

## CHAPTER 3

---

# GENDER AND GOVERNANCE IN KENYA: WOMEN'S JOURNEY BEYOND NUMBERS

---

MARIA NZOMO

### 3.1 Introduction

This chapter is informed by the view that human relations, including gender relations, are fundamentally organized around power relations. The issues and concerns that arise from those relations revolve around the challenges of sharing power in an equitable and just manner. The gendered power hierarchies that emerge in the allocation of strategic resources and labour are legitimized by a patriarchal social-cultural ideology that is deeply embedded and normalized by many societies.

This chapter, therefore, argues that in Kenya as elsewhere, the power question is central to the persisting inequalities between women and men in governance. The chapter thus seeks to analyse the Kenya women's journey on the road towards gender equity, equality and social justice through effective participation in public decision-making structures and processes. It reflects on the significance of the gains made; the hurdles that remain and provokes us to critically reflect on the next steps and what needs to happen; the strategies that need to be deployed and followed through; the kind of critical actors/torch-bearers that need to emerge to guide the next phase(s) of the journey and the outcomes that should be envisaged.

The central argument of the chapter is that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired equity and social justice.

The chapter is informed by my journey as a feminist International Studies scholar, seeking to make sense of the world in which we live; a world characterized by various types of social injustices and human beings' self-inflicted pain and loss through wars and avoidable conflicts, among others. These largely arise, in my view, from insatiable selfishness and greed; desire for monopoly of power and unwillingness to share it with others. Consequently, those with strategic power, whether economic, social or political, resist any efforts to share it. In respect to gender relations, the power question is central to the persisting inequalities between women and men in governance.

Despite increasing knowledge which confirms that it would be in the interests of all women, men and the society as a whole to cooperate, share power and work together as partners to promote the core common goods of development, security and human rights, progress has been slow in engendering and democratizing governance and its outcomes.

Masculinised ideological and socio-cultural norms have in many societies been employed to legitimize gender-based exclusions and marginalization in the public decision-making arena. Centuries of struggle to banish the negative aspects of socio-cultural values, especially patriarchy, continues to face resistance. The problem is further complicated by the dominant economic ideology of international capitalism, that not only lacks a 'human face', but tends to increase rather than decrease gender-based inequalities.

This chapter seeks to analyse Kenya women's journey on the road toward gender equity, equality and social justice, through participation in governance. It reflects on the significance of the gains made this far and the hurdles that remain; but more importantly, it provokes us to critically reflect on the next steps and what needs to happen; the strategies that need to be deployed and followed through; the kind of critical actors/torch-bearers that need to emerge to guide the next phase(s) of the journey and the outcomes that should be envisaged.

The central argument of the chapter is that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired equity and social justice. The chapter also makes the point that whereas the entire society is responsible for transforming and democratizing governance, elected, nominated and appointed leaders, both women and men, bear a special responsibility to represent and deliver on mandates delegated to them by taxpayers.

Thus, notwithstanding the momentous challenges women encounter in accessing public decision-making positions, the journey towards gender equality and social justice remains unfinished until critical actors and gender champions emerge to effectively contribute and sustain the process of eliminating patriarchal and hegemonic governance structures, values and processes that undermine the achievement of sustainable equity and equality for both women and men's enjoyment of human welfare, security and rights.

It is also important to keep in focus that women, just like men, are neither homogenous nor united by only one common ideology or philosophical belief. Beyond their shared biology and experiences with patriarchy, there are some more significant differences of class, ethnicity, race, religion, sexual orientation, political affiliation, etc., which may exert greater influence on women's behaviour in public life.

I note that the journey for women in Kenya thus far indicates incessant pursuit of gender equality in Kenya to participate in governance processes effectively and that some effort

has also been made to acquire an influential voice and use the governance platforms to advance gender and other societal interests, on an equal basis with men. These efforts however, are often undermined by the low level of societal acceptance and belief in gender equity and equality as a common good. In this connection, the chapter notes that the incremental gains that have been made, especially in developing legal, policy and institutional norms, have yet to make a significant impact in transforming societal and governance values and outcomes of decision-making, in a democratic direction.

This vexing issue is part of what this chapter attempts to address. The chapter thus examines the extent to which societal behaviour demonstrates and upholds democratic values; the rule and spirit of the law; promotes gender justice and general public good. Guided by the broad feminist theory on which the analysis of this chapter is anchored, the chapter assesses the gains; challenges and prospects as well as the underlying 'drivers' that are likely to determine that the transformation process is moving forward. The chapter starts by reviewing the existing state of knowledge on gender and governance; the debates on the significance of the numerical gains made by women on the journey towards gender equality; international and national norms developed to serve as basis of advancing gender equality and democratic governance; the milestones and the challenges encountered on the Kenya women's journey towards equity and social justice and the way forward.

### **3.2 Gender Equality and Democratic Governance: The State of the Art**

Governance has been defined in a variety of ways. The World Bank (1989) defined governance as the "sum of the many ways individuals and institutions, public and private, manage their common affairs" (cf. Rittberger & Zangl, 2003; The Commission on Global Governance, 1995:2). Many generally concur that 'good' (democratic) governance entails open, accountable and transparent processes; capacity, effectiveness and efficiency; a professional ethos that combats corruption, exclusion, nepotism and personal gain; and strict financial control and management of public funds. In this chapter, governance is defined as the management of public affairs, in a manner that encompasses the mechanisms, processes, and institutions, through which citizens and groups articulate their interests, mediate their differences and exercise their rights and obligations.

Many scholars have laid importance on the issue of women's participation in governance. Over two centuries ago, John Stuart Mill pointed out that the participation of both the majority and minority will have to be ensured for a government to be competent and efficient. In his book on Representative Government (originally published in 1861), he advocated bringing intellectual and social diversity into government by extending the franchise to women, noting that the idea of denying suffrage to half of the population and thus losing their talents in society, was *non utilitarian idiocy*; while Rule and Zimmerman (1997) argue that a parliament would fail to recognize or comprehend

issues of great importance to women in society, if there were few women members (cited in Reynolds, 1999: 547-8). The European Network of Experts (1997:8) also observed that a balanced representation of women and men at all levels of decision-making guarantees better government, informed by a cross-fertilization of inputs of both women and men as biological groups, their own and unique perspectives, experiences and values and ideas on how power should be exercised.

Ekvall (2015) has argued that decisions made and policies implemented by governance institutions shape perceptions of the roles which women and men play in society, as well as determining their access to rights and resources. She also notes that involvement of women in defining these policies and processes, and in influencing the institutions that produce them, make it more likely they will respond to the different needs and situations for both women and men, and contribute to gender equality. Hence, reducing patriarchal norms has an impact on the way governance is carried out by involving women (Ibid; Brody, 2009; Pearce, 2000) note, access to decision-making bodies will serve no purpose unless it is part of a broader framework to transform power relations within society and eliminate the discriminations women consistently experience. He thus argues that transforming gender relations must be addressed at every level of society, beginning with the domestic sphere, as “democracy in the home is a precondition for democracy abroad”. This should be enjoined by transformation of gender relations in the economic sector and political arena, bearing in mind that mainstreaming women is no longer enough. Annica (2010) also argues that gender relations, being relations of power, define the access and nature of participation in governance that tends to privilege men and masculinity while marginalizing femininity and its concerns. Other research done on the issue of gender and governance has shown a strong correlation between patriarchal norms and poor governance. This research has noted a correlation between an increase in women’s empowerment and rights, and significant improvement in overall governance, as manifested in better societal quality of life; enjoyment of rights and reduced gender-based violence and other forms of violence (Miguel, E. 2007; Ostby, G. 2005; Pinker, S. 2011).

### **3.3 Representation and Democratic Governance**

Chowdhury (1994: 21) offers five reasons why increasing women’s representation and participation is necessary: (i) it is a democratic and justice imperative; (ii) women’s presence in governance gives legitimacy to the State and the democratic process; (iii) women, just like men, are entitled to have representatives to lobby for women-specific needs; (iv) women’s increased participation in politics and decision-making bodies facilitates positive democratic change and opens up more spaces for them; and (v) women’s representation in governance has a demonstration effect that encourages citizens to appreciate women’s leadership capacities.

Pitkin (1967), among other things, has made the case that public democratic governance generally takes the form of a representative government, in which people elect and delegate authority to lawmakers (representatives), who should stay accountable to their electors. Representation then should be the instrument through which the majority of citizens, who do not participate directly in the day to day management of public affairs, find voice and effective vehicle for addressing their welfare; channelling their grievances and other matters of concern to them. (James Madison and Robert Dahl; Hanna Fenichel, 1967; Reid, John Phillip, 1989; Pennock and Chapman 1968; Schwartz, 1988; Manin, Bernard, 1997; Andrew Rehfeld, 2005).

As correctly and succinctly articulated by Pitkin (Ibid), representation consists of making citizens' voices, opinions, and perspectives 'present' in the public policy-making processes. Thus, political representation occurs when political actors speak, advocate, symbolize, and act on behalf of others in the political arena. Pitkin identifies four different types of representation: i) formalistic representation, which consists of formal authorization to represent; ii) Descriptive representation whereby a representative resembles those being represented and is assumed to have common interests and experiences with the represented iii) Symbolic Representation whereby a representative is perceived as 'standing for' the represented symbolically, regardless of what he/she has done for the represented and iv) substantive Representation, which entails the actions taken on behalf of and in the interests of, and as a substitute for the represented.

### **3.4 Making Women's Presence in Governance Count: beyond Numbers**

Inspired by Pitkin's theory of representation some gender and feminist researchers on 'beyond numbers', suggest that in order to attain a governance framework that promotes gender equality, there is need for a conscious and concerted effort by women in public governance, to set an agenda for change and to follow through with policy impacts, and accountability mechanisms and processes linking the state and civil society. Crook (2006 & 2009); Hassim (2003), Nzomo (2002, 2003, 2011, 2012, 2013, and 2014) have also argued that formal access to institutions of governance is an important first step and an essential democratic requirement.

However, formal access and presence in governance institutions is neither an end in itself nor does it necessarily translate into influence and capacity for substantive representation. Numbers, however large for any interest group, do not, on their own, guarantee power and influence. Shirleen, Hassim & Amanda Gouws, in their paper, *Power To Change* (HBF, 2011) also make the case that political systems do not necessarily evolve incrementally in a democratic direction; rather, direct interventions are needed in institutional design and in political cultures to ensure inclusion and participation of all citizens. Formal political institutions provide actors with the opportunities to either

change and challenge patriarchal norms, or legitimize the patriarchal status quo and ensure continuity in social and political life characterized by boundaries of inclusion and exclusion (Pierre 1999: 390).

The biases present in formal institutions towards masculine values, actors and processes often entail that some groups and ideas are privileged over others, resulting in unequal access to resources (Lowndes, 2002:p.91). Nzomo (ibid.) has also made the case that women in political leadership, just like men, should not be expected to represent other women homogenously and to promote a transformative gender agenda. Women just like men have only two shared commonalities - their biological makeup and a shared experience of patriarchy. Beyond this, identity differences (of class, ethnicity, race, religion, sexual orientation, political affiliation, etc.) become apparent. Goetz and Hassim (2003), provide a framework (dubbed triple “A’s”), for assessing women’s political performance, by considering their levels of access, presence and influence across different political arenas - the State, the Political System and Civil Society, across three political processes: Access, Agenda setting and Accountability.

This framework recognizes that women’s access to the State does not necessarily lead to a feminist agenda setting and accountability to women as a constituency. Instead, there is a need for critical actors, both women and men to emerge and consciously take on the role of gender champions and feminists within and outside the State and seek to push for gender-responsive governance. In this context, one of the ways to assess performance is by the extent to which critical actors are able to set an agenda that advances actionable gender equality policies followed by tangible outcomes.

All these scholars thus concur that in promoting gender and social justice agenda, the narrative needs to shift from solely numbers to include ‘beyond numbers’. The attainment of a threshold of 33% women presence in decision-making does not guarantee that this ‘critical mass’ becomes critical actors/representatives, who ‘act for’ and substantively advance gender and democratic agenda. Many remain symbolic, and/or descriptive representatives who may formally ‘stand for’ the gender agenda, but substantially have other diverse interests, capacities and interpretations of their role in public decision-making positions. Because of this, women’s status and capacity for meaningful political representation is said to largely depend on: (i) the kind of access they have to formal political structures-parliaments, political parties, etc.; (ii) the specific socio-cultural, economic and political contexts that mitigate women leader’s capacity/inclination to influence policy and in turn fulfil a transformative gender agenda and remain accountable to the constituent group(s) they represent; (iii) the size of the numerical presence, physical numbers of women in political office and (iv) the nature of the institutional norms and practices pertaining to governance institutions. In addition, this chapter takes cognizance of the diverse and unique values and experiences those women possess and bring into politics as people’s representatives; which when joined together with male

inputs, can contribute to improving the quality and outcomes of governance (Phillips, A 1995; Freeman: 1975; Hassim, S.; Tripp; Peterson and Runyan; Bystydienski; Shanley Pateman; Stanley; Harding; Nzomo; Nyokabi).

Under the circumstances, the extent to which women can convert formal representation into substantive representation depends only partially on their capacity and determination to succeed. Overall, women enter the political arena carrying the burden of patriarchal cultures and values that privilege masculinity in public governance and undervalue femininity, which is assigned reproductive rather than public functions. Consequently, the rules, norms and values that underwrite political engagement, reflect masculine values, as prescribed by culture and tradition. Hence entry into public governance does not eliminate hegemonic masculinity nor alter significantly gender inequality or the division of labour and power, which limits women's engagement in public life and creates gender imbalance in political representational structures and processes. The point is that, even if women were a homogenous interest group (which they are not), the prevailing patriarchy and hegemonic masculinity, would still pose a significant challenge on their formal presence in governance to make a substantive difference.

### **3.5 UN Perspective: Numbers and Beyond Numbers**

A UN expert group meeting held in Addis Ababa in 2005 noted that it is of utmost importance to have equal numbers of women and men in political office, based on the following: i) the justice argument – women have the right to be represented in equitable numbers with men; ii) the experience argument – women's experiences, just like men's, add value to policy-making and implementation; iii) Group interest argument – interests of men and women are different and thus women are needed in representative institutions to articulate other women's interests; iv) the critical mass argument – women can only effectively represent other women's interests in governance, when they achieve a minimum 33% numerical level of representation; v) the democracy argument – the equal representation of women and men enhances the democratization of governance and vi) the role model argument - women are attracted to political life if they have role models in the arena.

While acknowledging the importance and significance of increasing numbers, the experts noted that there is need to assess the contexts and conditions under which equal presence can become effective in empowering women and men, and thereby sustain democracy. In other words, substantive representation of women must look 'beyond the numbers' of women 'representatives' that claim to speak for women's interests but without tangible outcomes. It has, however, been noted in this regard that with specific political, cultural and social contexts, women representatives do attempt to address women's basic needs and tend to be less corrupt than men and hence bring some credibility to governance (Vargas and Wieringa: 1998). But this finding cannot

be generalised. The experts emphasized that it is necessary to go 'beyond numbers' and assess to what degree and under what conditions elected women actually represent and contribute to gender equality.

The experts identified three important conditions that contribute to the ability of women to promote gender equality effectively: i) the presence of critical actors of individual women (and men), who play key roles in the political process; ii) critical structures in the form of political processes and institutions that enhance women's political influence and iii) critical junctures - of certain socio-economic and political moments when forces combine to provide unprecedented opportunities for women to influence policy-making and implementation process.

The case for thinking beyond numbers is thus a call for more nuanced and constructive dialogue and analysis on the how, who and what of attaining a gender responsive and inclusive democratic governance environment, with rules of engagement that facilitate both women and men leaders, provide a level playing field to set and realize desired agenda(s) and outcomes.

It is on the basis of this framework that this chapter analyses Kenya women's journey to date and project on the future, but focus primarily on the post-colonial era. The issues addressed in this chapter focus on the following areas: (i) the status and significance of women's access to State/political institutions (e.g. Parliament, Executive and Judiciary); (ii) the normative (legal, policy and institutional) frameworks put in place to provide guidelines for democratic governance and their efficacy; iii) the gains made in accessing governance institutions and in engendering and democratizing institutional culture towards morality in statecraft and social responsibility.

### **3.6 International Accountability Norms and Mechanisms for Promoting Gender Equality in Governance**

Ideally, international legal, policy and institutional norms should provide a powerful accountability instrument as well as a mechanism for countering patriarchy and other cultural norms that undermine gender equality in governance. My argument in this section is that Kenya as a member of the international community has adequate international norms and frameworks to anchor the development of its national norms and practices.

Since the UN Charter was promulgated in 1945, numerous legal, policy and institutional norms have been put in place to promote gender and equality across the board. The Charter clearly articulates the commitment of all member states to uphold the principle of gender equity and equality. The 1948 Universal Declaration of Human Rights further declared that all human beings are born equal in dignity and Rights. This was followed in 1965 by the coming into force of the three UN treaties that are normally jointly termed as the International Bill of rights on political, economic and socio-cultural rights.

Many other similar international conventions and treaties were put in place between 1945 - 1995. The most notable treaty that emerged in the intervening period was the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is regarded as the principal international treaty for promoting gender and women's rights. Article 7 of CEDAW calls upon State parties "to take all appropriate measures to eliminate discrimination against women in the political and public life of the country". Further, at the 16th session in 1997, its Committee on the Elimination of Discrimination against Women adopted general recommendations regarding the participation of women in public life and emphasized that State parties should ensure that their constitutions and legislation complied with the principles of the Convention and that they were under an obligation to take all necessary measures, including temporary special measures, to achieve equal representation of women and men in political and public life.

It is also important to note that UN agencies, of which all states are members, carry the mandate of promoting gender equity and equality. The United Nations Commission on the Status of Women (UNCSW) is the key international institution put in place in 1946 to serve as an anchor for all issues related to gender and women's rights. At its forty-first session in 1997 UNCSW adopted Agreed Conclusions (1997/2), which emphasized that attaining the goal of equal participation of men and women in decision-making, was important for strengthening democracy and achieving the goals of sustainable development.

The United Nations Security Council in its resolution 1325 (2000) on women, peace and security, reaffirmed the important role of women in the prevention and resolution of conflicts and in peace-building and stressed the importance of their equal participation in decision-making and full involvement in all efforts for the maintenance and promotion of peace and security. Furthermore, the UN General Assembly resolution 58/142 of 2003 on women and political participation, urged Governments, the UN system, NGOs and other actors to develop a comprehensive set of policies and programmes to increase women's participation in decision-making, and support and generate political will, serious commitment to the promotion of the advancement of women and the goals of gender equality.

Despite the existence of these and other international norms, the scorecard of State and non-State actors indicates slow progress towards the democratization of the hegemonic and masculinised structures, culture and processes of governance prevailing in many societies, including Kenya.

This concern was well articulated fifty years after the launch of the UN Charter by the 1995 Beijing Platform for Action, which drew attention to the persisting inequality between men and women in decision-making across the world, with Kenya being among the worst offenders. It reaffirmed women's persistent exclusion and marginalization

from formal politics and other governance spaces. The Platform noted that this situation undermines the achievement of effective democratic transformations in governance institutions, including parliaments.

The Beijing Platform for Action emphasized that:

... women's equal participation in decision-making is not only a demand for justice or democracy, but also a necessary condition for women's interests to be taken into account. Without the perspective of women at all levels of decision-making, the goals of equality, development and peace cannot be achieved. (Para. 181)

The Platform, therefore, identified the need to develop implementable strategies to ensure women's equal access to and full participation in power structures and decision-making; as well as increase women's capacity to participate in decision-making and leadership. In this regard, it recommended the following strategic and implementation measures:

- i. to set specific, measurable targets for achieving gender-balanced composition in all governance bodies and committees as well as public administration and judiciary;
- ii. integrate women into elective positions in political parties;
- iii. promote and protect women's political rights;
- iv. reconcile work and family responsibilities for both men and women;
- v. enhance leadership and gender awareness training;
- vi. develop transparent criteria for decision-making positions and vii) create a system of mentoring.

### **3.7 The Kenya National Legal, Policy and Institutional Accountability Mechanisms: Constitution 2010**

The 2010 Constitution and the various legal and policy frameworks deriving from it are a key source of norms and accountability mechanisms. These mechanisms include Article 10 of the Constitution that provides for fundamental national values that should form the basis of the gender relations and governance ethos. Chapter 4 that constitutes the Bill of Rights provides a comprehensive template for actualizing and implementing individual and group rights and in particular, gender equity and equality. Chapter 6 on Leadership and integrity sets out strict requirements for those seeking public leadership and prescribes responsibilities of leadership, Conduct of state officers, financial probity etc. The Right of Recall of non-performing elected MPs as provided for under article 104

of the Constitution was expected to force MPs to remain accountable to the electorate. This article, along with the Elections Act, reinforces the provisions of Chapter 6 of the Constitution.

The 2010 Constitution also provided the legal platform for the domestication and adoption of laws and reforms on women's participation in politics. These laws have resulted in an increase in women's representation within all levels of government and, consequently, allowed women to increase their influence in decision-making processes. However, a large gap still exists between commitments pursuant to the ratification of the texts and the reality of women's leadership. Much more needs to be done to guarantee the full realisation of women's rights to representation as envisioned in the international law, the Constitution of Kenya, and in Kenyan law.

Many observers have hailed the Kenya Constitution as one of the most progressive in the world, as it complies with the international and regional obligations arising from treaties and conventions and other commitments signed and or ratified, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the 2003 Protocol to the African Charter on Human and People's Rights on the Rights of Women.

The 2010 Constitution has also provided the basic and most fundamental normative framework for guiding the implementation of promoting rights and democratic governance environment. The institutional mechanisms analysed below, all draw their mandates from the 2010 constitution.

### **3.8 Gender Aspects of the Kenyan State Mechanisms of Governance: 2010-2018**

As the analysis below indicates, Kenya is no longer short of legal, policy and institutional mechanisms to provide the basis of transforming gender relations and governance in a social justice direction.

#### **a) Parliament, The National Assembly and the Senate**

Parliament is one of the three arms of government that is charged with the important roles of legislation and oversight of other State organs. Chapter 8 of the Constitution of Kenya establishes the Legislature. Article 93 of the Constitution states that "There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate." To implement the two-thirds gender rule, Parliament first drafted the Constitutional Amendment Bill, 2015 (the Duale Bill) with provisions for a gender top-up clause like the one applied to county assemblies.

The constitution confers upon Parliament the core roles of legislation and exercise of oversight functions over other state organs. These twin roles give Parliament enormous

powers to develop and facilitate the implementation of governance norms; ensure accountability of other state organs and promote gender equity and equality in Parliament and other governance institutions. The two Houses of Parliament shall perform their respective functions in accordance with the Constitution as stated in Article 93 (2) of the Constitution.

These mandates confer wide-ranging strategic powers upon Parliament, which it could utilize to advance gender equity and equality and democratize and engender the culture of parliamentary governance. Despite these powers, the Kenyan Parliament has demonstrated to be one of the most masculine and patriarchal governance institutions in Kenya. As a legislative body, Parliament has to-date failed to pass any bill that would implement the two-thirds gender rule. Indeed, the extent of Parliament's role in the promotion of gender equity and governance can best be assessed against its failure to pass any bill that would implement the two-thirds gender rule.

Parliament first drafted the Constitutional Amendment Bill, 2015 (the Duale Bill) with provisions for a gender top-up clause like the one applied to county assemblies. In a move that seemed to contradict the Duale Bill, the Legal Affairs Committee of the National Assembly also tabled a separate bill – popularly referred to as the Chepkonga Bill– which provided for gradual implementation of the gender rule.

The Chepkonga Bill lengthened the timeline for the implementation and ensured that the Parliament would not be dissolved if it failed to meet the Supreme Court's August 2015 deadline. In the meantime, another bill was tabled in Senate, similar to the Duale Bill, but also limiting to two the number of terms one can serve as a county woman representative. Yet another bill, known as the Green Amendment, was developed by an informal parliamentary caucus on human rights, proposing to substantively change the Constitution through a referendum. This bill proposed to create twin constituencies to offer additional competitive seats for women.

All these gender focussed initiatives aimed at implementing the two-thirds gender rule failed to garner sufficient votes in parliament, despite receiving endorsements from President Kenyatta and others. In my assessment, the various lame attempts by some MPs to pass their respective versions of the two-thirds gender bill, lacked the seriousness and commitment necessary to provide an implementable/ enabling legislation for implementing the two-thirds gender rule.

The lack of harmony in coming up with one implementing legislation, along with the consistent lack of quorum every time the bill came up for voting, demonstrates lack of political will and entrenched patriarchal governance values that undermine gender equality.

(See also, [http://www.parliament.go.ke/About Parliament/](http://www.parliament.go.ke/About_Parliament/))

## **b) Parliamentary Gender Mechanism: KEWOPA**

At the parliamentary level, two female parliamentary caucuses are in existence. These are the Kenya Women Parliamentarians Association (KEWOPA) and the Kenya Women Senators (KEWOSA). The two contribute to Parliament's work in the area of integrating gender into laws and policies. Similar caucuses are also established in the 47 County Assemblies. These two have, *inter alia*, jointly with sections of the women's movement, been lobbying and putting pressure within and outside Parliament, for the implementation of the 'two-thirds gender rule'.

The Kenya Women Parliamentarian Association (KEWOPA), of which all women MPs in the National Assembly are automatically members, was launched in 2004. On its website (<http://www.kewopa.org/>) KEWOPA states that its vision is that "women and men are equitably represented in Parliament and decision making in public and private spheres to promote sustainable development. It also articulates its mission as being:

... to promote the advancement of parliamentary democracy by enhancing knowledge & understanding of democratic governance and facilitate the networking of women parliamentarians for the socio-economic and political development of Kenya (Ibid).

It also outlines its contribution in attaining its vision and mission. These include: i) the realization of the family Bills: - Marriage Act 2014 and the Matrimonial Property Act 2013 and Protection Against Domestic Violence; Act ii) Spearheading the push for the realization of the two thirds gender principle as proposed by the Constitutional Amendment Bill 2015 (No. 4), initiated by some KEWOPA members; iii) developed gender-responsive budgeting guidelines for Parliament; iv) developed a Members Handbook on Sexual and Reproductive Health and Rights. Other legislative KEWOPA contributions include: (i) the Children's Act of 2002; (ii) the Sexual Offences Act of 2006; (iii) the Counter Trafficking in Persons Act of 2010; (iv) the review of the Employment Act of 2007; (v) the Prohibition of Female Genital Mutilation Act of 2011 and the Breast Milk Substitutes (Regulation and Control) Bill now before Parliament.

Women-friendly policy changes initiated by KEWOPA include: (i) the tax waivers for sanitary wear and diapers; (ii) engendering the 2008 revised Standing Orders of the National Assembly; (iii) securing paid maternity leave for women MPs and female-designated washrooms; (iv) the appointment of women MPs as Chairs or Co-Chairs of five of the standing Parliamentary Committees and (v) the 2008 establishment of the Equal Opportunities Committee (EOC) that monitors and promotes equal opportunities for all marginalized groups. KEWOPA has also played a strategic role in engendering the 2010 Constitution making and subsequent implementation processes (Nzomo: 2011).

Based on the achievement's scorecard as presented, it can be argued that under KEWOPA, Kenya women in this key governance institution have performed well, despite

their numerical minority status and patriarchy-inspired resistance to gender equality encountered from most male MPs. KEWOPA seems to have demonstrated some capacity to set a gender agenda in Parliament.

This has led some to conclude that, if a 'critical mass' of women was attained in Parliament, they would secure more transformative changes in Parliament. That however, is debatable, especially when one examines the demonstrated inability to set an agenda on the vexing governance question of corruption. KEWOPA members, for example, have consistently voted with male MPs in support of the endless unilaterally determined salary increases in a society, where the majority of Kenyans are wallowing in poverty. My view of what needs to happen for the output of KEWOPA to change is to put more effort in 'recruiting' and 'converting' hegemonic patriarchs into gender champions/feminists whose alliance can be counted upon in promoting gender equity and equality.

The argument that an increase in the numbers of women MPs would automatically lead to positively influence governance is not supported by evidence of the record of performance of the more than ten African countries where women political representatives have attained and exceeded the 30% threshold. Like KEWOPA, they have also successfully spearheaded the enactment of some women and gender-responsive legislation, but have been unable to transform the patriarchal culture and norms of political institutions. Furthermore, the current political stalemate in Kenya occasioned by the male political elites' resistance to the implementation of the 2/3rds gender quota is a clear signal of the power of patriarchy and the likely battle ahead, as patriarchal forces continue to defy and resist gender equality. This reminds us that the Kenyan State and other institutions of governance remain gendered and greater physical presence of women will neither automatically alter the dominant masculine culture embedded in those institutions nor the gendered distribution of political power and other resources.

Formal access by Kenya women into governance institutions, without change in the patriarchal institutional norms, hinders women's capacity to set a transformative gender and democratic agenda; and/or strengthen accountability mechanisms. The point therefore is that, a key priority agenda of women political representatives should be to develop better strategies/mechanisms for transforming patriarchal institutional values that normalize inequalities and undermine and render ineffective any legislative successes. This will entail sacrifice, political will and commitment.

### **c) *Executive Mechanism: State Department for Youth and Gender Affairs***

This State Department on Youth and Gender, domiciled in the Ministry of Public Service, Youth and Gender, which in turn is located in the Presidency - the executive arm of government, is a strategic institution, which if well utilized, can make a significant contribution towards the positive governance change Kenya requires. The department is responsible for developing national policies on gender, creating standards to guide the

implementation of policies, making legislative proposals to parliament and providing leadership in that regard. More specifically, it is mandated to:

- (i) Institutionalize gender mainstreaming in ministries, departments and agencies as well as in the devolved county level and private sector;
- (ii) Promote the development and review of gender policies and legislation;
- (iii) Promote research, collection and analysis, storage and dissemination of sex-disaggregated data to inform programing, and
- (iv) multimedia campaign to promote women leadership as an advocacy tool.

To-date, the Department scorecard includes: i) revision of the National Policy on Gender and Development to align it with the Constitution so as to realize the participation of women, people with disabilities (PWDs), youth, ethnic and other minorities; ii) development of the National Equality Policy to facilitate implementation of the constitutional equality principles in all sectors; iii) the provision of guidance on the application of Article 27 on affirmative action with respect to gender and iv) issuance of a national strategy document to support women in elective politics and guide state and non-state actors on the implementation of programmes to prepare women for elections.

While recognizing the achievements made by the Department and its parent ministry, it is significant to note that the Department has given a scorecard containing only a contribution towards the normative policy norms required to realize gender equity and equality. The next, but more challenging step is to initiate implementation programmes and monitor the extent to which such outcomes contribute to the process of total societal change that benefits all.

Change of mind-sets is a crucial part of that process. The Department's programme initiated and launched in August 2018 is a good example in that direction. At the launch of this programme, the Department recognized and celebrated a few Kenya women heroines, who have distinguished themselves in public service and in particular, blazed the trail in search of gender equity and equality in Kenya. But for this programme to have long-term and sustainable impact, it needs to be integrated and entrenched in all other governance institutions.

#### **d) *The Office of the Registrar of Political Parties (ORPP)***

Political parties serve as the main conduit for candidates to compete for and attain elected office. The ORPP is the statutory body charged with the main responsibility of creating and enforcing regulations on the formation and operations of political parties, as contained in the Political Party's Act (PPA). The PPA is a key accountability tool, for enforcing and monitoring political Parties' compliance ensuring probity, transparency and fairness in the recruitment processes of all political office aspirants. In so doing, ORPP should thus

enforce accountability of political parties as provided in the PPA. In particular, ORPP should play a significant role in the implementation of the two crucial gender equality articles of the Kenya 2010 Constitution: Articles 27 and 81(b). For example, those placed on political party lists should be selected based on merit; proven commitment and service to the nation; leadership ability and integrity and in compliance with the no more than two-thirds rule. Since its creation, the ORPP lays claim to having completed a number of activities to improve the representation of women in political parties, including advocating for amendments to the PPA that created more enforcement provisions for the ORPP. In 2017, the ORPP created a gender-sensitive nomination checklist for political parties to guide the drafting of party constitutions, and conducted some auditing of political parties for compliance with the Constitution and amended the PPA. The ORPP works directly with the Independent Electoral and Boundaries Commission (IEBC) to audit nomination lists and regulate parties during the electoral process. The ORPP also lays claim to some positive achievements in ensuring compliance with the two-thirds gender principle.

However, the ORPP could do more to promote women's representation and effective participation in the governance structures and processes of political parties. Though provided with tools for enforcement and sanctions, the ORPP's performance in utilizing its enforcement powers to advance meaningful gender equity and equality in the governance structures and processes within political parties has been negligible. The scorecard indicates glaring masculine and hegemonic party control, which are treated as personal and exclusive political vehicles by their predominantly male owners, unregulated and unsanctioned by ORPP. It has further been noted in this regard, that ORPP has focussed largely on holding meetings and workshops designed to showcase the benefits of women's inclusion, and developing materials to guide the political parties in complying with the law. This is far from adequate. For example, its claim to having contributed to women's greater representation in political parties is not supported by evidence. Although most parties claim to have met the two-thirds gender constitutional requirement in their governing bodies, evidence as recent as 2017, indicates that women still typically occupy low positions, such as women league leaders and deputies to other positions, which do not offer visibility and has minimal influence on party decisions.

Furthermore, a gender breakdown of IEBC's candidates list for the 2017 elections revealed that prior to the election, the number of women lagged far behind that of their male counterparts. Of the 14,501 candidates who participated in the 2017 elections, only 8.7% were women, despite the concerted efforts of various actors to increase the pool of aspiring women (NDI & FIDA, 2017).

Moving forward, ORPP should, for example, redirect a large chunk of its time and financial resources towards more targeted, sustained and comprehensive civic education to raise the civic and gender awareness of both women and men on their rights and responsibilities; their role in contributing to the development of a democratic and gender

equitable governance culture and its correlation with the improvement of overall societal welfare. The ORPP could also better collaborate with the other relevant agencies, such as Directorate of Immigration and Registration of Persons, the National Council of Persons with Disabilities, and the IEBC, the National Cohesion and Integration Commission (NCIC) etc.

Women as members of political parties have their own role to play in enhancing their capacity to influence and promote gender equity and democratic governance. In this connection, it is worth noting that party systems comprising one or two dominant parties such as Kenya, party loyalty and identification is often very strong in parliaments and discourages representatives, both women and men, from forming cross-party alliances. Ultimately, women MPs are often unable to balance between their accountability to their respective Parties that demand adherence to the party ideology and, on the other hand, their role to champion the gender agenda, whose ideology may be in contrast to that of their respective political parties. Women parliamentarians thus need to address this challenge if they wish to effectively contribute to the transformation of the patriarchal governance culture that prevails in Parliament. Women parliamentarians often face the dilemma of having to follow their party's directive or to articulate demands for women and gender equality.

#### ***e) National Cohesion and Integration Commission (NCIC)***

The NCIC is a statutory body established under the National Cohesion and Integration Act No.12 of 2008. The establishment of NCIC recognized the need for a national institution to promote national identity and values, mitigate ethno political competition and ethnically motivated violence, eliminate discrimination on ethnic, racial and religious basis and promote national reconciliation and healing. Its core mission is to “develop and sustain processes that alleviate all forms of ethnic discrimination and promote diversity through knowledge’ (<https://www.cohesion.or.ke/index.php/about-us/ncic-at-a-glance>). It also promotes the constitutional national values of professionalism; integrity; accountability and transparency; affirmative action for the marginalized and the minorities; and inclusivity and respect for diversity.

Towards this end, in 2016 the National Cohesion and Integration Commission (NCIC) audited commissions, parastatals, and county public services to determine how diverse they were. The audit showed that women comprised only 12 per cent and 33 per cent of the chief executive officers of parastatals and national commissions, respectively. These statistics indicated a wide gender gap in the top offices of government despite the law providing for gender equity and equality. In the 2017 general elections, the NCIC generally included women in its mandate for monitoring conflict, but was not specifically focused on women.

NCIC, in my view, is a crucial institution which could greatly improve gender relations and the quality of governance in general if various organs of government desisted from

undermining its capacity to implement its mandate. For example, to-date it has been noted that many of the cases of breach or failure to comply with provisions of social cohesion and integration taken to the prosecutory and judicial organs for action have often been undermined by political interference. Again, the challenge here is not an inadequate framework or the norms therein contained. Rather, the key challenge is the dominant institutional culture that undermines the development of a culture that upholds the rule of law, promotes equity and equality, as well as values of accountability.

#### **f) *The Independent Electoral and Boundaries Commission (IEBC)***

The IEBC has the constitutional mandate to conduct and supervise referenda and elections of all public bodies. In line with Article 88 it has an obligation to uphold the general principles of the electoral system, including the two-thirds gender rule. IEBC is expected to propose to Parliament any legislative and regulatory proposals for enactment to guide the delivery of its mandate.

Given its mandate, the IEBC could play a greater role in providing guidelines to political parties to ensure compliance with the two-thirds gender rule. It has been noted that to-date the IEBC appears to have restricted its role to the implementation of the gender rule through party lists only. IEBC needs, inter alia, to work with other stakeholders in carrying out its gender mandate. For example, it should engage in raising awareness around provisions of the Election Code of Conduct among candidates, political parties and their supporters, with a view of creating an environment that is tolerant of inclusive participation and that encourages a free and fair electoral process.

#### **g) *The National Gender and Equality Commission (NGEC)***

The National Gender and Equality Commission (NGEC) was established in 2011, under Article 59 (4) of the Constitution that allowed it to be heaved off the Kenya National Human Rights Commission and thereby legalized through the enactment of the National Gender and Equality Commission Act (2011). As the chief parastatal monitoring body for promotion of gender equality, it bears a major responsibility to enforce and ensure compliance and expose non-compliance in respect to leaders' performance in advancing gender equality of all gender-related issues. It is not only mandated to oversee implementation of the constitutional obligations on gender equity but also the inclusion of marginalised groups. The NGEC also has powers to investigate violations relating to its mandate.

According to its self-assessment, the NGEC credits itself with having i) conducted both court and legislative initiatives to implement the two-thirds gender rule; ii) initiated in 2014 the consultations on how to facilitate implementation of the two-thirds gender rule in the 2017 general elections, leading to the eventual amendments to the PPA; iii) filed a case in 2013, challenging IEBC's criteria for allocating elective seats from party

candidate lists; iv) Enjoined in 2013, in the legal case of the National Gender and Equality Commission vs. Independent Electoral and Boundaries Commission & another [2013], in which it argued that the party lists submitted to the IEBC did not meet constitutional requirements, including the two-thirds gender rule. Since the 2013 elections had already been conducted and the statutory time limit for submitting party lists had passed, the court chose not to nullify the existing party lists but instead asked IEBC to publicise the parties that had qualified to nominate members to the legislature so that individuals could bring their own challenges. But these party lists were never published. The court also tasked IEBC to establish and publicise criteria for admissibility of party lists.

During the 2017 elections, NGEC deployed election monitors in various parts of the country to collect information on the level of participation of women voters and other marginalised groups. The commission plans to use this information to determine challenges facing women voters or women candidates in the elections. Due to budget constraints, the NGEC could not recruit or deploy a sufficient number of observers during the election, and has had limited breadth of information to work from in its reporting.

The NGEC initiatives to-date are hardly adequate. NGEC is charged with a core gender watchdog and accountability role, which it has poorly performed in the last seven (7) years of its existence.

### **3.9 Civil Society Accountability/Watchdog Institutions**

This category includes the Kenya Women's movement, which has for over the past three decades, played significant roles in promoting women's and gender rights. Not only has it been a key watchdog and an accountability mechanism for holding public officials to account but it has also been an important vehicle for building the capacity for asserting rights as electors of political leaders and as candidates seeking access or influence in public decision-making positions. Furthermore, the movement has taken the role of developing gender responsive governance norms as evidenced by its initiative that developed the 2011 National Women's Charter to serve as an accountability tool to hold both female and male political leaders accountable.

The media remains a powerful and important mechanism of holding leaders accountable, for example, through Opinion Polls, as well as by 'naming and shaming'. Media acts as both an executor and as a protagonist in promoting equal participation of men and women in elections. Media can also be an accomplice to gender-based discrimination by portraying stereotypical sensational images of women. According to Matekaire (2003) the media plays a significant role in determining how women in politics and decision-making are viewed and perceived by society in general. The media not only plays an important role in shaping the values of society but also reflects those values. The media is a chronicler of events, an informer, an educator, a transformative space and a tool to change society. Women in politics play a vital role in ensuring the democratic

governance of the country and, therefore, their contribution to this processes needs to be analysed in the appropriate context by the media.

Here again, the challenge has been not only to harness the change of patriarchal mind-sets operating in this sector but also to constantly persuade them to create a better balance between their core commercial objective and their social responsibility to provide to disseminate what promotes the public good, including the matter of gender equality and democratic governance. In Kenya significant progress has been made in this direction in the last three decades, but more remains to be done.

The religious sector could become a very influential accountability instrument as well as an important vehicle for developing high level of ethical standards in governance. The challenge here, however, is the highly patriarchal nature of this institution that is deeply embedded in the doctrine that provides the code of conduct within and outside this institution.

On the whole, the Civil society sector has a responsibility not only to lobby and to put pressure on state and other non-state public institutions to enforce/implement existing norms and policy guidelines for democratising and engendering governance and its outcomes but also to take gender-specific actions that speak to the institutional cultures and norms that undermine women's capacity to deliver; be accountable and also hold others to account. This sector thus needs to spearhead concerted and sustained civic education to combat the cultural values, norms and mind-sets that undermine women's effective participation in leadership and perpetuate gender inequality in division of labour, power and allocation of resources.

### **3.10 Kenya Women's Journey: Negotiating Rights and Space for Equitable Participation in Governance: 1963-2017**

The post-2010 legal, policy and institutional gains discussed in the first part of this chapter are a central part of the Kenyan women's journey in the struggle for rights and participation in governance structures and processes.

This journey has a long history dating from the pre-colonial and colonial Kenya which has been well documented elsewhere by feminist historians (Kanogo) and requires no repetition here. But the final year of transition to post-colonial era deserves mention, as it is here that we see the first Kenyan woman, Priscilla Ingasiani Abwao, participating alongside the team of five Kenyan men in the last stage of the independence constitution negotiation process at the 1962 Lancaster Conference in London. The Colonial governor had picked her for the delegation in her capacity as the first African woman to sit in the Legislative Council (LEGCO). Little is known of the role she played in the constitutional negotiations and in the undemocratic governance structures of the colonial government's LEGCO. But she is said to have been a principled woman

and an advocate for women's rights (Lichuma, 2017). Save for Abwao's presence at the constitutional negotiation process of 1962, women of Kenya were completely excluded from the entire first constitutional making and negotiation process. Despite Abwao's presence at this crucial independence negotiation conference, she seems to have been unable to secure the inclusion of gender and women's rights in the 1963 Constitution.

The 1963 independence constitution of Kenya provided for and legitimized patriarchy and discrimination against women in favour of personal laws. Thus, section 82 (4) of the first constitution of Kenya allowed discrimination in respect to marriage, divorce, burial, property ownership and devolution of property on the death of a spouse. It is also significant that the first post-independence parliament was an all-male parliament.

During the period 1963-2010, Kenya was governed by the independence constitution which had, in the intervening fifty-two years, been amended over thirty-nine times in a direction of entrenching authoritarian and patriarchal mode of governance. For every amendment made before 1991, human and gender rights became more eroded to the point where by 1991 no meaningful gender rights and freedoms were left in the old constitution. Despite this, the Kenyan women's resolve and steadfastness in the struggle for gender justice and right to participate in governance processes and to gain voice and visibility remained unshaken.

The twenty years struggle of constitutional reform (1990-2010) culminated in the promulgation of the 2010 Kenya Constitution. The role of women within and outside the State in the development of a progressive legal policy as well as institutional norms and frameworks that support gender equality, rights and social justice has been enormous. Without doubt, this twenty years long struggle for constitutional reform was a key part of the women's journey towards gender equity, equality and justice. The gender-responsive content of the 2010 Constitution, owes a lot to the gender champions that blazed the trail and provided leadership and other support to the women's movement that lobbied for the rights and other democratic gains in the 2010 Constitution.

Arguably, the most outstanding gain to-date that both women and men of Kenya have reaped from their struggles was a legal framework that comprehensively provides for women's rights as human rights, democratic governance values and principles, including human dignity, equity and equality, social justice, inclusiveness, economic, social and cultural rights, which are entrenched in the Bill of Rights in Chapter 4 of the Constitution. Women were specifically granted the right to confer citizenship to their foreign spouses and children born outside Kenya with non-Kenyan men. The Bill of Rights essentially provides that every person is equal before the law and has the right to equal protection and benefit of the law; equal treatment; and equal opportunities in political, economic, cultural and social sphere. The 2010 Constitution also created a bicameral parliament and a decentralized governance structure that created forty-seven County governments, each with a position for a woman only county representative. This brought a significant number of women into public leadership space.

The Constitution also provides for equality of rights in marriage, employment, matrimonial property; rights to inheritance, land ownership and access to education. The Constitution outlaws discriminatory customary practices and women are guaranteed equal parental responsibility. Both public and private institutions are required to comply with the gender and women's rights constitutional principles. The constitution thus provides massive space for both women and men to exercise rights and obligations; basic freedoms, as well as develop and embrace core democratic values of leadership and governance.

In addition, the State is expected to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. The State is further required to "take legislative and other measures to implement the principle that not more than two-thirds of members of elective bodies shall be of the same gender".

As noted earlier in this chapter, riding on the accountability of the 2010 constitutional provisions, the combined power of women parliamentarians and gender champions outside parliament successfully negotiated and secured enactment of the enabling legislation that have given implementation impetus to the 2010 Constitution. These legislations include: i) Marriage Act (No. 4 of 2014); ii) Employment and Labour Relations Court Act (No. 20 of 2011, revised edition 2014); iii) Protection against Domestic Violence Act (No. 21 of 2015); iv) Basic Education Act; v) Matrimonial Property Act (No. 49 of 2013); vi) Micro and Small Enterprises Act (No 55 of 2012); vii) Treaty making Ratification Act (2012); viii) The Prohibition of Female Genital Mutilation Act (2011); ix) Law of Succession Act (2012); x) Citizenship and Immigration Act (2011); xi) National Gender and Equality Act (2011); xii) Counter-Trafficking in Persons Act (2010) and xiii) Government Policy on Sexual and Gender-Based Violence (2017) which provided implementation guidelines for the Sexual Offences Act of 2006.

The Constitution has thus provided massive space, for both women and men, to exercise rights and obligations, basic freedoms, as well as develop and embrace core democratic values of leadership and governance. What the Constitution does not and could not provide is the necessary political will to uphold the rule of law and the desire and the moral fibre to act responsibly in the exercise of one's rights, with due recognition of the rights of others. It also did not and could not provide a formula of how to banish patriarchal mind-sets that constantly undermine efforts to implement the constitutional norms of gender equity and equality.

Notably, these critical legal standards of gender equity and equality have not been completely met. For example, Parliament has yet to pass legislation that would bring its two houses – the National Assembly and the Senate – in line with the Constitution's 'two-thirds gender rule'. Amendments to the Elections Act and the Political Parties Act (PPA) have improved the regulatory environment but remain inadequate, lacking meaningful incentives and enforcement mechanisms. Compliance among political parties and the

parliament continues to be problematic despite Supreme Court rulings, mandating implementation of the two-thirds rule. The manner in which patriarchal forces in Parliament have repeatedly blocked or undermined the implementation of the two-thirds gender rule speaks of the patriarchal and hegemonic values that prevail in the Kenyan government institutions. This institutional culture has undermined not only the progress in increasing women's numbers in Parliament but also the possibility of transforming the governance culture.

In respect to the quest for Kenya women's political representation, the journey for the first five decades after Kenya attained her independence, the struggle for gender equality, quite understandably, focussed on the need to increase the numbers of women in public decision-making, especially political institutions (Nzomo: 1991, 1992, 1993, 1994, 1996, 2002)

The quest for the attainment of the UN minimum standard threshold of one third female representation in political governance institution has yet to be met in Kenya. The patriarchal governance is largely blamed for this slow progress. In the latest (2017) elections, the second to be held since the promulgation of the 2010 Constitution, women still comprised less than the minimum UN requirement of 30 per cent women in Parliament. As of 2018, the total female representation in the bicameral parliament in Kenya stands at 26%. The National Assembly comprises 19.7% and Senate 26.5 %. Even that number has been made possible because of the affirmative action using both the party quotas and seats reserved for women.

NDI and FIDA-K (2017) analysed the performance of women politicians in the 2017 elections as compared to the 2013 elections, taking into account Kenya's political, legal, and cultural environment. In this context the Report identified and documented the challenges encountered by women and the lessons learnt from this election. An analysis of the aspects that shaped the outcomes of both the 2013 and 2017 elections indicates that most of the factors that undermined women's success were non-legal and were mostly a reflection of patriarchy and hegemonic masculinity in access to and ownership and control of resources, capacity to inflict violence, gender stereotyping, etc. It was noted that the political space remains largely androcentric, making it difficult for women to fully partake in politics. Religion, which is predominantly patriarchal in its views on gender relations, is one of the instruments that have been used to legitimize women's exclusion and under-representation in political decision making. According to Tripp (1999: 6):

The prohibitive cultural attitudes against women's involvement persist among both men and women. These are reflected in voting patterns, media coverage of female politicians, and even in blatant attempts to suppress women's assertion of their political rights and views.

That said, the 2017 elections did represent a step forward for women's representation, albeit an incremental one. Compared to the elections in 2013, more women won seats at

all levels, except for the presidential race, which remained exclusively male. For the first time, in 2017 three women became governors and three became senators compared to none in 2013. More women were also elected to the national and county assemblies (23 members of the National Assembly in 2017 vs. 16 in 2013 and 96 members of County Assemblies in 2017 vs. 82 in 2013). Women running as independent candidates were also elected for the first time. While these are positive changes, it is important to note that women comprised just 9.2 per cent of the 1,835 elected individuals in 2017, a marginal increase from 7.7 per cent in 2013.

Thus, the key challenge in moving forward to promote gender equity and justice in respect of political representation is not an absence of legal and policy norms, but a reflection of non-compliance with these norms. This lack of compliance has been the main challenge since the passage of the 2010 Constitution. Most notable has been the repeated failure of the Parliament to enact broad implementing legislation for the “no more than two thirds” gender rule, while the Executive has done little to hasten the process or apply pressure. Court decisions mandating legislative compliance to this constitutional rule have, in some cases, encouraged delay and, in others, have gone unenforced. National laws related to political parties and elections also have significant implementation gaps that facilitate non-compliance and encourage non-enforcement. The constitutional provision for Recall of non-performing MPs has faced similar challenge of MPs acting with impunity.

This outcome speaks of the need for the development of a democratic governance culture that would facilitate elected bodies, and indeed, all political institutions in Kenya to undergo further reforms, in particular to provide not only for gender equality principle but also for precise enabling mechanism(s) for the implementation of a sustainable engendered agenda.

The above analysis indicates that the next stage of the gender equity journey in Kenya entails a paradigmatic shift away from the narrow narrative focused on the attainment of the magical 33%-50% threshold (critical mass) of women (as a homogenous category) in decision-making positions as an end goal, towards a perspective that views numerical presence as a means rather than an end in itself, bearing in mind that a critical mass without critical actors (both men and women) is inadequate. Thus, the paradigm shift should involve a move towards a greater focus on critical acts and actors rather than a focus on critical mass; less focus on formal/descriptive gender equity and greater focus on substantive equity and equality.

In this respect, the next stage of the journey should combine the quest for more numbers, along with a conscious effort to recruit and sustain a group of critical actors/gender champions comprising women (and men) committed to spearhead the transformative change from patriarchal and hegemonic gender relations to power relations based on meaningful/ substantive rather than simply formal equality. As Childs and Krook (2007)

have noted, it is not really numbers that matter but rather, women's commitment and feminist consciousness of gender injustice. Numbers are important only to the extent that they are convertible to transformative action. In Parliament, for example, this implies that if politics is to be transformed in the legislative arena, gender champions should seek to change conditions of unequal power relations; patriarchal institutional culture and unequal access to economic resources.

## Conclusion

This chapter has demonstrated not only the challenges women face in accessing public decision-making positions, but also the bigger challenge of attaining transformative power. The central argument of this chapter has been that attaining the magical 33% minimum threshold of women's presence in public decision-making bodies should be treated as only a first step, as it does not automatically translate numbers into the influence needed to achieve and sustain the desired goals of equity, equality and social justice. I have made the case that the major challenge that undermines progress is patriarchal social-cultural values and hegemonic masculinities which pervade gender relations and governance structures and processes.

The chapter has shown that women's access to governance institutions does not necessarily lead to capacity to implementing a feminist agenda. Instead, as several scholars have noted, there is need for the emergence of critical actors, both women and men that have the commitment and the conviction of taking on the role of gender champions within and outside the State; and can sustainably push for gender-responsive governance, in a consistent and sustainable manner. In this context, one of the ways of assessing performance is the extent to which critical actors are able to set an agenda for change and follow through the implementation of actionable gender equality policies, followed by tangible outcomes. And as noted earlier, the development of legal and policy institutional frameworks, however progressive, is on its own inadequate in the absence of the willingness to transform normative frameworks into actionable programmes for engendering governance. Thus, the journey towards gender equality and social justice remains unfinished until critical actors and gender champions emerge to effectively contribute and sustain the process of eliminating patriarchal and hegemonic governance structures, values and processes that undermine the achievement of sustainable equity, equality and social justice for all.

Moving forward therefore, I would propose that there is need for scholars to continue to provide intellectual leadership by providing evidence-based knowledge and strategic thinking that goes beyond numbers and focuses more on the structural impediments that stand in the way of both attaining numbers as well as implementing positive transformative change. Scholarly analysis also needs to create greater understanding of the role of individual women's multiple and diverse identities and experiences (just like

men) that may contribute to sustaining patriarchy and hegemonic masculinity.

The overall strategy will, however, need to be multifaceted and strategically phased out, with short, medium and long-term goals. Making gender equality a reality in Kenya, therefore, requires not only a conducive normative framework but also the collaborative efforts of relevant state and non-state actors. These include all state organs such as the Parliament, the executive and the judiciary, as well as statutory commissions responsible for gender issues, such as the IEBC, the ORPP, the office of the Attorney General (AG), the NGEC and related institutions.

Furthermore, whereas the entire society should take responsibility for transforming and democratizing governance, elected, nominated and appointed leaders and other public officials employed by the taxpayers, both women and men, bear special responsibility to represent and deliver on mandates delegated to them. That responsibility entails, inter alia, democratizing and de-masculinising political institutions to make them responsive to gender equality and justice, including creating an enabling institutional and policy environment for equally effective participation of women and men and de-feminizing the responsibility for representing and achieving gender equality in parliament, so that it becomes a shared responsibility between male and female MPs who should all be held accountable for their contribution to this mandate.

In the short term, Parliament needs to enact progressive legislation that include specific mechanisms for meeting the two-thirds threshold in the National Assembly and Senate, as has been done at the County level. It should amend the Elections Act to facilitate full implementation of the inclusion principles in compliance with Article 100 of the Constitution. The IEBC and ORRP should play a greater role in providing guidelines to political parties to ensure compliance with the two-thirds gender rule. Civil society and the NGEC should continue to provide comprehensive civic education to citizens. Concerted and sustained civic education is necessary to combat the patriarchal cultural values, norms and mind-sets that undermine women's effective participation in leadership and that perpetuate gender inequality in division of labour, power and roles within households. Special training needs to be provided to key implementers, including political parties on how to implement the affirmative action regulations. Similarly, the Media personnel should continue to be sensitized on gender responsive reporting, especially in respect to cases of gender-based violence in the electoral context and outside it.

## Works Cited

- Brody, A. *Gender and Governance: Overview Report*. BRIDGE/IDS. Brighton, 2009.
- Bystydzienski, J. *Women Transforming Politics: Worldwide Strategy of Empowerment*. Indiana University Press, 1992.
- Childs, M.L. Krook; S. "Critical Mass Theory and Women's Political Representation." *Political Studies*, 2008.
- Chowdhury, N. *Women and Politics Worldwide*. Yale University Press, 1994.
- Dahl, R. A. *Democracy and Its Critics*. New Haven: Yale University Press, 1989.
- Ekvall, Asa. *Behind the Men: The Consequences of Governance Informed by Patriarchal and Hegemonic Norms on Masculinity*. University of Antwerp, 2015.
- EU. *A Guide to Gender Impact Assessment*, 1997.
- Freeman, J. *The Politics of Women's Liberation*. New York: Longman, Inc., 1975.
- Goetz, Ann Marie; Hassim, Shireen. *No Shortcuts to Power*. London: Zed Books, 2003.
- Gouws, Amanda; Hassim, Shireen. *The Power to Change: Women's Participation and Representation in Africa*, 2011.
- Kamau, N. *Women and Political Leadership in Kenya: Ten Case Studies*. Nairobi: Heinrich Boll Foundation, 2010.
- Kronsell, Annica. "Gender and Governance." In *The International Studies Encyclopedia*, 2010.
- Lichuma, W. "Gender Equality Challenges in Kenya and Africa." In *Gender Equality: International Challenges and Strategies for Success*. London, 2017.
- Lycklama a Nijeholt, Geertje; Virginia, Vargas; Saskia, Wieringa. *Women's Movements and Public Policy in Europe, Latin America, and the Caribbean*. New York: Garland, 1998.
- Manin, B. *The Principles of Representative Government*. Cambridge: Cambridge University Press, 1997.
- Miguel, E. "Poverty and Violence: An Overview of Recent Research and Implications for Foreign Aid." In *Too Poor for Peace? Global Poverty, Conflict and Security in the 21st Century*. Washington, D.C.: Brookings Institution Press, 2007.
- Mill, John Stuart. *On Liberty: Representative Government, Subjection of Women; Three Essays*. Oxford University Press, 1969.
- NDI and FIDA Kenya. *A Gender Analysis of the 2017 Kenya General Elections*, 2018.
- Nzomo, Maria and Kivutha, Kibwana. *Women and Politics in Kenya*. Nairobi: East African Education Publishers, 2003.

- Nzomo, Maria. *Women in Politics and Public Decision-Making*. Nairobi, 1992.
- \_\_\_\_\_. "The Gender Dimension of Democratization in Kenya: Some International Linkages." *Alternatives: Social Transformation and Humane Governance*, 1993a.
- \_\_\_\_\_. "The Unfinished Democracy: The Gender Dimension of Democratization in Kenya." In *The Independent Review: Journal of Eastern African Literary and Cultural Studies*, 1993b.
- \_\_\_\_\_. "The Status of Women's Rights in Kenya and Strategies to Overcome Inequalities." *Issues: A Journal of Opinion* vol. 22(2), 1994.
- \_\_\_\_\_. "Women in Politics: Challenges of Democratic Transition in Kenya." In *Perspectives on Gender Discourses*. Nairobi: Heinrich Boll Foundation, 2003.
- \_\_\_\_\_. *Impacts of Women in Political Leadership In Kenya: Struggles for Participation in Governance through Affirmative Action*, 2011a.
- \_\_\_\_\_. "Women in Kenya's Political Leadership: The Struggle for Participation in Governance through Affirmative Action." In *Perspectives: Political Analysis and Commentary from Africa, The Power to Participate: Building Feminist Political Influence in Africa*. Nairobi: Heinrich Boll Stiftung, 2011b.
- \_\_\_\_\_. "Women and Political Governance in Africa: A Feminist Perspective." *Journal of African Women Studies Centre*, no. 1, 2013, pp. 25-47.
- Ostby, G. "Horizontal Inequality and Civil Conflict." *13th Annual Political Science Conference, Norway*, 2005.
- Pearce, Tola Olu. *Gender and Governance in Africa: A Conceptual Framework for Research and Policy Analysis and Monitoring*, paper to be presented at The African Knowledge Networks Forum Preparatory Workshop 17-18 August 2000, Addis Ababa, Ethiopia, 2000.
- Pennock, J. Roland; Chapman, John W. *Representation*. New York: Atherton Press, 1968.
- Peterson, V.S. *Global Gender Issues: Dilemmas in World Politics*. United States: Westview Press, 1993.
- Phillips, A. *The Politics of Presence: The Political Representation of Gender, Ethnicity, and Race*. New York: Oxford University Press, 1995.
- Pinker, S. *The Better Angels of Our Nature: Why Violence Has Declined*. London: Viking, 2011.
- Pitkin, H. F. *The Concept of Representation*. Berkeley: University of California Press, 1967.
- Rehfeld, Andrew. *The Concept of Constituency: Political Representation, Democratic Legitimacy and Institutional Design*. Cambridge: Cambridge University Press, 2005.

Reid, J. P. *The Concept of Representation in the Age of the American Revolution*. Chicago: University of Chicago Press, 1989.

Reynolds, Andrew. "Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling." *World Politics* vol. 51 (4), 1999, pp. 547-48.

Schwartz, Nancy. *The Blue Guitar: Political Representation and Community*. Chicago: University of Chicago Press, 1988.

Shanley, M. (ed.) *Feminist Interpretations and Political Theory*. Penn State Press.

Stanley, L. *Feminist Praxis: Research, Theory and Epistemology in Feminist Sociology*. Routledge, 1990.

The Commission on Global Governance. *Our Global Neighbourhood*. Oxford: Oxford University Press, 1995.

Tripp, A. M. *Women and Politics in Uganda*. Kampala: Fountain Publishers, 2006.

World Bank. *The World Bank Annual Report*. 1989.