

MICHAEL WABOMBA MASINDE

13. THE ROLE OF WOMEN IN POLITICAL DECISION MAKING IN EAST AND SOUTHERN AFRICA

A Case Study of Kenya and South Africa

INTRODUCTION

Women have both a right and an obligation to active participation in political leadership. Their role in modern politics is a subject that needs further insight, considering the rise in the number of women with relevant political positions on the international stage (Zamfirache, 2010). In our society, the media and how women are perceived plays a vital role in either advancing or limiting women participation in politics. The media plays a significant part in furthering stereotypes and setting standards for women.

BACKGROUND

For most of history, women were considered second class citizens. In the early 21st century, *the glass ceiling* was considered to be the reason why the arenas of power were dominated by men. The concept stresses out the impossibility of women to advance on the scale of professions higher than they already have, claiming that women do not lack ambition or strong will, but they are kept from doing so by invisible obstacles. The glass ceiling is described as ‘those artificial barriers based on attitudinal or organizational bias that prevent qualified individuals from advancing upward in their organization into management level positions. The artificial barriers are stereotypes, media related issues, informal boundaries. There existed flaws of the state and politics, which undermined gender equality in the favor of men.

The state, the political system, and the positions of power were male dominated. The glass ceiling made it difficult for women to obtain and secure their places in the same way men did.

Since men were often associated with leadership in politics, foreign affairs etc, then women were often associated with the private, personal sphere of life, like the family. The way men and women think about themselves has direct consequences on the way men and women act in matters concerning politics, so it is not only an issue regarding the public, but also regarding the way oneself understands his or her role. Politics has a male-related meaning and, as a result, it remains the prerogative

of men. The public domain is ruled by men, while the private, personal sphere of life is mostly feminine.

Nowadays we face what seems to be a redistribution of power – public policies, strategic planning, the public and the private all seem to adopt a common language concerning gender equality, social equality, and equality of opportunity and so on. The glass ceiling is formally broken by all the official prerogatives or institutionalized norms that state the equality between genders. This has been achieved through encouraging women to join politics, coming up with laws that are pro affirmative action and implementing policies that favour women's participation in politics. In some of the countries in Africa the process has also been facilitated in a normative matter where special seats are assigned or left up to women in the political arena. The important contributors to women's high parliamentary representation across the world including Africa came from a combination of socioeconomic, cultural, and institutional factors interacting with women's mobilization and party activism.

THE PARTICIPATION OF WOMEN IN POLITICS

Women's involvement in politics varies throughout the world and their participation in politics and the democratic process has become an integral part of contemporary discourse on development and governance. In spite of the cacophony for women's political empowerment by international organizations, research consistently shows that in many parts of the world women still linger on the fringes of political realm and their participation in government structures and the democratic process remains low (Ogbogu, 2012).

Due to widely held views on the appropriateness of political activities for women, their participation is constrained. The following factors affect women's participation in politics: multiple roles of women, religion, finance, lack of mentors, lack of adequate mechanisms for monitoring electoral outcomes and protecting women's mandate, patriarchy/cultural barriers, exclusion from informal political party network, education/training and biologically inherited weakness (Ogbogu, 2012). Lack of resources works against the aspirations of many women to run for political office. For women to participate effectively in the political process, substantial amounts of resources are required. These include finances, time, infrastructure and people (Women Direct Service Center, 2006). Despite the difficulties faced by women, they continue with their political ambition, contributing enormously to politics and the democratic process with a view to advancing national development (Ogbogu, 2012).

Women have performed noble roles in government and have served as agents of change, women in government have been accountable and have promoted transparency and good governance. Most self-help development projects in the rural areas in Africa are initiated by women politicians in government, Women have

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contributed to national development despite the limited support and resources at their disposal. The few women in politics use different styles from men to build consensus on issues.

THE ROLE OF PARLIAMENT AND POLITICAL PARTIES

The extent to which parliaments are informed determines their scope for action (United Nations Programme for Development). They clearly play a key role in social change, especially in the advancement of women, not only because of their responsibility for shaping and amending the legal framework that underlies and determines women's rights in all areas (particularly as regards participation in decision-making, discussion and voting of the funds required for administrative initiatives, and reorientation and oversight of government action), but also because they fuel public debate and inform public opinion and the media, which influence them in turn.

Each parliamentarian is also a male or female party member and can thus stimulate his or her party and vice versa. Individual parliamentarians also engage in a dialogue with their voters, registering their aspirations and perceiving the motivation for their choices. As interaction between civil society and parliamentary institutions is essential, parliaments must be truly representative of both halves of the population.

Political parties have become more aware of the issues involved and the need for women to participate more fully in the decision-making process. However, difficulties in changing electoral customs and legislation and in establishing new practices contribute to the persistence of strong opposition in society and among women. Political parties have also made adjustment in their operations in an attempt to take account of the constraints affecting women.

WOMEN AND POLITICS IN KENYA

Kenya gained independence from the United Kingdom in 1963 and returned to multiparty politics in 1992 (Magnus Ohman). Since then, five parliamentary elections have been held, and the 2002 election marked the first major change in recent Kenyan politics (the then-sitting president, Moi, was not eligible to run, and his party lost almost half its seats in parliament). However, the National Rainbow Coalition (NARC), which won the election, later collapsed, and the 2007 elections saw widespread violence in parts of the country. The political situation stabilized after the 2013 elections, although its sustainability is uncertain in light of current security challenges facing Kenya.

Throughout Kenya's history, women have been subjugated to consistent rights abuses while shouldering an overwhelming amount of responsibilities. In Kenya the traditional view that women should concentrate on their domestic roles has

made politics be seen as a 'no go zone' for them. Women continue to be socialized to believe that it is only men who can take up political leadership. A woman who takes up such challenges is said to be a bad woman (i.e., not a good mother, wife). In fact, most of the women in Kenya who have tried their hands in politics have been branded as divorcees and men-bashers. This name-calling discourages other women from getting into politics. They continue to get discouraging comments such as: politics is dirty, it is not good for any woman of good moral standing, it is too violent, one requires a lot of money, who can vote for a woman? Who wants to be led by a woman? We are not yet ready for women leaders (Kamau, 2007). Some women are still affected by customs and traditions that have long since been declared as harmful cultural practices (Article 5 of the Maputo Protocol). It has been the experience in Kenya that women are underrepresented. From the 1st general election held in Kenya to the most recent 2013 general election, men have been the majority in parliament

THE PLACE OF WOMEN IN POLITICS PRE-2010

Before Kenya attained its new Constitution in 2010 women were discriminated against and there existed no level playing ground for women and men in politics. Politics and government were dominated by men. The gender disparities that existed in Kenya was due to the deep-rooted patriarchal socio-cultural, economic and political structures and ideologies. Under these conditions, Kenyan women have been excluded from participation in key governance capacities (Nzomo, 2003). Retrogressive cultural and traditional practices such as the son-preference ideology, lack of belief in the importance of educating girls, forced marriages, female genital mutilation, bride price collection, widowhood rites and disinheritance of girls and women, as some of the ills that impede the quest for women's leadership in Kenya (Omtatah, 2008). Poor socialization where boys are prepared for leadership and girls for domestic roles also worked and still works against women's ascendancy to leadership in Kenyan politics (Kamau, 2008). The 1963 Constitution was also a key factor in ensuring that there was no level playing field between women and men in politics. It provided for only the first generation rights known as civil and political rights under Chapter V from section 70 to 86 (The Repealed Constitution of Kenya, 1993). These rights were general in nature and did not specifically include women's cluster of rights.

In the first democratic elections ever conducted in Kenya in 1963, not a single woman was elected to Parliament (Migiro, 2015). It should be noted that this were important elections as they ushered Kenya into independence (Migiro, 2015). Female representation has only improved slightly. There was 4.1% female representation in Parliament in 1997, 8.1% in 2002 and 9.8% in 2007. Even with the 2010 Constitution providing for the two-thirds gender rule, the 2013 general elections saw only 16 of the 290 women elected as members of parliament (Kaimenyi et al., 2013).

SUBSTANTIVE EQUALITY AND TRANSFORMATIVE CONSTITUTIONALISM

Klare in his seminal article on the transformative constitutionalism (Klare, 1998) notes that equality is a foundational value that underpins the new constitutional dispensation. This is borne out by various provisions in the constitution. The provisions are the preamble, national values and principles of the constitution (Constitution of Kenya, Article 10) and value that underpins the Bill of Rights – Articles 19(2) and 20(4). Article 27 envisages a substantive right to equality and non-discrimination which prohibits direct or indirect discrimination by both state organs and private persons on prohibited grounds. Importantly, it recognises that there are individuals, groups and communities that have been adversely affected by past discrimination, and it obliges the state to put in place legislative and other measures, including affirmative action programmes and policies, to guarantee their equality rights as well as redress their past disadvantages. This expansive substantive conception and understanding of equality excludes a formal conception of equality which has the potential of entrenching the existing status quo and thus derail the transformative goals of the Constitution (Petition No. 15 of 2011 and High Court Petition No. 102 of 2011).

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CONSTITUTION OF KENYA, 2010

In the recent past Kenyans have experienced democratic transitions and legal reforms that have resulted in the gradual political changes evident in the rise, though very small, in the number of women in senior political positions. The Constitution of Kenya provides that ‘women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres’ (Constitution of Kenya 2010, Article 27(3)).

It also provides for affirmative action where the State is required to take legislative and other measures to ensure that not more than two-thirds of the members of elective or appointive bodies are of the same gender (Constitution of Kenya, Article 27(8)). It further reiterates that the same rule should be applicable in elective public bodies (Constitution of Kenya, Article 81).

Article 27 of thus aims to address some of the unfairness inherent in this state of affairs while also providing a legal framework to prevent unfair treatment of individuals based on the listed grounds in Article 27(4) and other personal characteristics or attributes. As such, the right to equality is an essential component of the transformative Constitution. The reason for this is that the right to equality encapsulates the aspiration of eventually achieving a society in which all enjoy equal access to the resources and amenities of life, and are able to develop their full human potential.

Two important consequences flow from this conception of the right to equality:

1. First, the right to equality cannot entail a guarantee that all people should be treated identically at all times, regardless of their personal attributes or characteristics,

social or economic status. The right should therefore be viewed as entailing more than a formal prohibition against discrimination.

2. Second, the right to equality must guarantee more than equality before the law and must focus on the effects or impact of legal rules or other differentiating treatment on individuals. The right to equality cannot therefore focus merely on whether two people have been treated in an identical manner by the legal rule or by the institution or individual concerned. The idea of substantive equality best captures this approach to equality jurisprudence.

Affirmative action is a deliberate move to reforming or eliminating past and present discrimination using a set of public policies and initiatives designed to help on the basis of colour, creed, geographical location, race, origin and gender among others (WilDAF Ghana, 2010). Affirmative action for women has been clearly enshrined in the constitution through the two-thirds gender rule, a framework for implementation does not exist, giving leeway for gaps. The executive arm of government must have the will to pursue such affirmative action policies by presenting Public Bills to the National Assembly on such policies thereby legalizing it for ease of application and enforcement (Omtatah, 2008). In Kenya, some quotas view affirmative action for women as a weapon to destroy the already rooted male prominence in public life and decision making positions and is unlikely to be fully achieved without an expressed mechanism as well as a change of mindset by not only the policy makers but also the general public (Daisy, 2010). Where a mindset change is achieved affirmative action for women would even be voluntarily achieved, and with expressed mechanisms for implementation, quotas would enable Kenya to reach the 33% mark (Daisy, 2010).

The Constitution also provides that “not more than two-thirds of the members of elective public bodies shall be of the same gender” (Constitution of Kenya, Article 81(b)). In December 2012, the Supreme Court gave an advisory opinion that the one-third gender rule be fully operational by August 27, 2015 (Supreme Court Advisory Opinion 2 of 2012).

When it comes to the allocation of the party list seats the Constitution explicitly states that except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed (Constitution of Kenya, Article 90(2)(b)). Political parties are also expected to promote gender equality and equity (Constitution of Kenya, Article 91(f)).

Under the devolved government system the two thirds gender rule also applies. The Constitution puts forth that *not* more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender (Constitution of Kenya, Article 197(1)). In addition, the National Gender and Equality Commission is also established by the Constitution. It is a successor to the Kenya National Human Rights and Equality Commission (Constitution of Kenya,

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Article 59(4)). The Commission helps bring about equality between women and men in various sectors including politics.

A reform in the 2013 elections was the introduction of WCR seats. They are to be contested only by women candidates nominated by political parties and presented for election in each of Kenya's 47 counties. This system does not exclude women from contesting for regular constituency seats, but rather to complement it and increase women's representation. This reform led to a significant increase in the number of women in parliament.

When it comes to political parties Kenya women politicians as well as those working in civil society have to date been generally unsuccessful in shaping or setting the agenda in political Parties (Nzomo, 2003). Parties have historically been highly gendered institutions with male gatekeepers that incorporate women into party structures on a different basis from men, and in ways. Although women play important roles in campaigning and mobilizing support for their Parties, rarely do they occupy strategic decision-making positions in Party structures or benefit from political parties resources for conducting election campaigns.

In Kenya Women's leadership not only aid in building nations but also helps to balance up decision making processes , decisions concerned with issues of education, health, gender violence, women's economic empowerment, peace, rights, dignity, and democracy are usually of great concern to women leaders. They bring a different perspective to leadership as opposed to men.

WOMEN AND POLITICS IN SOUTH AFRICA

Role Played by Women in Political Decision Making in the Apartheid Regime

During the Apartheid period, women were prominent in almost all areas of protest. Of all the campaigns in that women were involved, the most significant was the anti-pass campaign in 1956 which saw thousands of women of all races gathered in Pretoria to present a petition against the carrying of passes by women to the then Prime Minister, J. G Strijdom (Women Protection and Representation in South Africa after 20 Years of Democracy).

In the early day of the apartheid regime in South Africa political organizations were banned and those who defied this order were taken prisoner. This in turn greatly curtailed the participation of women in political scene in the country (Women Protection and Representation in South Africa after 20 Years of Democracy).

With time this changed and Africans were allowed to form political parties and liberal movements giving an opportunity to women to get involved.

In September 1991, the African National Congress Women's League (ANCWL) brought together women from different communities and spheres of life as well as political parties, women's organizations, advocacy non-governmental organizations, grassroots organizations and trade union movements to discuss the possibility of

a national women's structure that would link women across racial and ideological divisions. This resulted to the creation of the Women National Coalition (WNC) a year later in April. The main idea for the formation of the WNC was to ensure women's demands and hopes of their role and status for a new nation formed part of South Africa's new Constitution. It was aimed at ensuring that women participated in the making of the constitution and in the formulation of the Women's Charter for Effective Equality that was launched in 1994 (Women Protection and Representation in South Africa after 20 Years of Democracy). WNC made the parties involved in the transition aware of an organized women's constituency (Albertyn, 1994). Women's interests in gender equity were written into the draft constitution, and women and their concerns became important targets in the election campaign in 1994. ANC Women's League (ANCWL) also engaged in extensive internal lobbying to in an attempt to ensure that a third of the National Executive Committee of the ANC would be women (Wendy, 1990). Although they were not successful, their passionate and bold attempt to secure women's participation at the highest level of decision-making structures changed the nature of the debate within the ANC, and by the 1994 elections, the ANC had committed itself to ensuring that one third of the parliamentary candidates on the ANC's party list would be women. Women continued to work together to take advantage of the powerful opportunity created by the political transition that was occasioned by the apartheid regime coming to an end (Wendy, 1990). The lobbying of women within their own parties, and the political alliances formed among women across parties (including the National Party, ANC and IFP), played a pivotal role in ensuring that a commitment to gender equality remained a defining feature of South Africa's Constitution (Wendy, 1990).

The Role of Women in Political Decision Making Post-Apartheid (Under the 1994 South African Constitution)

After South Africa attained its independence in 1994, it made significant steps in empowering women in the political scene and encourage more women to get involved. This was achieved through coming up with legislation and setting up policy frameworks that level the playing field for women in politics (Southern Africa). The South African Constitution puts emphasis on a non-racial and non-sexist democracy (The Constitution of South Africa 1994, Preamble). The feminist and women's rights movements took advantage of this era of expanded political and civil freedom, and were able to achieve meaningful democratic participation in legal and Constitutional reform (Nobrega, C.).

On 15 December 1995, South African Parliament adopted without reservation the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its Optional Protocol, thus committing itself to a wide range of obligations under international law inclusive of giving equal opportunities to women and men in politics (Women Protection and Representation in South Africa after 20 Years of Democracy). On 10 December 1996, International Human Rights day,

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the late former State President, Nelson Mandela signed into law a final constitution for South Africa which allowed the establishment of the Commission on Gender Equality (CGE) in April 1997. The CGE is an independent statutory body established to promote and protect gender equality (Constitution of South Africa Act 108 of 1996, Section 187).

South Africa also signed other key international and regional instruments, such as the Beijing Platform for Action; the Millennium Declaration; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the Solemn Declaration on Gender Equality in Africa; and the SADC Protocol on Gender and Development all which play a key role in advancing the role played by women in political decision making (Constitution of South Africa Act 108 of 1996, Section 187). The SADC protocol on gender and development gives a target of 50% representation of women in all areas of decision making including politics.

The Constitution of South Africa also establishes the commission on gender equality which advances and promotes gender equality and the women's status in politics and other relevant sectors (Constitution of South Africa Act 41 of 1996, Section 119(3)) After South Africa's first democratic election in 1994, women formed 27.75% of members of the National Assembly (Kaimenyi et al., 2013). This number increased to 44% in 2009. By mid-2014, out of 400 seats in the National Assembly, women's representation stood at 40.8% in the Lower House and 35.2% in the Upper House, ranking South Africa third in the world in terms of women representation in Parliament. In 2009, the number of women in the South African government was higher at 58.2% as compared to males. The South African Parliament recently passed the Women's Empowerment and Gender Equality Bill, which strongly called for equal participation of women in the economy and for equal representation of women in positions of decision-making, (50/50) in both private and public sectors (Kaimenyi et al., 2013). In South Africa the party list version of the proportional representation system has been a key electoral tool for bringing large numbers of women into office. It has also been observed that quotas on party lists for women are more effective at advancing women participation in politics than reserved seats (Goetz, 1998).

CONCLUSION

The question that the jurisprudence begets is that must the country wait for policies and laws to be passed for women to benefit from the equality and non-discrimination clause entrenched in the Constitution? In fact, the failure to have specific mechanisms in the Constitution for attainment of the gender quota means that feminist activists have to go back to the trenches to lobby for enactment of requisite legislation for the fruits of the gender quota to be realised. Thus in the Kenyan case, Constitutional entrenchment is not enough to realise gender equity in representation. Substantive equality asks what impact differentiating legal rules or

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other differentiating treatment will have on groups or individuals, given differences in the social and economic status of such groups or individuals, and given the way in which existing ‘neutral’ legal rules privilege the economically and culturally dominant and powerful in society. A legal commitment to substantive equality therefore entails attention to the context.

CASE LAW

Federation of Women Lawyers (FIDA-K) & 5 others v Attorney General & Another, High Court Petition No. 102 of 2011.
John Kabui Mwai & 3 Others v Kenya National Examination Council & 2 Others, High Court of Kenya at Nairobi, Petition No. 15 of 2011

LIST OF LEGAL AUTHORITIES

Beijing Platform for Action
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
SADC protocol on gender and development
Solemn Declaration on Gender Equality in Africa
The Constitution of Kenya 1963
The Constitution of Kenya 2010
The Constitution of South Africa

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*Michael Wabomba Masinde
Moi University School of Law
Main Campus, Kesses
Kenya*