and regulation. Policy Paper, 2(10). Ottawa: International Development Research Center.

White, D. (2012). The social and economic impact of MPESA on the lives of women in the fishing industry on Lake-Victoria. Independent Study Project (ISP) Collection. 1246. Retrieved from http://digitalcollections.sit.edu/isp_collection/1246 .

Young, R. A. (1991). Privatization in Africa. *Review of African Political Economy*, 51, 50-62.