

# From seats to voices: Analysing the effective participation of women in governance in the Kenyan parliament

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► Received: 4 June 2024 ► Accepted: 14 November 2024

## Abstract

*Since Kenya's independence, women have strived for equal participation in governance, despite facing significant challenges due to societal norms. The Constitution of Kenya (2010) introduced gender reforms, enhancing representation through quotas and decentralisation. Since 2013, women's representation in Kenya's parliament has increased. However, the question that remains is whether the elected or nominated women have exercised their roles effectively. This paper traces women's political participation in Kenya from the pre-colonial to the post-2010 Constitution period, highlighting the fight for gender parity and subsequent representation. It calls for gender equality rather than mere parity thereby addressing concerns about women in parliament being 'voiceless representatives.' This paper emphasises the need for women's meaningful participation in decision-making processes, including their presence in parliamentary committees. This entails not only numerical representation but also active involvement in shaping policies and governance agendas, making their presence substantive rather than symbolic.*

**Keywords:** women representation, effective participation, equality, gender parity, political inclusion

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## Introduction

Some communities in Africa hold a negative stereotype of women that suggested the weakness and even inherent stupidity of women.<sup>1</sup> Scholars point out that derogatory statements were common in some communities to the extent that their derogatory connotations were hardly noticed.<sup>2</sup> Some stories and myths have been propagated about the negative traits of women in leadership in the African precolonial societies for example, a tale is told of *Chief Wangu wa Makeri*, who became so intoxicated and crazed for power that she danced naked before a crowd which promptly removed her from power. Additionally, women were portrayed as power-hungry, conceited, cowardly, soft-hearted and immoral.<sup>3</sup>

In some communities, male children were prioritised in inheritance, while women were sidelined.<sup>4</sup> The inheritance of property followed a patriarchal system, where the eldest son or the male heirs inherited property from their father or the deceased male relatives.<sup>5</sup> This system was based on the belief that men were the primary custodians of family property, and they were expected to maintain it for welfare of the entire family.

In the precolonial period, most African communities were headed by chiefs and councils of elders.<sup>6</sup> Leadership and political roles were predominantly male-dominated, with chiefs and councils of elders ex-

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<sup>1</sup> Wilhemina Oduol, 'Kenyan Women in Politics: An analysis of past and future trends', 22, *Transafrican Journal of History* (1993) 167, citing Micere Mugo, 'The role of women in the struggle for freedom', in Achola Pala, Thelma Awor and Krystall Abigail (eds) *The participation of women in Kenya society*, Kenya Literature Bureau, 1978, 210.

<sup>2</sup> Oduol, 'Kenyan Women in Politics: An analysis of past and future trends', 167.

<sup>3</sup> Oduol, 'Kenyan women in politics: An analysis of past and future trends', 167.

<sup>4</sup> Mary Mogute, 'Investigating female children's rights to family property and its implication on children's justice in Kisii County,' 1(1) *Interdisciplinary Journal of the African Child*, Special Edition (2019) 2.

<sup>5</sup> Patricia Kameri Mbote, 'The law of succession in Kenya: Gender perspective in property management and control', *Nairobi Women and Law in East Africa*, 1995, 4.

<sup>6</sup> Martin K Maitha and Magunga Willima Oduor, 'Paramount chiefs', *Google Arts and Culture*, Kenya National Archives.

cluding women. For example, the *Njuri Ncheke* among the Meru community has been largely male dominated.<sup>7</sup> These factors made it near impossible to hear of women's role in 'manly spheres' like politics, international affairs and governance in Kenya.<sup>8</sup> These patriarchal beliefs undermined women and reinforced their dependence on men. Despite women's contributions during the colonial period and in the fight for independence, their achievements in political affairs were glaringly understated.

This paper analyses the effective participation of women in governance. The present part introduces the discussion. The first section explores the effective participation of women in governance in Kenya, focusing on the historical, political, and social dynamics that have shaped their role in decision-making processes. Despite significant strides towards gender equality, women have faced persistent barriers in accessing and influencing political spaces. Beginning from the precolonial period, through the colonial period, and into post-independence Kenya, women have struggled to secure their rightful place at the decision-making table. The barriers have been rooted in social, cultural and institutional factors including deeply entrenched patriarchal norms, limited access to education and restrictive political structures that have historically marginalised women's voices in governance.

Drawing from election data in 2013, 2017 and 2022, the paper then proceeds to explore women's representation after the promulgation of the Constitution of Kenya (2010) highlighting the gradual increase in women's representation in legislative bodies at both the national and county levels. It analyses the court's stance on women's representation, particularly in enforcing the two-thirds gender rule. It underpins the challenges which still persist in ensuring the meaningful participation of women in governance, where simply achieving numerical representation falls short of guaranteeing that women's voices are heard and that their perspectives are integrated into decision-making processes.

<sup>7</sup> Charlese Wanyoro, 'Meru elders heed calls to include women in traditional courts', *Nation*, 3 March 2023.

<sup>8</sup> Oduol, 'Kenyan women in politics: An analysis of past and future trends', 167.

This paper then shifts to a discussion of qualitative representation, addressing the importance of ensuring that women's voices are meaningfully integrated into governance processes. It concludes with recommendations to further enhance gender equality in political participation, including enforcing strict compliance with gender equality laws and focusing on fostering not just numerical representation but also the empowerment and influence of women in decision-making roles.

## **The effective participation of women in governance**

### *From seats to voices: Women's fight for representation in Kenya, 1920-1963*

Women remain significantly underrepresented in positions of political power.<sup>9</sup> History shows that no African woman was nominated to LegCo up to 1958.<sup>10</sup> However, white women in Kenya played a significant role in fighting for gender representation in the colonial era.<sup>11</sup> Kenya had its first general election in 1920.<sup>12</sup> Although the election had only one racial group, it involved multiple genders.<sup>13</sup> It was among the first elections to observe gender parity in the world since women were allowed to vote and contest for electoral positions in Kenya.<sup>14</sup> This was yet to happen in Britain, USA and other European countries.<sup>15</sup> In Britain for example, women were neither eligible nor permitted to vote before fulfilling certain conditions.<sup>16</sup> The conditions were that women could only vote if they were above the age of 30, married or held a university

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<sup>9</sup> Maria Arnal Canudo and Fatuma Ahmed Ali, 'Exploring feminine political leadership attributes and women's campaigns during the 2017 general election in Kenya' in Nanjala Nyabola and Marie-Emmanuelle Pommerolle (eds) *Where women are: Gender and the 2017 Kenyan elections*, Africae, Twaweza Communications, 2018, 116.

<sup>10</sup> Godfrey K Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)', *SSRN Electronic Journal*, 21 June 2022.

<sup>11</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>12</sup> Judy Moraa, 'History of election in Kenya', *Haki FM Shows News Blog*, 11 August 2022.

<sup>13</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>14</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>15</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>16</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

degree.<sup>17</sup> These requirements did not apply in Kenya in the 1920 general elections. While no woman vied for an elective position in the first general election, many turned up to vote in the all-male contested elections in 1920.<sup>18</sup>

20 July 1922 marked a historic moment both in Kenya and in the British Commonwealth when Mrs Gertrude Grogan contested in a by election for the Nairobi South seat, competing against three male candidates.<sup>19</sup> Although Mrs Grogan did not win, she made history as the first woman to run in an election in Kenya and possibly in the entire British Commonwealth.<sup>20</sup>

Lady Sidney Mary Catherine Anne Farrar was the first woman was elected to the LegCo in Kenya.<sup>21</sup> She was elected to the LegCo after defeating her male counterpart, Conway Harvey with only two votes.<sup>22</sup> Lady Farrar was elected to the LegCo as a member representing the Rift Valley, a position she held until 1942.<sup>23</sup> She was involved in the affairs of the East Africa Women's League (EAWL) and her election was a major triumph for the EAWL, whose members actively campaigned for her by reaching out to the women voters in her constituency.<sup>24</sup> This opened the door for women to contest and win elective posts in Kenya during the colonial era.

By 1939, Lady Farrar had recruited seventy women to the First Aid Nursing Yeomanry (FANY).<sup>25</sup> Lady Farrar started FANY to provide nursing services to soldiers who were injured during World War II. By the end of 1940, FANY's membership had increased to between 700-

<sup>17</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>18</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>19</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>20</sup> Sang, 'Women and the parliament of Kenya: Historical reflections (1917-1974)'.

<sup>21</sup> Sang, 'Women and the parliament of Kenya: Historical reflections'. See also Christine Nicholls, 'Lady Sidney Farrar', *Old Africa Stories from East Africa's Past*, 28 September 2015.

<sup>22</sup> Nicholls, 'Lady Sidney Farrar'.

<sup>23</sup> Nicholls, 'Lady Sidney Farrar'.

<sup>24</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>25</sup> Nicholls, 'Lady Sidney Farrar'.

800 members who were all local women.<sup>26</sup> Since they were no longer nursing but pursuing other useful occupations, the name was changed to Women's Territorial Service.<sup>27</sup> At the end of the War, FANY was disbanded.

The June 1952 elections brought in a second woman, Mrs Agnes Shaw, representing Nyanza Province. In March 1958, Governor Sir Evelyn Baring nominated Mrs Jemimah Thoiya Gecaga to the LegCo, making her the first African woman to be a member of the Legislative Council.<sup>28</sup> The process that led to her nomination was neither transparent nor consultative.<sup>29</sup> Mrs Gecaga was appointed 14 years after Eliud Wambua Mathu was nominated to the LegCo.<sup>30</sup> Mrs Gecaga was among the core founders of the *Maendeleo ya Wanawake* Organisation formed to advocate for gender parity in Kenya; a factor that weighed in on her appointment.<sup>31</sup> This influenced her appointment to the LegCo.

African women appointed to the LegCo faced a number of challenges. These women were first appointed by the country's governor, with short terms that limited their ability to form meaningful alliances with women outside the LegCo.<sup>32</sup> Moreover, deeper structural issues further perpetuated gender inequalities and were evident in the minimal participation of women in the nation's political landscape.<sup>33</sup> Their nominations were primarily a symbolic gesture by the state, showing a lack of substantial effort to address the underrepresentation of women in the LegCo.

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<sup>26</sup> Nicholls, 'Lady Sidney Farrar'.

<sup>27</sup> Nicholls, 'Lady Sidney Farrar'.

<sup>28</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>29</sup> Phoebe Musandu, 'Tokenism or representation? The political careers of the first African women in Kenya's Legislative Council (LegCo), 1958-1962', 28(4) *Women's History Review* (2018) 587 and 592.

<sup>30</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>31</sup> Nairobi Reporter, 'The immortals: The Gecagas- Chips off the old family block', *The Standard*, 2015.

<sup>32</sup> Musandu, 'Tokenism or representation? The political careers of the first African women in Kenya's Legislative Council (LegCo), 1958-1962', 592.

<sup>33</sup> Musandu, 'Tokenism or representation? The political careers of the first African women in Kenya's Legislative Council (LegCo), 1958-1962', 593.

After the Lancaster Conference in 1960, the government included a woman among the ten (10) African delegates in the second Lancaster Conference.<sup>34</sup> On 10 May 1961, Ms Priscilla Ingasiani Abwao was nominated as the only African woman representative to the Lancaster Conference.<sup>35</sup> The Conference was meant to provide her with a platform to advocate for the needs of African women as the country moved closer to independence.<sup>36</sup> However, this was not the case. Ms Abwao was silenced and disallowed to speak or engage in the discussions being held. She was made *voiceless* and was relegated to the shadows of the conversations because of her gender.<sup>37</sup>

In the 1962 Conference, she was permitted to submit and present a written memorandum.<sup>38</sup> Ms Abwao grabbed the opportunity and decided to use this opportunity to advocate for women in Kenya.<sup>39</sup> In her memorandum, on behalf of Kenyan women to Kenya's Independence Constitution, Ms Abwao highlighted the importance of ensuring equal representation of women in the independent Kenyan government.<sup>40</sup> She set the tone and pace in the fight for opportunities for women in the political and governance space before independence. By 6 December 1963, the parliament of Kenya had received the royal charter to start its functions as an independent nation, however, its parliament did not include any woman.<sup>41</sup>

### *The struggle for women representation in post-colonial Kenya*

After independence, women realised that political freedom did not automatically lead to economic or social progress, especially for

<sup>34</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate', *Paukwa*, 21 October 2021.

<sup>35</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>36</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>37</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>38</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>39</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>40</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>41</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

themselves and their families.<sup>42</sup> This realisation prompted a shift in the focus of the organisations established during the colonial era, therefore, aligning them with the aims and objectives of post-independence women groups, such as the Kenya Association of University Women (1965), *Mfangano* Women Groups (1973), Nyeri Women's Association (1974), Breastfeeding Information Group (1973), and Kenya Women Finance Trust (1981).<sup>43</sup>

There was no female representation in the first parliament and President Kenyatta did not nominate any woman to fill the gap thus making it an all-male parliament and reversing the progress made.<sup>44</sup>

In 1966, the Constitution of Kenya (Amendment) Act No 19 of 1966 abolished the senate, and its membership was combined with that of the house of representatives to form a unicameral legislature – the national assembly.<sup>45</sup> In 1969, Honourable Grace Onyango etched her name as the first African woman to win an electoral seat in Kenya, becoming the first woman to serve in independent Kenya's second parliament.<sup>46</sup> She triumphed in Kisumu Town Constituency, defeating the male contenders and capturing national attention.<sup>47</sup> Earlier, in 1965, she had already broken barriers by becoming the first African woman to be elected as mayor and served as the mayor of Kisumu.<sup>48</sup> Her journey progressed and she became the first female deputy speaker of the national assembly.<sup>49</sup>

The number of women increased in the third parliament. Three women were elected to parliament in 1974. These were Honourable Grace Onyango who was now serving her second term, Dr Julia Auma Ojiambo (Busia Central) and Honourable Philomena Chelagat (Eldoret

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<sup>42</sup> Riria Ouko, 'Women organisations in Kenya', 15, *Journal of Eastern African Research* (1985) 189.

<sup>43</sup> Ouko, 'Women organisations in Kenya', 189.

<sup>44</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>45</sup> The National Assembly, 'Fact sheet No 19: History of the parliament of Kenya', 10; The Constitution of Kenya (Amendment) Act No 19 of 1966.

<sup>46</sup> The National Assembly, 'Fact sheet No 19: History of the parliament of Kenya', 10.

<sup>47</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>48</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.

<sup>49</sup> Sang, 'Women and the Parliament of Kenya: Historical reflections (1917-1974)'.



North).<sup>50</sup> In 1997, Honourable Charity Kaluki Ngilu boldly stepped into uncharted territory as Kenya's first female presidential candidate and challenging the nation's highest and toughest glass ceiling.<sup>51</sup> Though she came in fourth, Honourable Ngilu left her mark on the political landscape as the first woman to ever contest for presidency in Kenya.

*Women's contribution to the fight for constitutional reform and affirmative action in Kenya*

A number of constitutional reforms took place in Kenya with major reforms dating back to the 1954 drafting of the Lyttleton Constitution as well as the Lennox-Boyd Constitution of 1958.<sup>52</sup> At independence, the Independence Constitution was not gender responsive. The fight for women representation through affirmative action began strongly after the 1997 general elections.<sup>53</sup> Women created movements that were instrumental to their struggle.<sup>54</sup> This began by the creation of the Women's Political Caucus (1997), the Coalition on Violence Against Women (COVAW) (1998), the Committee on Affirmative Action in 1999, the creation of the Women Lobby Team (1999-2000) and the Women's Political Alliance (2000).<sup>55</sup> Other crucial movements that women created included: the National Women Negotiating Team (2007), the Women's Organisations Coordinating Committee for Protecting Women's Gains (2009/2010), the G10 group (2009), the Caucus for Women's Leadership Regional Assemblies, and the 'Waremba na Yes' (2010).<sup>56</sup>

Honourable Phoebe Asiyo, a member of parliament, introduced the first motion advocating for affirmative action to enhance women's

<sup>50</sup> The National Assembly, 'Fact sheet No 19: History of the parliament of Kenya', 10.

<sup>51</sup> Nasibo Kabale, 'Charity Ngilu: Kenya's first female presidential candidate', *The Standard Kenya*, 2018.

<sup>52</sup> Paukwa, 'Priscilla Abwao: The Legislative Council delegate'.

<sup>53</sup> Elishiba Njambi Kimani and Wanjiku Mukabi Kabira, 'The historical journey of women's leadership in Kenya', 1(1) *Journal of Emerging Trends in Educational Research and Policy Studies* (2012) 843.

<sup>54</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 847.

<sup>55</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 847.

<sup>56</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 847.

representation in elective positions.<sup>57</sup> Her motion called for parliament to increase the number of women parliamentarians by eighteen (18), with at least two (2) from each province, and an extra two (2) from the Rift Valley Province.<sup>58</sup> Kenya had eight (8) provinces at the time. The motion was seconded by Honourable Kiraitu Murungi and a majority of the minority members of the House.<sup>59</sup>

Unfortunately, despite the push for change, the members of parliament at the time were unwilling to amend the constitution to include provisions increasing the number of women in leadership positions.<sup>60</sup> Kimani and Kabira quote Honourable Koech, the Minister of State at the time, who stated that there was no need for the motion because male members of parliament represented both women and men, and that there was already one assistant minister for culture who was a woman. He noted that women were doing a wonderful job bringing up children which was a very important role. Honourable Koech argued that 'time was not ripe for affirmative action'.<sup>61</sup> The motion was thus defeated.

On 12 April 2000, Honourable Beth Mugo in collaboration with women organisations and with backing from the Affirmative Action Committee, reintroduced the motion under the title '*Affirmative action*'. She pointed out that Kenya was an outlier in the region, by refusing to embrace affirmative action, like Uganda, Rwanda and Tanzania, which had already adopted and implemented such measures.<sup>62</sup>

The motion was strongly supported and seconded by Honourable Martha Karua.<sup>63</sup> Some members from the House argued that since a constitutional review was about to commence, the clerk of the National Assembly should write to the Constitution of Kenya Review Commission (CKRC) and request that affirmative action be included in the review

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<sup>57</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 843.

<sup>58</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 843.

<sup>59</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 843.

<sup>60</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 844.

<sup>61</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 843.

<sup>62</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 844.

<sup>63</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 844.

process.<sup>64</sup> The negotiations and the draft review law had formally entrenched the principle of affirmative action in the proposed law.

Women enjoyed the fruits of affirmative action in 2007, when the number of women members of Parliament increased to twenty-one (21) with fifteen (15) elected and six (6) nominated members.<sup>65</sup>

## Gender representation under the Constitution of Kenya (2010)

The Constitution of Kenya (2010) was promulgated on 27 August 2010 provided for a presidential system of governance.<sup>66</sup> The new constitutional dispensation created a bicameral parliament, re-established the senate and increased the size of the national assembly to 350 seats with 290 elected members representing constituencies, 47 county women representatives,<sup>67</sup> 12 nominated members and the speaker who is an *ex officio* member.<sup>68</sup> The senate consists of 68 members – 47 elected senators representing each of the 47 counties, 16 nominated women members and 4 members representing the youth, women and persons with disabilities and the speaker who is an *ex officio* member.<sup>69</sup>

Articles 97(1)(b) and 98(1)(b) specifically provide for seats that are exclusively reserved for women including 47 women elected by the registered voters of the counties, each county constituting a single constituency for the national assembly and 16 women members to be nominated by political parties according to the proportion of members of the senate elected under Article 90.

The Constitution of Kenya (2010) has been hailed for enshrining the gender-rule requirement through quotas.<sup>70</sup> Under Article 10, the consti-

<sup>64</sup> Kimani and Kabira, 'The historical journey of women's leadership in Kenya', 844.

<sup>65</sup> National Assembly, 'Fact sheet No 19: History of the parliament of Kenya', 11.

<sup>66</sup> National Assembly, 'Fact sheet No 19: History of the parliament of Kenya', 11.

<sup>67</sup> Constitution of Kenya (2010) Article 97(1)(b).

<sup>68</sup> Constitution of Kenya (2010) Articles 97(1)(c) and (d)

<sup>69</sup> Constitution of Kenya (2010) Article 98.

<sup>70</sup> Constitution of Kenya (2010) Article 27.

tution provides for equity, inclusiveness, equality, non-discrimination and the protection of the marginalised as national values and principles of governance.<sup>71</sup> Further, Article 21(2) clarifies that equality includes the full and equal enjoyment of all rights and fundamental freedoms.<sup>72</sup> Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.<sup>73</sup> The state and individuals are prohibited from discriminating directly or indirectly against any person and on any ground.<sup>74</sup>

Further, the state is obligated to legislate and ensure that necessary measures are put in place to prevent discrimination since women are under the category of individuals that have suffered because of past discrimination. This includes implementing affirmative action programmes and policies to give full effect to the realisation of women's democratic rights and to recognise their role in governance and leadership positions.<sup>75</sup>

Article 27(8) is a great achievement in the fight for gender representation and gender equality in Kenya. Article 27(8) reads that:

in addition to the measures contemplated under clause (6), the state shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender.<sup>76</sup>

Despite such a succinct provision, there has been a disconnect between the rule as laid out under the law and its application and requisite implementation.

### *The National Assembly and the two-thirds gender-rule crisis in Kenya*

The Constitution binds parliament to enact legislation to promote the representation of women, persons with disabilities, youth, ethnic

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<sup>71</sup> Constitution of Kenya (2010) Article 10.

<sup>72</sup> Constitution of Kenya (2010) Article 21(2).

<sup>73</sup> Constitution of Kenya (2010) Article 27(3).

<sup>74</sup> Constitution of Kenya (2010) Articles 27(4) and (5).

<sup>75</sup> Constitution of Kenya (2010) Article 27(6).

<sup>76</sup> Constitution of Kenya (2010) Article 27(8).

and other minorities as well as marginalised communities.<sup>77</sup> Notably, the fifth schedule, gives a timeline of five years within which parliament must have enacted the legislation. Sadly, this has never been implemented.<sup>78</sup>

Parliament has been criticised for failing to implement the two-thirds gender rule despite court orders.<sup>79</sup> The first parliament constituted in 2013 after the promulgation of the 2010 Constitution, was expected to enact legislation to ensure the two-thirds gender rule is provided for and adhered to within the five-year duration. It is regrettable that since 2015, Kenya's government has had an unconstitutional arm of government (parliament) which has passed laws and enacted legislations that are in force, applicable and binding. The unconstitutionality of parliament is due to its failure to adhere to the two-thirds gender rule, despite court directives and rulings mandating its implementation. Despite failing to meet the constitutional requirement, various bills have been tabled by legislators in the National Assembly in an attempt to move parliament towards the implementation the two-thirds gender rule.<sup>80</sup>

In the first two bills; the Constitution of Kenya (Amendment No 4 of 2015) Bill, popularly known as the Duale I Bill, and the Constitution of Kenya (Amendment No 6 of 2015) Bill, also known as the Duale II Bill, the National Assembly failed to muster the quorum to pass a constitutional amendment.<sup>81</sup> Similarly the Senate Bill (No 16 of 2015) popularly known as the Two-thirds Gender Bill on Article 256(1)(d) or the 'Sijeny Bill' failed twice after the Senate was unable to raise the requisite numbers in its favour. In both instances, members either deliberately

<sup>77</sup> Constitution of Kenya (2010) Article 100.

<sup>78</sup> Kenya National Commission on Human Rights, 'Advisory on the proposed Constitution of Kenya (Amendment) Bill 2018 on the two thirds gender principle to the Justice and Legal Affairs Committee through the Clerk of the National Assembly,' 23 May 2018.

<sup>79</sup> Katiba Institute, 'Parliament's mischief on two- thirds gender rule', Katiba Institute.

<sup>80</sup> Constitution of Kenya (Amendment) (No 6) Bill (2015); Duale II Bill (2018).

<sup>81</sup> Centre for Rights Education and Awareness, 'Tracing the journey: Towards implementation of the two-thirds gender principle', Centre for Rights Education and Awareness Kenya, 2019, 26 and 28.

abstained from the legislature or openly voted against the bills, including the Constitution of Kenya (Amendment) Bill (2014) (the Mutambo Bill).<sup>82</sup> Undeniably, the failure to enact the law is a direct indicator of the reluctance by legislators to implement the two-thirds gender rule.<sup>83</sup>

The Constitution of Kenya (Amendment) Bill (2015) (popularly referred to as the Chepkong'a Bill) was arguably the more flagrantly unconstitutional of all the bills.<sup>84</sup> The Chepkong'a Bill proposed the 'progressive' realisation of the two-thirds gender rule.<sup>85</sup> The Bill was bad law to the extent that it sought to ignore the implementation of Article 27(8) of the Constitution by deferring the enactment of the two-thirds gender rule up to 2037 despite the constitutional time-limit stipulated in the fifth schedule. Notably, all these bills failed.

Kenya has struggled to achieve significant representation of women in parliament.<sup>86</sup> At 20.8 percent, Kenya has among the lowest percentage of women in parliament in East Africa.<sup>87</sup> In East Africa and worldwide, Rwanda leads in women representation with 61.3 percent of the members of the lower house being women.<sup>88</sup> Burundi comes in second after Rwanda at 37.8 percent, followed by Ethiopia at 37.2 percent, Tanzania at 36.6 percent, and Uganda at 33.5 percent.<sup>89</sup> Additionally, South Sudan is ahead of Kenya at 26.5 percent.<sup>90</sup>

<sup>82</sup> Constitution of Kenya (Amendment) Bill (2014) proposed by Mwingi Central member of parliament, Joe Mutambo.

<sup>83</sup> Centre for Rights Education and Awareness, 'Tracing the journey: Towards implementation of the two-thirds gender principle', 28.

<sup>84</sup> Centre for Rights Education and Awareness, 'Tracing the journey: Towards implementation of the two-thirds gender principle', 27.

<sup>85</sup> Centre for Rights Education and Awareness, 'Tracing the journey: Towards implementation of the two-thirds gender principle', 4.

<sup>86</sup> Nyabola, 'A seat at the table: The fight for gender parity in Kenya', 52.

<sup>87</sup> Nyabola, 'A seat at the table: The fight for gender parity in Kenya', 52.

<sup>88</sup> Eszter Zaborszky, 'Women's participation in Parliament, The case study of Rwanda,' Escola de Sociologia e Políticas Públicas Departamento de História, September 2017, 5.

<sup>89</sup> Nyabola, 'A seat at the table: The fight for gender parity in Kenya', 52.

<sup>90</sup> Nyabola, 'A seat at the table: The fight for gender parity in Kenya', 52.

## **Kenyan courts' position on the failures by parliament to enact the two-thirds gender rule within the stipulated time frame**

The Kenyan judiciary under the Constitution of Kenya (2010) has contributed significantly to promoting and enhancing the rule of law in Kenya.<sup>91</sup> This is exemplified by petitions that have been filed before courts challenging the continued failures by parliament to implement the two thirds gender rule.

### *The Supreme Court Advisory Opinion No 2 of 2012*

*In the matter of the principle of gender representation in the National Assembly and the Senate*, the Attorney General, Professor Githu Muigai, moved to court seeking an advisory opinion as to whether the terms in Article 81(b) of the Constitution were to be implemented during the general elections scheduled for 4 March 2013 or needed to be applied progressively over an extended period of time.<sup>92</sup>

The arguments of the parties reflected two distinct and contrasted approaches in relation to the applicability of Article 81(b) of the Constitution as read alongside other provisions.<sup>93</sup> First was that the Rule needed not be implemented during the general elections of 4 March 2013, but in stages, through legislative, policy-making and other measures,<sup>94</sup> while the second, contended that the Rule must be realised immediately and in the general election of 4 March 2013.<sup>95</sup>

To reconcile the two approaches, the court interpreted the term progressive realisation to mean; 'the gradual or phased-out attainment

<sup>91</sup> Willy Mutunga, 'Progress report on the transformation of the Judiciary the first hundred-and-twenty days', *Kenya Law*, 19 October 2011.

<sup>92</sup> *In the matter of the principle of gender representation in the National Assembly and the Senate*, (with dissent Professor Willy Mutunga, Chief Justice and President of the Supreme Court) Supreme Court Advisory Opinion No 2 of 2012, Advisory Opinion of the Supreme Court on 11 December 2012 [eKLR] para 24.

<sup>93</sup> Supreme Court Advisory Opinion No 2 of 2012, para 44; the arguments of the parties were in relation to the following constitutional provisions: Article 27(4), 27(6), 27(8), 96, 97, 98, 177(1)(b), 116 and 125.

<sup>94</sup> Supreme Court Advisory Opinion No 2 of 2012, para 44.

<sup>95</sup> Supreme Court Advisory Opinion No 2 of 2012, para 45

of a goal – a human rights goal which by its very nature, cannot be achieved on its own, unless first, a certain set of supportive measures are taken by the state.’<sup>96</sup> While the court acknowledged that the term ‘shall’ in Article 81(b) imposes a mandatory obligation, it also recognised that achieving the two-thirds gender rule is not a straightforward process that can be implemented immediately without a proper framework and preparation.

Subsequently, the Office of the Attorney General and the National Gender and Equality Commission established a Technical Working Group (TWG) in 2014 to develop a formula for implementation. Members of the TWG were drawn from constitutional commissions, the Law Society of Kenya, and civil society organisations.<sup>97</sup> The TWG generated eight proposals but ultimately settled on a post-election mechanism that required an amendment to the Constitution.

*Centre for Rights Education and Awareness (CREAW) v Attorney General and another*

This petition was filed by CREAW in 2015 ahead of the 27 August 2015 deadline. The petitioner challenged the failure by the attorney general and the Commission of Implementation of the Constitution to publish a bill to be considered and passed by parliament in order to bring into force the two-thirds gender rule in the national assembly and senate.<sup>98</sup>

The High Court, affirmed that the advisory opinion of the Supreme Court *In the matter of the principle of gender representation in the National Assembly and the Senate* was binding.<sup>99</sup> The respondents contested the timing of the petition claiming that it was filed prematurely and argu-

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<sup>96</sup> Supreme Court Advisory Opinion No 2 of 2012, para 53.

<sup>97</sup> Centre for Rights Education and Awareness, ‘Tracing the journey: Towards implementation of the two-thirds gender principle’, 18.

<sup>98</sup> *Centre for Rights Education and Awareness (CREAW) v Attorney General and another*, Petition 182 of 2015, Judgement of the High Court of Kenya at Nairobi on 26 June 2015, [eKLR] para 12.

<sup>99</sup> *Centre for Rights Education and Awareness v Attorney General and another*, para 60.



ing that the petitioner ought to have waited for 27 August 2015 deadline to dawn before approaching the court, the court disagreed citing with approval the decision of the five-judge bench in *Coalition for Reform and Democracy and Others vs Attorney General, Petition No 628 of 2014 (the CORD case)*. The court stated that a party does not have to wait until a right or fundamental freedom has been violated, or for a violation of the Constitution to occur, before approaching the court.<sup>100</sup> It took note of the fact that there had been various processes in the previous year which should have culminated in a draft legislation for presentation to parliament.<sup>101</sup> With this in mind, the court directed that the relevant bill be prepared and submitted to parliament within forty days from the date of judgment.<sup>102</sup>

*Centre for Rights Education and Awareness (CREAW) and 2 Others v Speaker of the National Assembly and 6 Others*

This was a petition before the High Court challenging the eleventh parliament for failing to pass the bill to implement the two-thirds gender rule. The petitioners sought a declaration that the resultant National Assembly and Senate, if non-compliant with the two-thirds gender rule would be unconstitutional unless the two-thirds gender rule was enacted and implemented before the general elections scheduled for 8 August 2017.

The court correctly pointed out that the Supreme Court in 2012 had rendered its opinion in the matter of Articles 81, 27 (4), (6), (8), 96, 97, 98, 177 (1) (b), 116, 125 and 140 of the Constitution relating to the principle of gender representation in the National Assembly and the Senate. Subsequently the National Assembly extended the period required to pass the requisite legislation to August 2015, a period which has since lapsed.<sup>103</sup> While the court declined the application by the petitioner

<sup>100</sup> *Centre for Rights Education and Awareness v Attorney General and another*, para 66.

<sup>101</sup> *Centre for Rights Education and Awareness v Attorney General and another*, para 114.

<sup>102</sup> *Centre for Rights Education and Awareness v Attorney General and another*, para 113.

<sup>103</sup> *Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others*, Petition No 371 of 2016, Judgement of the High Court at Nairobi on 29 March 2017 [eKLR].

for the empanelment of a three judge bench to listen to the petition for raising a substantial point of law, the court noted that the matter before it was not new and that the Supreme Court in 2012 rendered its opinion on the issue.<sup>104</sup>

The court therefore directed parliament and the attorney general to take the necessary steps to ensure the required legislation was enacted within 60 days from the date the judgment was issued and to report progress to the chief justice.<sup>105</sup>

*Katiba Institute v Independent Electoral and Boundaries Commission, High Court*

This petition was filed by Katiba Institute against the Independent Electoral and Boundaries Commission (IEBC).<sup>106</sup> The core question was whether there was an obligation imposed on political parties to comply with the two-thirds gender rule in their nominations ahead of the general elections.<sup>107</sup> The court observed that one of the constitutional objects and principles under Article 27 and Article 27(8) is to eliminate all forms of discrimination against women in the electoral system.<sup>108</sup> The court further referred to the case of *Centre for Rights Education and Awareness v Attorney General and another 2015 [eKLR]* stating that:

the people of Kenya recognised the inequalities in our electoral system, the inequality of power between men and women and the socialisation of patriarchy as a result of inter alia, discriminatory practices, gender insensitive laws and policies.<sup>109</sup>

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<sup>104</sup> *Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others*, 10.

<sup>105</sup> *Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others*.

<sup>106</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, Petition No 19 of 2017, Judgement of the High Court at Nairobi on 20 April 2017 [eKLR] para 5.

<sup>107</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 5.

<sup>108</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 47.

<sup>109</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 47.

The court further revisited the decision in *Federation of Women Lawyers (FIDA-K) and five (5) others v Attorney General and Another*,<sup>110</sup> which observed that the purpose of Article 27(8) was to provide or place an obligation upon the state to address historical injustices a particular segment of the people of Kenya may have encountered.<sup>111</sup>

The court agreed with the petitioner that political parties are bound by the two-thirds gender rule, and hence their nomination process for parliamentary candidates must comply with the Rule. It noted that political parties are not excluded since the Constitution clearly states that its provisions bind everyone.<sup>112</sup> Additionally, the court asserted that political parties, as public entities funded by the people of Kenya, have a responsibility to empower women and marginalised groups. This is in line with the requirement to mainstream gender equality and eradicate gender discrimination.<sup>113</sup>

Accordingly, the court directed political parties to take measures to formulate rules and regulations for purposes of complying with the Rule during party nominations. However, in order not to disrupt the advanced preparations for the elections, the court directed that the order be applied in the 2022 general election.<sup>114</sup>

Parliament has failed to implement the two-thirds gender rule. Nevertheless, parliament invoked Article 261(2) to extend the deadline for enacting the law by one year. Paradoxically, while it failed to secure the votes needed to pass the Duale Bill I, it managed to gather sufficient support to approve the extension! Even after the additional year expired, parliament was unable to pass the Bill.<sup>115</sup>

<sup>110</sup> *Federation of Women Lawyers (FIDA-K) and 5 others v Attorney General and Another*, Petition 102 of 2011, Judgment of the High Court at Nairobi, 25 August 2011 [eKLR].

<sup>111</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 48.

<sup>112</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 48.

<sup>113</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 48.

<sup>114</sup> *Katiba Institute v Independent Electoral and Boundaries Commission*, para 85.

<sup>115</sup> Centre for Rights Education and Awareness, 'Tracing the journey: Towards implementation of the two-thirds gender principle', foreword.

Despite the last petition<sup>116</sup> and the court's order to parliament to enact legislation on the two-thirds gender rule within sixty days, parliament failed once again. In response to this situation, the petitioners approached Chief Justice Honourable David Maraga in June 2017 with a formal request to advise the president to dissolve parliament, as outlined by the high court and stipulated in the Constitution.<sup>117</sup> This was followed by a letter from the Law Society of Kenya (LSK), through the then president Nelson Andayi Havi dated 21 September 2020 to the Office of the Chief Justice which led to Justice David Maraga advising the President, Honourable Uhuru Kenyatta to dissolve the twelfth parliament of Kenya for failing to implement the constitutional gender rule.

In his advice to the President under Article 261 of the Constitution, Justice Maraga addressed President Kenyatta stating that:

Your Excellency, *the gravamen of the six petitions is that parliament having, for over 9 years and despite 4 court orders, failed, refused and/or neglected to enact the requisite legislation, I should, pursuant to the provisions of Article 261(7) of the Constitution, advise you to dissolve parliament. As parliament had not advised me whether or not it had passed the Representation of Special Interest Groups Laws (Amendment) Bill, 201 and/or the Constitution of Kenya (Amendment) Bill, 2019, I decided not to engage on further correspondence. Instead, I caused summons to be served upon parliament and the attorney general on 3 August 2020.*<sup>118</sup>

President Kenyatta did not act upon the advice from Chief Justice Maraga. However, members of parliament including the speaker of the National Assembly, Honourable Justin Muturi criticised the judiciary and Chief Justice Maraga.<sup>119</sup> He termed the advice to dissolve parlia-

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<sup>116</sup> *Centre for Rights Education and Awareness (CREAW) and 2 Others v Speaker of the National Assembly and 6 Others*, Petition No 371 of 2016, Judgment of the High Court at Nairobi, 29 March 2017 [eKLR].

<sup>117</sup> Centre for Rights Education and Awareness, *Tracing the journey: Towards implementation of the two-thirds gender principle*, 2019, 1.

<sup>118</sup> Office of the Chief Justice and President of the Supreme Court of Kenya, 'Chief Justice's advice to the President pursuant to Article 261(7) of the Constitution', 22 September 2022, para 12.

<sup>119</sup> David Mwere, 'Muturi fights back after CJ tells Uhuru to dissolve Parliament,' *The Nation*, 22 September 2022.

ment over its failure to effect the two-thirds gender rule as ‘ill-advised, premature and unconstitutional’.<sup>120</sup>

The LSK on the other hand, following the advice by Chief Justice Maraga to the president to dissolve parliament, wrote to Dr Fred Matiangi, the then cabinet secretary of the Ministry of Interior and Coordination of National Government, notifying him that the twelfth parliament is unlawful and should not conduct business beyond 22 October 2020 and that all police officers assigned to members of the twelfth parliament should be withdrawn.<sup>121</sup>

### **The performance of women in Kenya's elections (2013-2022)**

History has shown how Kenyan women had a difficult time moving into the country's political structures. Prior to the 2013 election, women in the tenth parliament of Kenya (2008–2013) consisted of approximately 9 percent of the total membership.<sup>122</sup> Only 50 women were elected to parliament between Kenya's independence in 1963 and 2013.<sup>123</sup> This has not been the case after the promulgation of the Constitution of Kenya (2010).

The country has witnessed a positive shift in the political participation and representation of women.<sup>124</sup> The Constitution brought modest gains for women, through affirmative action, the percentage of women representatives increased from 7.5 percent to 19.4percent.<sup>125</sup> In the tenth parliament (2007-2013), there were 13 women members of parliament in comparison to 160 men. The number increased after 2013 with the

<sup>120</sup> Moses Odhiambo, ‘Raila supporters attack CJ Maraga over Uhuru letter’, *The Star*, 23 September 2020.

<sup>121</sup> Law Society of Kenya, Letter to Ministry of Interior and Coordination of National Government, 24 December 2020.

<sup>122</sup> Natalie Cowling, ‘Proportion of seats held by women in the national parliament of Kenya from 2004 to 2023’, Politics and Government, *Statista*, 8 April 2024.

<sup>123</sup> Aili Tripp, Catie Lott and Louise Khabure, ‘Women's leadership as a route to create empowerment: Kenya case study’, *USAID*, 29 September 2014, 20.

<sup>124</sup> Tripp and others, ‘Women's leadership as a route to create empowerment’, 21.

<sup>125</sup> Cowling, ‘Proportion of seats held by women in the national parliament of Kenya from 2004 to 2023’.

senate taking the lead with 18 out of 67 members of the house being women, bringing the percentage of women representatives in the Senate to 26.8 percent.<sup>126</sup> In the National Assembly, there were a total of 68 women legislators out of 349 members.<sup>127</sup> While the two-thirds gender rule was not attained, the country recorded the highest number of women in the legislature since independence.<sup>128</sup>

The 2017 elections represented an incremental step for women representation.<sup>129</sup> Compared to the 2013 elections, women achieved greater representation at all levels except in the presidential race, which remained male dominated. Notably, women won gubernatorial and senatorial seats for the first time (three), and more women were elected to both the national and county assemblies.<sup>130</sup> Below is a table of the number of women and men legislators in the 2013 and 2017 elections.

*Table 1: Women and men legislators at the National Assembly (2013 and 2017)*<sup>131</sup>

<b>The National Assembly</b>						
	2013			2017		
	<b>Elected</b>	<b>Appointed</b>	<b>Reserved</b>	<b>Elected</b>	<b>Appointed</b>	<b>Reserved</b>
Men	274	7	0	267	7	0
Women	16	5	47	23	5	47
% of women (290)	5.5%	41.7	100%	7.9%	41.7%	100%

*Source: IEBC (2020) and Republic of Kenya (2013)*

<sup>126</sup> Tripp and others, 'Women's leadership as a route to create empowerment', 23.

<sup>127</sup> Tripp and others, 'Women's leadership as a route to create empowerment', 23.

<sup>128</sup> Gloria Nyambura Kenyatta, 'The political participation of women in Kenya', 25 *Journal of International Women's Studies* (2023) 4.

<sup>129</sup> National Democratic Institute (NDI) and the Federation of Women Lawyers (FIDA Kenya), 'A gender analysis of the 2017 Kenya general election', The National Democratic Institute (NDI) and the Federation of Women Lawyers (FIDA Kenya) 6 February 2018.

<sup>130</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 6; in 2017 there were 23 elected female members of the National Assembly as compared to 16 in 2013 and 96 members of County Assembly in 2017 from 82 in 2013.

<sup>131</sup> Kenyatta, 'The political participation of women in Kenya', 4.

Table 2: Women and men legislators at the senate (2013 and 2017)<sup>132</sup>

The Senate				
	2013		2017	
	Elected	Appointed	Elected	Appointed
Men	47	2	44	2
Women	0	16	3	18
% of women	0%	89%	6.8%	90%

Source: IEBC (2020) and Republic of Kenya (2013)

The number of women representatives increased after the 2022 general elections in comparison to the 2017 elections. The positive shift was seen across all elective positions except the presidency, 29 female members of parliament were elected in the National Assembly and 7 female governors and 3 female senators were elected.<sup>133</sup> Following the August 2022 election, six women were nominated to the National Assembly while 18 were nominated to the Senate.<sup>134</sup> Following the nominations, the total number of women in the National Assembly currently stands at 82 out of 349 that equates to 29 members of parliament, 47 women representatives and 6 nominated women.<sup>135</sup> The positive shift in women participation in politics and governance reveals a steady increase in women's representation in Kenya over the years.

From the statistics, one can see that the constitutional two-thirds gender rule is attainable. As opposed to the national parliament, the county assemblies in Kenya have already attained the two-thirds gender requirement as established under the Constitution.<sup>136</sup> Although three counties (Taita Taveta, Trans Nzoia and Narok) did not meet the 33 percent threshold in the 2017 election, the IEBC used party lists to in-

<sup>132</sup> Kenyatta, 'The political participation of women in Kenya', 4.

<sup>133</sup> Konrad Adenauer Stiftung, 'Factsheet of women's performance in 2022 elections', Konrad Adenauer Stiftung, 2022, 2.

<sup>134</sup> Konrad Adenauer Stiftung, 'Factsheet of women's performance in 2022 elections', 2.

<sup>135</sup> Konrad Adenauer Stiftung, 'Factsheet of women's performance in 2022 elections', 2.

<sup>136</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 31.

crease the number of nominated women to achieve the two-thirds gender rule in most counties.<sup>137</sup>

## **Voicelessness among women leaders in parliament**

Factors that inhibit women candidates from vying for elective positions as well as obstacles that exist once they are elected contribute to voicelessness among women leaders.<sup>138</sup> Underrepresentation was a major factor towards voicelessness among women leaders prior to the 2010 constitutional dispensation. Before 2013, the number of women parliamentarians remained low at 9.8 percent.<sup>139</sup>

Higher levels of women's representation in the legislature are linked to the adoption of policies that advance gender equality, foster social inclusion, and support human development. Women legislators in the Global South play a critical role in driving policy changes that improve living standards and foster human development.<sup>140</sup> Developing countries with more women representation in their parliaments are more likely to pass comprehensive gender-sensitive laws.<sup>141</sup>

Formerly, low women representation in parliament undermined the effectiveness of women leaders in pushing for democracy, local and national development agendas, increased responsiveness to citizen's needs, and promoting gender-sensitive legislations. Other factors that also rendered women leaders voiceless in the early parliaments include socio-economic, ideological, and psychological factors, as well as cul-

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<sup>137</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 31.

<sup>138</sup> UN Women Africa, 'Latest study maps out the growing challenges for women in Kenyan politics', 23 May 2023.

<sup>139</sup> Sebastian Gatimu, 'Kenyan politics: Where have all the women gone?', Institute for Security Studies (ISS), 24 May 2016.

<sup>140</sup> Rollin F Tusalem, 'Does gendered representation in national legislatures promote substantive representation and human development? Evidence from the developing world', 50(6) *Politics and Policy* (2022) 1099.

<sup>141</sup> Elizabeth Asiedu, Claire Branstette, Neepea Gaekwad-Babulal and Nanivazo Malokele, 'The effect of women's representation in parliament and the passing of gender sensitive policies', American Economic Association, 18 October 2022, 1.



tural practices and gender stereotyping which have previously shaped men's perceptions of women as being incapable of political leadership.<sup>142</sup>

Factors contributing to women's voicelessness in the post-2010 Constitution period are quite unique. Underrepresentation cannot be viewed as the only and major challenge today. Politics is commonly seen as a male-dominated sphere.<sup>143</sup> Women who enter this arena and achieve legislative success often face being 'othered' therefore enduring ridicule and slander due to perceptions of their inability to lead.<sup>144</sup> The personalisation of politics further entrenches this challenge, as tribal loyalties and patriarchal leadership structures reinforce patronage networks and control over local decisions.<sup>145</sup>

Political parties have played a significant role in perpetuating gender imbalances in representation. Although many parties emphasise gender inclusivity in their manifestos, they consistently fall short in actively supporting or nominating women for key leadership positions. The functions of political parties include 'representation of societal interests in the legislatures, political socialisation and participation, political education and communication, recruitment of political leaders, policy formulation and working towards political cohesion'.<sup>146</sup> Kenya's election system is based on the fact that many voters vote along party lines, often referred to as the 'six-piece'; where they elect candidates from the

<sup>142</sup> Clara Wangari Mutabai, 'Women and global politics: Analysing challenges faced by women political leaders in Kenya', Unpublished Master's Thesis, United States International University Africa, 2017, x; Asiedu, and others, 'The effect of women's representation in parliament and the passing of gender sensitive policies', 4.

<sup>143</sup> iKNOWPOLITCS, 'E- discussion: Gender norms in politics', iKNOWPOLITCS, 27 November 2023.

<sup>144</sup> Mwathi Mary. 'Perceptions of female legislators in the 11<sup>th</sup> Parliament on media portrayal of women politicians in Kenya,' Unpublished Masters Thesis, University of Nairobi, 2017, 64.

<sup>145</sup> Jacqueline Muturi, 'First understand the root causes impact of gendered political violence to curb it', Centre for Human Rights and Policy Studies (CHRIPS), December 2021.

<sup>146</sup> The National Assembly Taskforce on Factsheets, Speaker's Rulings and Guidelines, 'Factsheet 12: Role of political parties and key parliamentary offices', The Clerk of the National Assembly, 2022, 4.

same party for all six key positions: president, governor, senator, MP, women representative, and Member of County Assembly (MCA).<sup>147</sup>

Most political parties have biased nomination processes in political party primaries. Powerful male candidates with a strong financial backing are often favoured therefore side-lining women with fewer financial resources. Parties also tend to nominate few women for less competitive positions, leaving the more influential roles predominantly to male candidates. In the 'six-piece narrative', voters tend to align their choices with the dominant party in their region which discourages independent thought about individual candidates' merit.<sup>148</sup> Often, this leads to the exclusion of competent women in favour of male candidates with party tickets.

Political violence is currently another contributor. Political violence against women is distinct from traditional forms, with perpetrators ranging from political opponents and law enforcement to criminal groups, party members, and even family.<sup>149</sup> This violence often occurs across the electoral cycle – before, during, and after elections – and manifests not only as physical and psychological harm but also as economic sabotage, relentless harassment, and character defamation.<sup>150</sup>

On numerous occasions, women politicians have voiced their concerns over political violence, a persistent issue during election periods.<sup>151</sup> Reports of physical violence have surfaced in nearly every electoral cycle. One female candidate recounted an incident, stating, 'the situation became so chaotic that gunshots were necessary to disperse the attackers'.<sup>152</sup>

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<sup>147</sup> Mark Sedgwick, 'Kenya elections 2017: "Six-piece" vote explained', *British Broadcasting Channel*, 8 August 2017.

<sup>148</sup> Mark Sedgwick, 'Kenya elections 2017: "Six-piece" vote explained'.

<sup>149</sup> Muturi, 'First understand the root causes impact of gendered political violence to curb it'.

<sup>150</sup> Muturi, 'First understand the root causes impact of gendered political violence to curb it'.

<sup>151</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 39.

<sup>152</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 39.

In 2019, Kenyan member of parliament Honourable Rashid Kassim was accused of slapping fellow member of parliament Honourable Fatuma Gedi, a member of the budget committee, for allegedly not allocating funds to his constituency.<sup>153</sup> The incident sparked outrage among female members of parliament, who staged a walkout from parliament after male colleagues mocked the situation, referring to it as 'slapping day' as reported by then member of parliament for Murang'a County, Honourable Sabina Wanjiru Chege.<sup>154</sup> Additionally, during party primaries, Honourable Millie Odhiambo experienced extreme violence, including the burning of her home and the tragic death of her bodyguard, who was run over by a vehicle associated with an opposition campaign. Similarly, in February 2017, Ms Eunice Wambui, an aspiring member of parliament for Embakasi South, was attacked while conducting a voter registration drive in Mukuru Kwa Reuben, Nairobi.<sup>155</sup>

Overall, violence against women in politics is an offensive barrier that hinders female politicians from full participation in politics and also negatively impacts their durability and success in the political arena.

The voiceless of women in parliament hinders their effective participation in parliament. Used in this context, 'voiceless women on seats' does not mean the inability or weakness of elected female representatives to voice their ideas but refers to the societal obstacles that inhibit women leaders from participating effectively in parliament.

Over the past two decades, there has been a notable rise in women participating in politics across various levels of governance due to the introduction of gender quotas, particularly in African countries.<sup>156</sup> Kenya has adopted the quota system under its constitution to address the gender gap in parliament and in any other elective or appointive positions.<sup>157</sup> This is a significant step which has led to an increase of women

<sup>153</sup> BBC News, 'Kenya MP arrested 'for slapping female colleague'', *BBC News*, 13 June 2019.

<sup>154</sup> BBC News, 'Kenya MP arrested 'for slapping female colleague'.

<sup>155</sup> NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general election', 39.

<sup>156</sup> Asiedu and others, 'The effect of women's representation in parliament and the passing of gender sensitive policies', 5.

<sup>157</sup> Constitution of Kenya (2010) Article 27(8).

representation in parliament. Despite these achievements, women still cannot participate as effectively as men in the legislation processes in parliament.<sup>158</sup>

Beyond the seats they occupy in parliament, women do not head major departmental committees or occupy leadership positions of the houses. Most women in the parliamentary positions are also nominated and not elected. In Kenya, nominated members of parliament are considered inferior as compared to the elected members. This offensive barrier hinders most female politicians from fully participating in the businesses of the houses hence making them *voiceless women on seats*.

#### *What next once at the table?*

History has proven that the number of women in parliament has increased and continues to increase. The gender-parity requirement has been attained by county assemblies. The National Assembly and the Senate have partially attained the requirement. This begs the questions: What next after attaining the threshold? What is the quality of representation accorded to women once on the seats? Does the increased gender representation alone translate into meaningful engagement and decision-making power? What is the depth and impact of women's role once they have secured seats at the table?

Greater representation of women in parliament often leads to increased focus on women's issues.<sup>159</sup> The fight for numbers is a tool that facilitates women's direct engagement in public decision-making.<sup>160</sup> Sandra Pepera notes that women's active participation in leadership roles at national, local, and community levels has become a cornerstone of the global development policy. Women's participation promotes gender equality and broadens both the range of policy issues addressed and the diversity of solutions proposed.<sup>161</sup>

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<sup>158</sup> Zedekia Sidha, 'Despite increased representation Kenyan politicians still face gender barriers', London School of Economics (LSE), 7 August 2023.

<sup>159</sup> Political Participation of Women, Asia-Pacific, *UN Women Report*, 2023.

<sup>160</sup> Political Participation of Women, Asia and the Pacific, *UN Women Report*, 2023.

<sup>161</sup> Sandra Pepera, 'Why women in politics', NDI, 28 February 2018.

Research indicates that women are more effective gender-responsive law-makers than their male counterparts. Secondly, whether a legislator is male or female has a distinct impact on their policy priorities.<sup>162</sup> Evidence also demonstrates that as more women are elected, policies increasingly reflect family needs, the need to improve the quality of life, and the interests of women, ethnic minorities, and racial groups.<sup>163</sup>

In this case, increased women representation is just a stepping stone to achieving gender equality and the promotion of gender responsiveness. It is not the endgame. The fight for gender equality is far from over. Without voices and the equal participation of women in decision making once at the table, there can only be an attainment of gender parity, constitutional gender thresholds and mere numbers in parliament without achieving gender equality. There is no gender equality if women are still undermined in the seats they occupy.

Professor Maria Nzomo underscores the importance of ensuring that women's participation in governance goes beyond mere numbers in representation.<sup>164</sup> Drawing inspiration from Hanna Pitkin's theory of representation,<sup>165</sup> she highlights the perspective of gender and feminist scholars who argue that achieving a governance system that fosters gender equality requires deliberate and strategic efforts by women in public leadership. This includes developing transformative agendas, promoting meaningful policy reforms, creating accountability frameworks, and strengthening ties between the state and civil society.<sup>166</sup> She also notes that merely achieving formal access to governance structures or increasing the number of women within them does not necessarily lead

<sup>162</sup> Craig Volden, Alan E Wiseman and Dana E Wittmer, 'The legislative effectiveness of women in Congress', Centre for the Study of Democratic Institutions, Working Paper 04, 2010, 337.

<sup>163</sup> Pepera, 'Why women in politics'.

<sup>164</sup> Maria Nzomo, 'Gender and governance in Kenya: Women's journey beyond numbers' in Wanjiku Mukabi Kabira, Patricia Kimeri-Mbote, and Nkatha Kabira and Agnes Meroka (eds) *Changing the mainstream: Celebrating women's resilience*, African Women Study Centre, 2018, 55.

<sup>165</sup> Hanna Pitkin, 'The concept of representation', in Jacob T Levy (ed) *The Oxford handbook of classic contemporary political theory*, Oxford University Press, 2015.

<sup>166</sup> Nzomo, 'Gender and governance in Kenya', 55.

to genuine influence or the capacity to deliver substantive representation.<sup>167</sup> Ultimately, large numbers alone, regardless of the group, are insufficient to guarantee real power or influence in decision-making.<sup>168</sup>

Political systems do not automatically progress toward democracy in a gradual manner. Instead, deliberate interventions in institutional frameworks and political cultures are crucial to promote the active participation and inclusion of all citizens.<sup>169</sup> There is a need to 'foster gender responsive governance' in Kenya and Africa beyond just numbers.<sup>170</sup> More effort is needed in the fight to attain and promote gender equality in political representation and governance in the Kenyan parliament, moving beyond numbers, seats and quotas.

### **Gender parity and gender equality in the Kenyan parliament**

It is quite imperative to distinguish gender parity from gender equality. The attainment of gender parity does not automatically translate into the attainment of gender equality. Kenya is more concerned with the attainment of numbers and the mere achievement of gender parity in parliament and has forgotten the greater need to ensure gender equality. Gender equality is a human-rights concern.<sup>171</sup> It implies that 'women, men, boys and girls of all classes and races participate as equals and have equal value'.<sup>172</sup>

Kenya has seen a significant rise in the number of female legislators, growing from none at independence to 22 percent in the national assembly and 31 percent in the senate following the 2022 elections.

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<sup>167</sup> Nzomo, 'Gender and governance in Kenya', 55.

<sup>168</sup> Nzomo, 'Gender and governance in Kenya', 55.

<sup>169</sup> Shirleen Hassim and Amanda Gouws, 'The power to change: Women's participation and representation in Africa', Background Discussion Paper Prepared for HBS Engendering Leadership Project, 2011, 2.

<sup>170</sup> Hassim and Gouws, 'The power to change: Women's participation and representation in Africa', 3.

<sup>171</sup> United Nations Population Fund (UNFPA), 'Gender equality', UNFPA.

<sup>172</sup> UNFPA, 'Gender equality'.

However, activists and policymakers focusing on formal legal reforms have overlooked informal structures that diminish women's voices. While more women are present in policy dialogue forums at local and national levels, they lack substantial power in policymaking. Progress on key gender issues like domestic violence, female genital mutilation, and reproductive health has stalled. Despite the increase in women legislators, their influence in legislative and policy-making processes remains limited. Barriers to effectiveness include a lack of representation in committee chair roles, which hold significant sway over legislative priorities.<sup>173</sup>

Most house leaders and chairpersons of various committees in the National Assembly, Senate and county assemblies are male. Stephanie Wangari describes the national assembly house leadership as a *boy's club*.<sup>174</sup> The table below presents the gender representation in the committees of the National Assembly and the Senate.

*Table 3: Women and men members of committee memberships (after 2022 general election)*

The National Assembly						
House committee	Composition	Men	Women	Chair-person	Vice chair	% of women
House business committee	14	12	2	Male	N/A	14.29%
Agriculture and livestock	15	12	3	Male	Male	20%
Blue economy and irrigation	15	11	4	Male	Male	26.67%
Environment, forestry and mining	15	11	4	Male	Male	26.67%

<sup>173</sup> Sidha, 'Despite increased representation Kenyan politicians still face gender barriers'.

<sup>174</sup> Stephanie Wangari, 'Eyes on the data: Kenya's National Assembly remains a boys' club', *Africa Uncensored*, 2 October 2023.

<b>The National Assembly</b>						
<b>House committee</b>	<b>Composition</b>	<b>Men</b>	<b>Women</b>	<b>Chair-person</b>	<b>Vice chair</b>	<b>% of women</b>
Finance and national planning	15	15	0	Male	Male	0.00%
Labour	15	10	5	Male	Male	33.33%
Lands	15	12	3	Male	Female	20%
Trade industry and cooperatives	15	13	2	Male	Female	13.33%
Public investments, social services administration and agriculture	15	13	2	Male	Male	13.33%
Budget and appropriation	27	20	7	Male	Female	25.93%
National cohesion and equal opportunity	21	14	7	Male	Female	33.33%

*Data analysed and extracted from the Parliament (NA) Kenya website on 13 February 2024.<sup>175</sup>*

*Table 4: Women and men members of committees' membership(after the 2022 general election)*

<b>The Senate</b>						
<b>House Committee</b>	<b>Composition</b>	<b>Men</b>	<b>Women</b>	<b>Chair-person</b>	<b>Vice chair</b>	<b>% of women</b>
Business committee	10	6	4	N/A	N/A	40%
Agriculture, live-stock and fisheries	9	8	1	Male	Male	11.11%
Finance and budget	9	6	3	Male	Female	33.33%

<sup>175</sup> Parliament of Kenya, 'The National Assembly of the Republic of Kenya'.



<b>The Senate</b>						
<b>House Committee</b>	<b>Composition</b>	<b>Men</b>	<b>Women</b>	<b>Chair-person</b>	<b>Vice chair</b>	<b>% of women</b>
Devolution and intergovernmental relations	9	7	2	Male	Female	22.22%
Labour and social welfare	9	7	2	Male	Male	22.22%
Land, environment and natural resources	9	6	3	Male	Male	33.33%
National cohesion, equal opportunity and regional integration	9	5	4	Male	Female	44.44%

*Data analysed and extracted from the Parliament of Kenya website (the Senate) on 13 February 2024.<sup>176</sup>*

From the above data analysis, no woman heads any of the major parliamentary committees both in the National Assembly and the Senate. In the National Assembly, there are only four women deputy chairs out of the eleven analysed committees, with no woman in the Finance and National Planning Committee. In the Senate there are only three women vice chairs out of the seven major committees being analysed. This in turn has greatly undermined women sponsored legislative processes.

In the twelfth parliament, 499 bills were processed with women sponsoring only 39 bills.<sup>177</sup> Women sponsored nine (9) out of 110 bills in the National Assembly between March 2013 and June 2015.<sup>178</sup> This represents approximately 8 percent of the total bills sponsored by women. The Senate reflects a similar trend, with women sponsoring 9 out of 49

<sup>176</sup> Parliament of Kenya Website, 'The Senate of the Republic of Kenya'.

<sup>177</sup> Wangari, 'Eyes on the data: Kenya's National Assembly remains a boys' club'.

<sup>178</sup> Wangari, 'Eyes on the data: Kenya's National Assembly remains a boys' club'.

bills between March 2013 and June 2015, accounting for roughly 18 per cent of all bills.<sup>179</sup> The introduction and sponsoring of gender-responsive bills in parliament has been greatly undermined by male legislators in leadership positions of the National Assembly and the Senate committees. This means that women are still lagging behind when it comes to sponsoring bills in parliament.

The case is no different at the county level. While the number of women in county assemblies has grown, it remains uncommon for them to occupy committee chair positions. When they do, these roles are often limited to committees that are considered less prestigious and are underfunded, such as those focusing on gender, youth, and children's affairs.<sup>180</sup> Men occupy essential positions in county assemblies, including those of the speaker, deputy speaker, leader of majority, leader of minority, chief whip and their deputies.<sup>181</sup> Therefore, it is clear that the counties in Kenya have managed to achieve gender parity without attaining gender equality.

#### *Necessary measures needed to achieve gender equality*

'Access' has been identified by scholars as a crucial measure for promoting and ensuring gender equality in governance.<sup>182</sup> Generally, 'access' refers to the need for equitable opportunities for women to participate in political processes, from candidacy and occupying leadership roles to taking up decision-making positions and, ensuring that barriers such as economic, social, and cultural limitations are removed to foster genuine inclusivity. This paper defines access in two ways: first, as women's capacity to engage in the electoral process, and second, as their opportunity to participate in the policy-making sphere.<sup>183</sup>

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<sup>179</sup> Wangari, 'Eyes on the data: Kenya's National Assembly remains a boys' club'.

<sup>180</sup> Sidha, 'Despite increased representation Kenyan politicians still face gender barriers'.

<sup>181</sup> Sidha, 'Despite increased representation Kenyan politicians still face gender barriers'.

<sup>182</sup> Hassim and Gouws, 'The power to change: Women's participation and representation in Africa', 5.

<sup>183</sup> Hassim and Gouws, 'The power to change: Women's participation and representation in Africa', 5.

Access can be through various means. In the electoral arena, reserved seats, and party influence are commonly used.<sup>184</sup> In the policy arena, governments may actively invite women's participation. Additionally, special mechanisms, collectively known as national gender machineries can be used to provide institutionalised access to the policy-making processes.<sup>185</sup>

In the parliamentary arena, access ranges across various levels, from the ability to submit recommendations on upcoming legislation and attend public hearings, to engaging in one-on-one discussions with members of parliament.

This method is practicable and applicable in Kenya. Access to governance in the electoral arena generally deals with the fight to meet the required numbers. The Constitution of Kenya (2010) through quotas has ensured that this is guaranteed. Seats are now reserved for women in parliament both at the national level and the county level. The only challenge is on access in the policy arena.

The policy arena deals with issues beyond the table, beyond numbers and beyond seats. It concerns quality representation by women and their role in legislation and policy formulation. This can be achieved by implementing necessary laws, policies and regulations to ensure that women are given opportunities to be part of parliamentary leadership and not just have mere membership. Women should be given opportunities to head various committees within parliament, sponsor bills, have their bills supported, voted for and passed as laws.

Political parties have the best opportunity of ensuring gender equality by enforcing proper implementation of quotas, ensuring and establishing clear, transparent nomination processes and providing opportunity to all.

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<sup>184</sup> Hassim and Gouws, 'The power to change: Women's participation and representation in Africa', 5.

<sup>185</sup> Hassim and Gouws, 'The power to change: Women's participation and representation in Africa', 5.

Political sanctions and penalties should be enforced for the political parties who fail to meet gender representation established under the regulatory frameworks. Sanctions for non-compliance such as financial penalties and disqualification from elections if properly implemented and enforced, can help level the playing field and promote greater gender equality in political representation.

Women's rights defenders, women's rights organisations, women's rights advocates and institutions should not only focus on the attainment of numbers, but also focus on the attainment of power by women once elected. This will ensure that women's voices in parliament are heard and considered in decision making tables.

## Conclusion

Gender parity in parliaments is an important step towards gender equality when accompanied by broader structural and societal changes to ensure that women have equal opportunities, representation, and influence in shaping policies and institutions. Achieving numerical balance in parliamentary representation is not sufficient to address the complex and multifaceted challenges of gender inequality. The proposed necessary measures should be implemented to ensure that representation translates into meaningful participation, influence, and long-term change. By doing this, Kenya will have succeeded in moving women *from seats to voices*.