

# **Maria Nzomo**

## **Women's march to power is painfully slow**

To understand the passion, the anger and the frustration being expressed by Kenyan women and other gender-friendly groups with the implementation the new Constitution, one would need to have a full appreciation of their many years of struggle to achieve them; only to become “contentious issues”.

It has taken Kenyan women nearly three decades of struggle for rights, activism, gender sensitisation, capacity-building, lobbying and mobilising to take up various political leadership positions.

Whereas civic, gender and human rights awareness has improved significantly, progress towards access to political leadership positions has remained painfully slow due to a combination of structural obstacles.

These include deeply embedded patriarchal socio-cultural values that pervade all institutions of governance and lack of political will to fully embrace gender equity and equality.

The current status of Kenyan women in political leadership is a glaring reminder of this shortfall. Currently, Parliament has only 9.9 per cent women representation; trailing far behind the global average of 18.8 per cent.

Seven African countries have attained the “critical mass” threshold of 30 per cent women representation in decision-making and two more are approaching that threshold.

Over the past decade, all the countries in the Eastern African region have not only overtaken Kenya on all measures of gender equality indices but all have also attained and surpassed the 30 per cent threshold.

In particular, Rwanda has rapidly recovered from genocide to become the leading country in the region and the world, on its gender parity index with 56.3 per cent women parliamentary representation by 2011.

Globally by 2010, 25 countries had attained a “critical mass” of women's presence in national parliaments in 189 countries across the world. It is worth noting that all the countries that have attained 30 per cent women's presence in parliament, have done so through the adoption of one or several types affirmative action measures, both constitutional and non-constitutional.

The struggle for affirmative action in Kenya can be traced to the early 1990s, although it became politically visible from 1996 to 2007, through the repeated tabling in Parliament of affirmative action Bills sponsored by several female MPs: Mrs Charity Ngilu (1996); Mrs Phoebe Asiyo (1997), Mrs Beth Mugo (2000); Ms Martha Karua (2007). All the attempts to effect an

affirmative action law were rejected on flimsy “technical” grounds by predominantly male parliaments.

Finally, in August 2010, 20 years of struggle for a new constitution yielded most of the gains that were the reasons for the struggle for a new constitution: equality of rights, duties and freedoms between women and men; removal of all forms of discrimination in both legal and social practice and equal opportunities in political, economic, cultural and social spheres.

On representation generally, the Constitution clearly provides in various articles including (27(6) and (8), 56, 81(b), 100(a) and 197(1), that the principle of affirmative action which requires that no more than two thirds of one gender occupies elective and appointive public positions would be adhered to and operationalised through appropriate legislation.

### **Bill of Rights**

The Bill of Rights entrenches this requirement and obligates the State to make appropriate legislative and other enactments to give full effect to the principle of affirmative action.

Other specific gender rights include: outlawing retrogressive socio-cultural practices that violate women’s rights such as forced marriages, wife inheritance, female genital mutilation, rape within marriage and others.

Given the constitutional harvest, for a while following the promulgation of the new Constitution, there was a distinct sense of relief and achievement, as gender-friendly groups counted their gains and recited the various socio-economic and political benefits.

But even as celebration was in the air, some gender analysts were cautioning that some of the shortcomings in the new Constitution in respect to women and gender rights could pose problems during the implementation process, notably: the merger of the gender and equality commission (that was expected to monitor and ensure the implementation of gender-related laws) with the national commission for human rights; the anomaly between the two-thirds gender balance principle, as contained in Articles 27 and 81, and the contradictory provisions of Articles 97 and 98, that specify composition and membership of Parliament and Senate by gender, but with numbers that fall way short of the two-thirds principle.

With no inbuilt mechanism to ensure the realisation of this principle the implementation of the “no more than two thirds of either gender” principle was doomed to be problematic from the outset.

The celebration witnessed on that momentous promulgation day on August 27, 2010 have been replaced by a certain sense of sobriety and frustration over the slow process and in some cases what appears like deliberate attempts to reverse the gains in the Constitution through a distorted implementation process or constitutional amendment, as is being suggested now, in respect to the “no more than two thirds” principle.

It seems to me that with the current political tinkering with the implementation of the two thirds principle, the history of affirmative action during 1990-2007, may be repeating itself; with strikingly similar language being used to block the enactment of the two thirds representation principle.

This time around, we are being told that despite the efforts made by women's groups and female MPs to engineer two viable formulae for resolving the constitutional anomaly, the Cabinet has chosen to ignore these, in favour of the more politically expedient path, as communicated to the public by the Presidential Press Service. It seems that the problem is not technical; it is political; it is about political positioning in readiness for 2012.

It is indeed preposterous that the Cabinet would contemplate a constitutional amendment Bill seeking to annul a fundamental constitutional gain for women that is entrenched in the Bill of Rights under Article 27.

### **Legislation and implementation**

The current trend thus suggests total lack of political will to facilitate and transform the formal constitutional gender gains for both women and men into substantive power through legislation and implementation.

The setbacks then encountered to date in constitutional implementation process in respect to gender rights, are a stark reminder that not much has fundamentally changed in attitudes and treatment of gender and women rights, in the Constitution.

*Prof Nzomo, a former ambassador, teaches at the Institute of Diplomacy & International Studies, University of Nairobi.*