Since Kenya attained formal independence in 1963, women have been seeking to effectively participate alongside men, in governance and decision-making in all aspects of public life. But for the first three decades of postcolonial governance, progress was painfully slow due to a combination of structural obstacles: i) deeply embedded patriarchal socio-cultural values; ii) undemocratic institutions, buttressed by equally undemocratic and gender blind legal and policy frameworks and iii) low levels of civic and gender awareness. Under this institutional and socio-cultural environment, it is hardly surprising that despite the active and effective role women played in the colonial liberation struggles\(^1\), the first post independence government under the late President Kenyatta did not have a single woman member of Parliament. When leaders of the only national women’s organization at the time sought to engage the State over this exclusion, the male political gatekeepers argued that there were no qualified women\(^2\). But the presence of women in politics and public decision-making institutions remained dismal several decades later, despite the large pool of highly educated women in the country. During this period therefore, women in Kenya were circumscribed in advancing a gender agenda, as they operated primarily within civil society, with no political space and with minimal connection or support from the largely patriarchal State.

Kenya reverted to a multi party political system in 1992, and \textit{formally} embarked on a road in a democratic direction. But in reality, democracy in Kenya remained elusive in a context of undemocratic legal framework and political culture. There was however adequate political space for political mobilization; articulation of demands, and some space for engaging the intransigent State. This inspired the emergence of a progressive feminist led women’s movement that has since engaged in gender activism, gender sensitization, mobilization, capacity-building of women political leaders; socio-economic programs for poor women and the lobbying for constitutional reform. This feminist movement led by a cross.-section of well educated women from the Academy, Legal Practice and national women’s NGOs, spearheaded the 1990’s women’s movement; dubbed: \textit{the Second Liberation Struggle}.\(^3\) The attainment of a 30\% numerical presence of women in parliament has since been a major part of this feminist struggle, based on the deep conviction that there was a direct positive relationship between gender equity, development and good governance. Furthermore these feminist activists argued that a critical mass of women in parliament would not only advance the gender agenda, but could also positively transform the patriarchal political culture.

\textit{This} post 1991 feminist activism has over the years generated some notable successes, especially in respect to the remarkable improvement in civic, gender and human rights awareness; alongside strategies for policy and advocacy interventions. However, there has been dismal performance in increasing women’s numerical strength in all public decision-making bodies, but most notably in Parliament and local government. Currently, the Kenyan parliament has only 9.8\% women representation; trailing far behind the global average of 18.8\% women representation in world parliaments. Over the past decade, some African countries have attained and even surpassed the critical mass threshold of 30\% women representation in decision-making. All the countries in the East African region have overtaken Kenya on all measures of gender equality indices and as in the case of Rwanda, standing at 56\% women parliamentary representation by January 2011, was ranked first globally, followed closely by South Africa at number three (3) position, while Kenya stood at position 101, in global the ranking of women’s presence in parliament.\(^4\)
The poor performance of Kenya in regard to women’s representation in political leadership, despite having pioneered and provided leadership to the post-1990 multi-party women empowerment programs in the East African region, continues to raise concern both at the level of theory and praxis.5 And yet all evidence over the last two decades, points to concerted and consistent efforts by Kenyan women to gain access to centers of power. Furthermore, women groups in civil society have continued to engage in gender sensitization, mobilization and lobbying for a gender responsive constitution that would restore women’s rights and provide for AA; while a few leading women politicians have diversified their political strategies in party politics by seeking and attaining the position of Chairperson or ‘Owner/ Founder’ of some of the smaller political parties, in a bid to expand their negotiating power base within the male dominated political party framework.6

These efforts notwithstanding, both internal and external pressure to increase women’s representation in decision-making through AA, continued to mount as more and more countries in the region attained and surpassed the 30% women representation threshold, primarily through the system of Quotas and/or Proportional representation. Thus from 1996, Kenyan women, within and outside parliament, combined the push for comprehensive constitutional reforms with a collaborative strategy to have the government enact an AA law, under the old constitution.

**Feminist Struggles for Affirmative Action in Kenya**

The struggle on AA in Kenya can be traced to the early 1990s, but became politically visible in 1996, when Hon. Charity Ngilu moved the motion for implementation by Parliament, of the Beijing Platform for Action (which provided for AA), but the motion did not pass. In 1997, Hon. Phoebe Asiyo tabled the first Kenya specific AA bill in parliament but it also flopped due again, to lack of support from a male dominated parliament.

Three years later, on 20th April 2000, MP Beth Mugo sponsored through her Social Democratic Party, an AA draft Bill that sought to increase representation of not just women, but other marginalized groups in decision-making organs, but primarily in political institutions. The Bill at first seemed to have received widespread parliamentary support, and was to be debated in November 2000. But on 12 October 2000, the then President Daniel Arap Moi, announced that he was opposed to AA for women, as he believed in equal opportunities for all regardless of gender. The proposed Bill was subsequently shelved.7

But the struggle for constitutional reform continued and three years later, through concerted lobbying by women leaders, AA measures were included in the 2005 Draft Constitution that was subjected to a National Referendum held in November 2005. The draft Constitution was rejected, thus putting AA on the backburner once again.8

The next attempt at securing an AA law was through the Constitution of Kenya (Amendment) Bill 2007 on AA, which sought to create 50 automatic seats for women in the current 10th Parliament, along with an additional 40 Electoral Constituencies, with a view of putting women’s representation in Parliament closer to their population size. The bill tabled by then Justice and Constitutional Affairs Minister, Hon. Martha Karua, was also rejected on several grounds, including the claim of lack of consultation and failure to secure broad consensus both within and outside the government side.9 Some MPs also claimed discomfort with the proposed AA bill as it focused only on women, at the exclusion of other marginalized and
vulnerable groups, including the physically challenged, the youth, and those from minority communities and religions. Furthermore, apart from male Parliamentarians, a number of key male stakeholders within Civil Society were also opposed to the Bill, including, the Central Organizations of Trade Unions (COTU) and the Law Society of Kenya (LSK). On the other hand, women in Civil Society, former MPs, Women’s organizations such as Maendeleo ya Wanawake organization, the National Women Coordinating Committee, Educationists, and Media Women Association etc, all lobbied aggressively for the endorsement of the Constitution of Kenya (Amendment) Bill 2007.

This struggle for AA led by the combined force of feminist led activists, in collaboration with other gender responsive groups and individuals, intellectuals, and women parliamentarians, was finally rewarded in August 2010, when the 20 years of struggle for a new Constitution, yielded a very progressive legal and political instrument, that not only provides for AA but guarantees both women and men, equality of rights and duties in equal measure; and removes all forms of discrimination in both legal and social practice.

Top on the list of the key gains that women feel they have harvested from this new constitution, is the inclusion in the Bill of Rights, with a legally binding principle of AA, backed by additional protocols that guarantee the implementation of AA through quotas and reserved seats, in all appointive and electoral processes. The AA provisions, binds the State to ensure gender equity in access and measures to correct historic imbalances suffered by all minorities and disadvantaged groups.

Women political leaders and their counterparts in Civil Society are hopeful that under this new democratic constitutional dispensation, they can set an effective gender agenda, and in particular attain the long awaited 30% critical mass in the next parliament after the 2012 elections. But will they?

The first hurdle is that, whereas the Principle of AA is clearly embedded in the Bill of Rights, simple political arithmetical calculation indicates that the formula provided for attaining this in key political institutions, reveals a deficiency. For example, the formula for the composition of Parliament does not add up to the 30% Critical mass threshold needed in the newly created Senate and reconstituted National Assembly. The combined quota strength of nominated, reserved and proportional representation seats only guarantees women 13.5% of the National Assembly seats and 26% of Senate Seats. Past political experience does not inspire confidence that women candidates can through the universal competitive electoral process, garner the balance of 17.5% seats required to attain the 30% threshold in the National Assembly. To bridge the likely shortfall from the competitive electoral process for the open seats, effective strategies need to be put in place to invoke and successfully lobby for full application of Article 27(8) of the Constitution which provides that:

“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.”

The second hurdle is that the Constitution implementation process so far has not demonstrated adequate political will to translate women’s rights into reality. Barely six (6) months into the implementation process, the optimism and hope that heralded the dawn of the new constitution is increasingly being replaced by a mixture of cautious sobriety and disillusionment. The implementation process to date has demonstrated repeated lack of strict adherence to the constitutional provisions, such as the AA, let alone, the principles and provisions of inclusiveness, equity and justice. It is indeed emerging that patriarchal values, political and related institutional cultures have remained intact, and are hindering the advancement of a gender
Agenda under the new constitution. The AA principle as provided for in the new Constitution has already been violated in the first implementation phase of Public appointments under the new legal dispensation.\textsuperscript{12}

Given this emerging trend, there is already concern among feminist activists that the implementation of the AA Principle, the quota and proportional representation systems as provided for by the Constitution, are likely to continue to encounter resistance from the male political class, many of whom remain opposed to the principle of AA. Consequently, calls for greater vigilance, and greater involvement by women in the implementation process, are increasingly being made.

So in terms of the process, the focus of Kenya’s feminist struggle is still on the ‘hows’ of attaining a critical mass, rather than on assessing impacts of quotas and performance of women’s numerical political presence in parliaments and other political institutions.

\textbf{Would a Female critical mass in the Kenyan Parliament bring a significant Difference?}

Despite the emerging hurdles with the constitutional implementation process, it is indeed timely to begin to reflect on whether, if a critical mass of women representation is attained in the Kenyan parliament after the 2012 general elections, such numerical strength would translate into influence in policy and programmatic action that would, for example, be responsive to the needs of poor women in the allocation of national budgets. Would this female critical mass help to de-masculine the deeply embedded institutional male political culture and replace it with a more democratic culture. Indeed, what guarantee do we have that these Female MPs would have the commitment and the interest to advance a gender Agenda in Parliament? These are pertinent issues that draw our attention to the need to pay to focus more on the process and criteria of selecting and electing the female beneficiaries of AA. Kenyan women should also pay heed and take lessons from the experiences with Quotas for women of South Africa, Uganda and other countries that already have a critical mass of women in parliament. For example, Tamale and Tripp have noted that in the case of Uganda, allegiances to the National Resistance Movement (NRM) at times hamper the ability of women MPs to support legislation favored by the women’s movement, if such legislation contradicts or challenges the NRM political party position.\textsuperscript{13} Goetz and Hassim in the case of South Africa,\textsuperscript{14} also caution that whereas AA contributes to increasing numbers of women in governance institutions, it may undermine women’s autonomy and enhance their susceptibility for co-optation and conformity with anti- feminist political practices.

Supporting the same argument Dodson\textsuperscript{15} notes in the case of the US that \textit{increasing numbers of women} in leadership positions in the US governing institutions \textit{did not in itself make a difference} for women’s issues and total \textit{numbers} seemed to matter less than the \textit{strength of the party} to which the women leaders belonged\textsuperscript{16}. Lawless and Fox\textsuperscript{17} reached a similar conclusion in a study of Women candidates in Kenya, when they concluded that:

\begin{quote}
“The suggestion that electing women candidates would generate a woman’s agenda is precarious in the Kenyan case. The 19 women candidates interviewed demonstrate neither fervour, nor an affinity, for forwarding women’s issues.”
\end{quote}

A 2008 UNIFEM study\textsuperscript{18}, while acknowledging that higher numbers of women in parliament generally contribute to stronger attention to women’s issues, also noted that women’s presence in government alone may not be enough to change public policy and resource allocation. On economic governance, a 2001 World Bank report\textsuperscript{19} suggested that the higher the number of women in parliaments or the private sector, the lower the level of corruption and the \textit{less likelihood of women to be involved in bribery and corruption.}\textsuperscript{20}
But this was countered by another World Bank 2003 study that argued that, *more women in politics are not the cause of low corruption, but rather, liberal democratic institutions and transparent political processes create an enabling environment for more women to participate in politics and to combat and minimize opportunities for corruption.*

Another school of Political analysts have taken the opposite view by asserting that, when women get into leadership and management, they bring a different perspective to political leadership and help solve problems associated with perpetual poverty, state building, and balancing decision making processes. These analysts also argue that when women get into leadership and management, they bring a different perspective to political leadership. Nyokabi Kamau in her study of ten Kenya female politicians argues women bring a different perspective into politics and that some individual women politicians contribute more than is often acknowledged. The study also argues that the lack of a critical mass of women in political institutions has been a major constraint for women politicians to effect significant and positive difference towards transforming the male-dominated culture of politics, public policy, and resource allocation in a gender equitable manner.


Many Kenyan women activists and female MPs hold the view that, Women make a difference not necessarily because of numbers, but despite them. They argue that, despite their marginality in decision making, Kenyan women have made some significant difference in shaping and advancing the gender agenda. In this connection, they point to the fact as numbers of women in parliament began to rise, especially in the 9th and current 10th Parliaments, some key policy and legislative changes made in favour of women, and sponsored by female MPs have been enacted during this period. These include tax waivers for Sanitary Towels and baby diapers; passing into law of the *Sexual Offences Bill*, *Children’s Act of 2002*, the *Political Parties review of the Employment Act of 2007*, leading to an increase in maternity leave to four months (three months actual maternity leave and one month annual leave), and an increased focus on gender issues and HIV and AIDS, especially by the Minister of Health, who has been a woman since 2003. The *Employment Act*, as well as the *Political Parties Act*, was also significant pieces of legislation, as they sought to address key issues of gender equitable representation in the socio-economic and political arenas respectively and discourage gender discriminative practices. Also attributed to female MPs has been a notable paradigm shift in the gender responsive direction that Parliamentary debates have taken, some of which have resulted in gender sensitive policies that may advance the Gender Agenda. These include: the *Sessional Paper No. 2 of 2006 on Gender Equality and Development*, *National Land Policy*, *National Reproductive and Health Policy*, *Gender Policy in Education of 2007* and the *National Policy for the Abandonment of Female Genital Mutilation of 2008- 2012*

Furthermore several individual women political leaders are cited as role models who have made significant contribution to women’s advancement but are also recognized globally. Often cited are the Nobel Laureate, Prof. Wangari Maathai, Martha Karua, Charity Ngilu and Phoebe Asiyo, among others.

**Concluding Note**

Kenya is a country that is currently undergoing an important but challenging political transition, which is likely to shape and determine the nature and culture of governance institutions and processes that are being crafted through the constitutional implementation process now under way. The Women’s agenda is part of this process. As noted above, the emerging trend in the implementation process has to date been...
uninspiring and calls for vigilance by the feminist groups that fought so hard and struggled for so long to have key gender provisions ingrained in the Bill of Rights. Some of these gains can be lost or indefinitely delayed during the enactment of legislations, and hence will require close collaboration between women in civil society and those in Parliament to protect and advance the gender agenda through the provisions of this new constitution.

Just as the return to political pluralism in Kenya in 1991 did not alter the prevailing undemocratic structures and culture or facilitate women’s access to institutions of governance, the new constitutional dispensation on its own cannot guarantee that a gender agenda will be advanced. Even with the envisaged increased numbers of women in decision-making through AA, the State remains gendered, and does not automatically alter the dominant male culture in governance structures or the distribution of political power between men and women.

While acknowledging the achievements women have made in the past decade towards enacting gender friendly laws, it is also the case that women within and outside do not only always act in unison in support of women related issues. Party politics and the growing ethnic identities sometimes constrain the development and support of a common strategy on key gender issues. These challenges cannot be resolved by the provisions of the new constitution but they could dilute the potential effectiveness of the anticipated increase in numerical strength of female MPs in the post 2012 Parliament.
ENDNOTES


2 At a brainstorming Forum organized by HBF Kenya, on 22nd March 2011, to honour the Kenya Women political pioneers of the feminist struggle for women’s rights, Hon. Phoebe Asiyo who was the first African President of the First national women’s organization set up in 1952- *Maendeleo Ya Wanawake* organization- narrated how after women had fought alongside men for Jomo Kenyatta’s release from house arrest imposed on him by the Colonial Governor, when independence was won in 1963, women were completely sidelined from governance institutions.


4 These figures are derived from data compiled by the *Inter-Parliamentary Union* on the basis of information provided by National Parliaments by 31 January 2011, for 188 countries. See also, [http://www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm).

5 Some have argued that Patriarchal values that pervade all political institutions of governance: political parties, parliament, local councils and government bureaucracies, coupled with (until August 2010) an undemocratic legal framework, have been viewed as major obstacles to women’s presence in political governance. Others have heaped blame on the women’s movement and organizations for their alleged failure to provide concerted and sustained support to women in politics. Still others have blamed the women politicians themselves for poor political strategies and unwillingness to make politics a full time profession, with all the sacrifices it entails. See also Nzomo, M. (ed.) *Women in Politics: Challenges of Democratic Transition in Kenya*, Heinrich Boll Foundation, 2003.

6 Most political Parties have not well institutionalized and professionalized and so me have a short life span. Some of them are owned by individuals who set them up or bought them from others. However they serve as important political vehicle for negotiating a share of political power. The women MPs who lead or own parties include: Hon Martha Karua (NARC-K); Hon. Charity Ngilu (NAK) and Dr Julia Ojiambo (LDP)

7 The retired President Moi is a patriarch par excellence. He is quoted as saying that: “women have little minds”. Throughout his tenure as President, he believed that there was no gender imbalance question in Kenya requiring redress at the level of law and policy. Thus, his rejection of the proposed AA bill 2000 was consistent with his ideology. See also, *Daily Nation*, Nairobi, 13th October 2000; c.f. *Daily Nation on the Web* 5th September 2000 and 20th April 2000)
For example, it was reported that two women MPs on the government side disagreed on the floor of the House during the AA debate.

COTU boss argued that the move was against the spirit of competitive politics and urged members of parliament to reject the bill as it was unfair amendment of the law of the land. The Chair of the male dominated LSK argued that the proposed amendment were unconstitutional and discriminative and also amounted to fundamental change in the constitution; hence the need for a referendum vote.

While male MPs blamed Karua for personalizing the bill and for not engaging in the required dialogue and wider consultation in search for consensus, it was also the case that the same MPs had rejected on flimsy grounds previous AAA Bills tabled in Parliament. The MPs also blocked the *Equality and Domestic Violence Bill*.

For more details, see *Constitution of Kenya: August 2010*: Nairobi, Articles 97 & 98.

The President Kibaki had in February 2011, appointed a men only team to occupy the top judicial positions of the Chief Justice, the Attorney General, Director of Public Prosecutions and Director of National Budget. Women lawyers moved to court and successfully made a case for the unconstitutionality of the appointments on grounds that the action violated and failed to abide by the AA principle. See also, *Daily Nation*, Nairobi, February 26, 2011: pp.5&6


Ibid


Ibid


29 through the pressure from female MPs in 2007, the government committed itself to set aside close to USD125 thousand in the national budget for the tax free purchase of sanitary towels, to cater especially for poor female pupils and students, who were previously absent from school for five days each month due to lack of sanitary towels, resulting in poor school performance and high drop out rate. The voicing of this gender issue by women MPs in Parliament led to public awareness and greater government sensitivity to women’s specific needs in budget allocation.

30 The *Sexual Offences Act* initially received a lot of opposition from male members of parliament. It was only after much lobbying by women legislators and women civil society organizations that the Act was enacted. However, due to the opposition it received from men, some important clauses were removed, for example marital rape and criminalization of female circumcision.

31 The 2004 Nobel Peace Laureate Prof. Wangari Maathai is the founder of the Green Belt Movement, a women-driven grassroots reforestation and sustainable development movement that has planted more than 40 million trees. An environmental and socio-political activist, her numerous awards include the Goldman Environmental Prize, the Africa Prize for Leadership and the UNEP/Eyes on the Environment Award. She has played a pivotal role in Kenya’s politics and has without doubt been a role model and mentor for many Kenyan women aspiring for leadership.

32 Karua became the MP for Gichugu constituency in 1992 and has since remained a prominent national politician. Her work as a human rights advocate has been recognized through several awards. In 1991, she was recognized by Human Rights Watch as a human rights monitor. In December 1995, she was awarded by the Federation of Kenya Women Lawyers (FIDA) for advancing the course of women. In 1999, the Kenya Section of IJC awarded her the 1999 Kenya Jurist of the Year Award and the LSK awarded her the Legal Practitioners Due Diligence Award. She headed the government’s team in negotiations with the ODM regarding the political dispute that resulted from the 2007 election. She was later endorsed as the national chairperson of the NARC-Kenya political party on 15 November 2008 and immediately declared she would be running for the Presidency in the 2012 elections.
Charity Kaluki Ngilu became the first ever, female presidential candidates in Kenya in 1997, under the Social Democratic Party (SDP) and finished fifth. After the 1997 elections, she moved to form and head the National Party of Kenya (NPK), which she has since used effectively to negotiate her way through the rough waters of Kenya’s male dominated politics. It was with the strength of her NPK party that she joined the Orange Democratic Movement (ODM) in 2007 and subsequently was appointed Minister of Water and Irrigation in the Coalition Government of ODM and PNU. She previously served as Minister of Health.

Phoebe Asiyo a former goodwill ambassador for UNICEF is one of the renowned Kenyan political pioneers and committed advocate for women’s rights for more than two decades. She has been highlighting the status of women in Africa in all walks of life and the various forms of oppression they are subjected to, from domestic violence, rape and female genital mutilation, to forced/early marriage, denial of educational opportunities, and denial of property and economic rights. She is also a recipient of many international awards and honorary degrees.