
**THE EFFECTS OF LEGAL AND INSTITUTIONAL FRAMEWORK ON
THE PARTICIPATION OF WOMEN IN POLITICAL LEADERSHIP IN
NYANZA REGION (2010-2017)**

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ABSTRACT

Purpose of the study: The journey towards active participation of women in political leadership, particularly in the Nyanza region has been punctuated with a lot of challenges. Therefore, the study aimed at examining how the legal and institutional framework occasioned by the 2010 constitution changed women's participation in political leadership in Nyanza Region.

Research methodology: The study employed content analysis as well as desktop review in assembling the legal documents, the laws, Acts of parliament as well as KIIs in which key informants were interviewed. The analysis was historical in which the chronology since 2010 was followed and presented in narration.

Findings: According to the study findings, there has been an increase in the number of opportunities for women to participate in political leadership since 2010. The creation of special seats for women in parliament aided their representation. The introduction of the two-thirds gender rule was also a positive development; however, it has not been fully implemented.

Conclusion: The research will be useful to legislators, historians, and legal experts.

Recommendations: The study recommended that the two-thirds gender rule be fully implemented in order to level the playing field for women in political leadership.

Keywords: *Legal, Institutional framework, Participation of women, Political leadership, Nyanza*

INTRODUCTION

Historically, worldwide statistics point to the conclusion that women are underrepresented in the participation in politics (Blackmore, 2005). According to Farida (2016), in many countries, women have had inadequate opportunities in social participation, especially in striving for political rights and power in the government and different institutions. As much as this historical tendency still persists, in the recent past women are increasingly being elected to be heads of state and government. As of October 2019, the global participation rate of women in national-level parliaments was 24.5%. In 2013, women accounted for 8% of all national leaders and 2% of all presidential posts. Furthermore, 75% of all female prime ministers and presidents occupied office in the past two decades (Farida, 2016).

In Kenya, historical trends in the post-independence era demonstrate that women have been underrepresented. For example, in the first parliament (1963-1969), there were no women who were elected in parliament out of the 124 parliamentarians that were elected; in the second parliament (1969-1974), there were 2 women in parliament; the third parliament (1974-1979), there were 6; in the fourth parliament (1979-1983), there were 6; the fifth (1983-1988), there were 2; in the sixth parliament (1988-1992), there were also 2; the 7th parliament (1992-1997), there were 7; in the eighth parliament (1997-2002), there were 9; in the ninth parliament (2002-2007), there were 18 and in the 10th parliament (2008-2012), there were 24. In the eleventh parliament (2013-2017), there were 19 women who were elected to parliament in addition to the 47 women representatives from each county. Given that the number of parliamentarians has been for a long time between 124 and 222, the numbers demonstrated above are a clear indication that women's role in political leadership has been a challenge (Maeri, 2014).

According to Kanogo (2013), Nyanza region has had a few outstanding women who, during the early years of independence, managed to beat the social and economic odds to actively participate in politics; these are Phoebe Asiyo, Grace Ogot and Grace Anyango. This is because, as Otieno *et al.* (2016) avers, women have found it hard because of male domination. Bosibori (2013) argues

that one of the many barriers that hinder women's participation in political leadership is that of cultural norms, beliefs and myths as well as traditions, customs and practices that have internalized the notion that women cannot make good leaders. This has, from the pre-colonial period, colonial and post-independence periods, negatively affected their participation in politics, particularly in Nyanza region. However, after the promulgation of the 2010 constitution, space had been widened to allow many women to participate in political leadership. It is against this background that this study sought to examine the effects of the legal and institutional framework after 2010 on women's participation in political leadership.

STATEMENT OF THE PROBLEM

Nyanza region has for a long time perpetuated patriarchal system. Since the pre-colonial times, the role of women in the society was mostly subordinate. This explains the fact that even during the early years of independence, particularly 1963 to 1969, there was no woman politician who managed to be elected in parliament. From 1968 to 2013, there were only four women leaders who were elected in parliament. Even after the 2002 General Elections, the three were no women who were elected from Nyanza. This, according to Kanogo (2013) it later on emerged that the contesting parties KANU and NARC did not want to 'jeopardize' their chances of winning by appointing women whom they believed were politically weak. The 2010 constitution brought far reaching changes in as far as representation of women in political positions was concerned. It not only spelt out the threshold for gender representation, but also introduced special seats for women in all the counties and thus ushered in a new era of legal and institutional framework.

RESEARCH OBJECTIVE

To examine the effects of legal and institutional framework on the participation of women in political leadership in Nyanza region (2010-2017)

LITERATURE REVIEW

According to Mwangi (2008) political developments in Kenya since independence lead to the conclusion that it has secluded the Kenyan woman. The author avers that Kenya has had a legislative council since 1907, making it one of the oldest functioning legislatures in the Commonwealth Africa. As a result, the present parliament is a carryover of the Legislative Council. However, ever since it was established it has continued to be male dominated. During the entire six decades of its existence, there was no single woman who found her way into the LEGCO.

This legacy was carried over to independence period, it was only during the second general election that Grace Onyango was elected, becoming the first woman ever to be elected (Mwangi, 2008). In 1974, she was joined in parliament by Dr. Julia Auma Ojiambo and Philomena Chelagat Mutai, who were elected as MPs for Busia Central and Eldoret North constituencies respectively. Dr. Ojiambo was then appointed an Assistant Minister. The female membership was boosted to five by the nomination to parliament of Dr. Eddah Gachukia and Jemimah Gecaga. In the 1979 elections, (the fourth elections after independence) Mrs. Onyango, Dr. Ojiambo and Miss Mutai were re-elected and Mrs. Phoebe Asiyu made a debut to parliament to represent Karachuonyo (Mwangi, 2008). According to Al-Khawaldeh(2006), the policies put in place in a given country may determine the extent to which various individuals may be included in the political scenes. For instance, a study carried out in Jordan showed that laws and the direction of political life in Jordan are in the hands of men; in accordance to traditions and customs that have been inherited, and in accordance to the hierarchical paternal system that has been mentioned previously

The study also revealed that the Jordanian government has enacted laws that benefit Jordanian women. However, the contents of these laws and regulations are insufficient to guarantee women's political participation rights. Recognizing the truth does not always imply putting it into action. The truth's implementation necessitates that, on behalf of the government, both men and women understand and accept that exercising this right is an obligation (Al-Khawaldeh, 2006). In India, women make up only 10% of national and state legislatures on average. In order to increase women's political participation, the constitution was amended in 1993 to require a random third of village council positions to be reserved for women. It has also been noted that policy and legal framework changes have resulted in significant electoral gains for women. Women were significantly more likely to stand for and win councilor positions in villages that were not currently reserved after ten years of the quota system.

It can be observed that the provision of policies and institutional frameworks which support women may help in promoting their participation in politics. Policy formulation can be observed as a key to integrating the equal participation of both male and females in the political arena. This is in line with Bertens (2003). It maintains that in order to mainstream gender equality in politics in any country, a clear Programme needs to be designed, where entry points for follow-up on gender equality perspectives can be identified. A thorough gender analysis of national context must

therefore be made to highlight inequalities, and to take action on promotion of gender equality. Clear operational goals should be set for the Programme with regard to strengthening gender equality. Politics is everyone's business and affects the lives of each of us. The more women are associated in numbers in political decision making process in governments, the more they can change the modalities and outcomes of policies. Only then will the concept of democracy find concrete and tangible expression.

The promulgation of the Kenyan constitution in 2010 ushered in a paradigm shift in Kenya's politics especially on the issue of gender parity. This was the first time in Kenyan history that deliberate steps had been put in place to bridge the gender gap (Fida *et al.*, 2018). Since then, Kenya has gone through two elections; in 2013 and 2017. In 2013, 16 women MPs managed to be elected to the National Assembly; in 2017, the number increased to 22 (Gender Analysis, 2017). This is in conflict with The Kenyan Constitution provisions, especially in Article 81 (b) which limits the representation of the majority gender to no more than two thirds (Akech, 2018).

According to the Gender analysis conducted by USAID, neither the National Assembly nor the Senate has managed to achieve this threshold. According to NDI (2018), Kenya's parliament is yet to pass a legislation that would bring it in line with the constitution's "two thirds" rule. As much as there have been attempts aimed at legislating towards the rule, (for example through the Elections Act and Political Parties Act), these amendments still remain inadequate and short of the requisite good will required to enhance full implementation (NDI, 2018). In fact, owing to this challenge, women in Kenya's parliament still constitute a paltry 22% of the entire house (Ondieki & Bula, 2018)). If state and non-state actors jointly work together, more can be done. These actors, according to USAID (2018) include: the judiciary, IEBC (Independent Electoral and Boundaries Commission), Office of the Registrar of Political Parties, The Attorney General, the civil society and the electorates. Progress towards the achievement of gender rule can be made through collaborative effort. These examples are an elaboration of the essence of a clear policy framework as a saving grace for women's participation in political leadership.

METHODOLOGY

The study used a descriptive case study design, with the Nyanza region as the focal point. Siaya, Homa Bay, Kisumu, Nyamira, Kisii, and Migori are the counties in this region. It primarily employed desktop review, in which data from the 2010 constitution, Acts of Parliament, Reviews,

Newspaper articles, and interview transcripts were welded together and qualitatively analyzed. This entailed categorizing the data into two themes based on the objectives and narrating them. Simultaneously, the study focused on Key Informant Interviews with past and current women leaders in Nyanza. Their responses were given in the form of quotations.

RESULTS AND DISCUSSIONS

The 2010 Constitution and the Provisions on Women's participation in Leadership

Having discerned that the period after the change of government from Moi regime to Kibaki regime was not beneficial to the increased representation of women in parliament, the aftermath of the 2007/8 Post election violence presented the perfect opportunity to change the overall institutional framework in favor of women political leadership. In fact, during the constitutional making process, care was made to ensure that clauses were infused in the constitution to safeguard women's political participation in political leadership. In 2010, the new constitution was promulgated and it came into effect during the 2013 General Elections that were seen as a defining moment to the struggle for women's representation in Nyanza Region.

The articles of the constitution which advance these measures are: Articles 27 (3), 27 (b), 81 (b), 177 (b) and 197. Article 27 (3,) states that women and men have the right to equal treatment, including opportunities. The same article goes further to require the state to take legislative and other measures, including affirmative action to redress disadvantaged groups. Article 81 (b) states that not more than two thirds of members of elective public bodies shall be of the same gender. Article 177 (b) states that gender principles must apply even in County Assemblies (Kenyan Constitution, 2010). These laws went a long way in ushering in a paradigm shift in women's participation in Nyanza and even the rest of the country. For the first time in the history of Nyanza region, all the 6 counties managed to send females to parliament after the introduction of the Woman Representative seat. This was a clear demonstration of the role of the legal framework as well as the institutional framework in enabling women to participate fully in elective political leadership posts.

Towards a Paradigm shift in Women Participation the Eleventh and Twelfth Parliament

In the period after the promulgation of the Kenyan Constitution, there were many gains among them the increase in women's participation in political leadership in all the counties in Kenya. As

had earlier noted, Kenya’s record of female leadership had been very poor since attaining independence in 1963. The highest numbers were recorded after the post 2010 constitution during the 2013 elections. The table below demonstrates female representation:

Table 1: Women’s political Representation-Comparison

YEAR	NO. OF SEATS	MEN	WOMEN	% OF WOMEN
2013	349	280	68	19.8
2007	222	201	22	10
2002	222	204	18	8.1

In the 2013 elections, the composition in the National Assembly was enhanced by the quota system that allowed 47 women to be elected on only women seats. Only 16 women were elected out of the 290 open constituency seats available. There was no woman elected as a senator. A total of 18 women came through the quota for women, persons with disabilities and the youth reserved seats by way of nomination. Total female representation in the bicameral parliament in Kenya stood at 26% after the election. The National Assembly comprised of 19.7% and Senate 26.5 % all made possible because of the affirmative action using both the party quotas and seats reserved for women. At the County devolved level, there were no women Governor elected and therefore the Council of Governors between 2013 and 2017 was a ‘boys club’ consisting of 47 men. In the lower-level county assembly, there are only 86 women elected members of the county assemblies out of 1450 seats available for men and women to compete. Over 750 women were nominated in the assemblies to meet the not more than two third gender rule courtesy of the principle in Articles 177 (1) (b) and (c).

The failure to operationalize the constitutional provision to effect the gender rule has become a bone of contention since then. According to Ondieki (2018), the constitution did not dictate how the two thirds gender rule would be implemented. As a result, the Attorney General sought an advisory opinion from the Supreme Court of Kenya on the matter and it held that this principle had not been transformed into a full right capable of direct enforcement. This was a setback to this law because it was again put back to parliament, which is highly patriarchal, to pass the law operationalizing the articles in the constitution. Owing to this frustration, The Center for Rights Education Awareness Trust sued parliament and a judgment was made to the effect that if

parliament fails to pass the requisite Gender Law, it stands dissolved. (Ondieki, 2018). However, all efforts that have been attempted to pass, have been futile because of lack of quorum or the MPs opposing it.

As much as Kenya is a dominant political, economic power in the region, it remains the only country yet to establish affirmative action for gender representation in parliament. This calls for introspection into the bottlenecks that occasion this scenario. According to Pradhan (2018) for a country to be said to be democratic, steps must be taken to ensure that women participate in the democratic processes. These steps include, but not limited to first creating safe societies where women and girls can live free from violence; providing care and treatment services for victims of gender-based violence; strengthening women's access to resources and opportunities; increasing women in decision making and narrowing gender gaps in education and learning.

Effects of legal and institutional framework on women's Political Leadership in Nyanza after 2013

For the first time, Kisii and Nyamira counties had an opportunity of sending women to parliament. Mary Sally Keraa was elected on an ODM ticket with a total of 115,508 votes to represent Kisii County in the National Assembly. Keraa has been on the limelight in fronting for the legislation of the gender rule; for example, on Wednesday 26th October 2016, Keraa fronted an argument in parliament castigating men who were against the two thirds gender rule and insisted that unless there is a formula that can be arrived at to operationalize the rule, it would be a futile attempt. (National Assembly Hansard, 26th October, 2016). Dennitah Ghati was elected as a Women Representative for Migori County in 2013 on an ODM ticket with 183,323 votes. According to AMWK, she is an ardent supporter and "life member of ODM." The MP is from the Kuria community, a minority group in the county that has never had a female legislator represent them. She believes that her ideology helped her win the hearts of the people. "I respect the people, and the people respect me." "They saw a lot of faith and hope in me," she says.

The patron of Kuria Women for Raila, a lobby group she set up to campaign for Raila Odinga's presidential bid, Dennitah says that she could not have chosen any other party. "ODM was and is still my political vehicle of choice for my political ambition because of its strength in the county and its ideologies. It also captured the aspirations of the people in my county." The secretary general of ODM Mashinani – Migori branch, explains that for women in politics, the choice to

belong in a political party is important, as it is difficult to sail through as an independent candidate. “For any serious contender, being in a political party propels you.” (AMWK. The county MP has long fought for the rights of women and the girl child in Kuria region, and by extension, South Nyanza region. She has campaigned against FGM and early child marriages. She has also been a strong defender of the girl child’s education. The MP does this through the Education Centre for the Advancement of Women (ECAW), a women’s rights NGO based in her county, which she founded and chairs. It also promotes women’s economic rights and empowerment. To her, ECAW was the realization of her vision for the rural girl and woman (ibid).

In Homa Bay, Hon. Gladys Wanga was elected in the 2013 elections with 298,623 votes on an ODM ticket. The Homa Bay County Women’s Representative grew up in a political family. Her father, the late John Nyasuna, was a counselor and chairperson of Kisumu County Council. She emulated him and developed interest in politics at an early age. As she puts it, getting into politics “was a natural thing for me.” Her father inspired her a lot, and so did other political leaders whom she says, played a role in making her the politician she is today. Gladys singles out Hon Charity Ngilu, for whom she has great admiration, among the leaders she looks up to. In high school at Kisumu Girls’, Gladys Wanga was appointed head girl and she proved to be a natural leader. Her leadership flourished further when she joined Kenyatta University. In an interview with AMWK, she states that “In 2003, I contested the highly competitive position of secretary general in the student’s union, and became the first female student to be elected to that position. My role was to represent students at the university senate and council,” she shares. Serving in the position, Gladys spearheaded the review of the Constitution for the Kenyatta University Students’ Association to allow for the union’s independence in running its affairs. She also mobilized resources to run the union.

Gladys remained actively engaged in politics even after university. While she worked in various positions and organizations, including serving as the Programme Manager at LVCT Health, a Kenyan NGO with focus on HIV/AIDS, she engaged in ODM Party politics. “I actively campaigned for ODM in the 2007 and the 2013 election, as well as for individual parliamentary candidates,” she reveals. When she decided to vie, she naturally chose ODM, which was the most popular party in her constituency. “I am an active member of my party’s Parliamentary Group.” Campaigns are not always smooth for most politicians, and Gladys was no exception. “The

campaigns were intense, and the most difficult part was raising the resources needed. Homa Bay County is vast and the terrain is difficult. With support of friends, giving small amounts of money and volunteering their services, we managed to mount a successful campaign and got the seat,” Gladys recalls.

She experienced a lot of verbal violence from opponents who discredited women’s leadership. Undeterred, she remained focused on the task at hand, receiving the support of mainly women and the youth, and a few men. The holder of a Master of Science in Health Management degree received little help to prepare her for the position. “I have been learning on the job. Being a women’s representative, which is a new office in the devolved government, comes with its own responsibilities. We have to ensure there is no duplication of roles with other offices,” she notes. Her key promises were the empowerment of women and the youth, and education for the girl child. Despite not having any money allocated to the office of the County MP, Gladys has partnered with several private sector and civil society groups to mobilize women to register for national identification cards, National Hospital Insurance Fund, National Social Security Fund, birth and death certificates, among other documents that are not easily accessible to many people in the rural areas AMWK. In Kisumu, Rose Auma clinched the seat on an ODM ticket with 321,432 votes. Rose Ogendo-Nyamunga was interested in politics as early as 1992, while a high school student at Ng’iya Girls’ High School. The niece of the late Robert Ouko, Rose followed political developments of the 1990s from family discussions and knew where her fate was. “I followed political activists like James Orenkos and Paul Muite, as I had an interest in people’s rights and justice. Proper treatment of all people and poverty eradication were close to my heart,” she shares AMWK.

Rose was born and raised in Ahero, in a monogamous Christian family of 12 children where honesty, respect and self-esteem were treasured values that shaped her life. “My father was a businessman who stood for economic empowerment of women. This made him an opinion leader who influenced local political leadership,” she recalls. The other influence on Hon. Nyamunga’s leadership abilities were the responsibilities her parents laid upon her shoulders. “I came to appreciate much later when I understood why I was being given the responsibilities. I believe my parents had seen that I could take on multiple tasks and still be thorough in everything that I did, I never liked short-cuts,” she explains. She also served in various leadership positions at primary

school, and was a head girl at Ng'inya Girls' High School. Before joining politics, Rose was in business. She had previously been formally employed for six years. "I am a hands-on person and I was not getting enough challenge in an office job, so I decided to engage in business," she expounds. The graduate of Commerce (Accounting and Finance), as well as a degree in Law (LLB) from the University of Nairobi, also has a CPA (K), and an MBA in Finance and Strategic Planning. She is currently pursuing a master's degree at the International School of Leadership. A micro-finance, business and economic empowerment consultant, she also has businesses in the hotel industry, real estate, rice growing and milling, general trading, owns a school in Nairobi, and has business interests in Juba, South Sudan.

Another politician from Nyanza who was elected in 2013 is Millie Odhiambo. In an exclusive interview with AMWK, Millie Odhiambo-Mabona attested that she is an achiever. Years of consistent work as a lawyer, women's and children's rights activist earned the graduate of the Universities of Nairobi and New York, awards. Millie started her career as a state counsel at the State Law Office, followed by the Federation of Women Lawyers in Kenya (FIDA-K) as a legal officer, the Association of Women in Development, Coalition on Violence against Women (COVAW) and the Caucus for Women's Leadership. The CRADLE is one of the MP's dreams come true. She founded the organization that promotes the rights of children, in 1997. The CRADLE has offered legal aid to children and women; mentored young women on leadership, life-skills and career choice; advocated and lobbied government for legal reform and human rights mainstreaming.

Millie received the YWCA Democracy Award, the Eve Woman of the Year Award for Human Rights and Gender, and an acknowledgment in 2006, by then US Senator, Barrack Obama, during his visit to Kenya. In 2006, Millie's younger brother and a friend, requested her to help the then Mbita MP, Hon Otieno Kajwang', with his campaign. Millie, who had never engaged in politics, was baffled and reluctant, but relented and became Kajwan'g's chief manager. At about that time, the passionate supporter of ODM Party realized that its presidential campaign was not going well. She mobilized more than 20 ODM MPs to heighten the party's campaign, and with the approval of party leaders, Millie initiated and financed the Western Kenya Presidential Campaign that consolidated political activities in most of Nyanza and Western Provinces, parts of Nairobi and the North Rift regions AMWK.

The passionate lawyer who had served as a delegate at the Bomas of Kenya, during the constitutional drafting process says that served as “my political tipping point! It propelled me to the public forum, and I could feel myself moving towards a different arena.” But that was not her first brush with politics. Much earlier, in 1983, Millie who grew up in Homabay Town watched with fascination as Hon Phoebe Asiyo beat the late Okiki Amayo in Karachuonyo Constituency election. “Okiki was then very powerful, perhaps second in power only to President Moi. Watching Phoebe beat him in an election, even after he had demanded for a recount, and seeing him break down in tears, was intriguing. I admired Phoebe’s power. My interest in politics was pricked,” Millie relates. Since her election, Hon Odhiambo has started various SACCOs to enable her constituents participate in diversified agriculture and fishing. She has also started training and entrepreneurship opportunities for youth in catering, tailoring, driving and mechanics. For the continuity of the rich Suba and Luo cultures, Millie has started cultural events that will bring the youth and the old together AMWK (2016).

In Siaya County, Christine Oduor was elected as the first Women Representative with 293, 242 votes on an ODM ticket. Oduor is a trained teacher with a Bachelor of Education from University of Nairobi. She also holds a Master’s Degree in Communication and Linguistics from the University of Lancaster and a PhD student from the Irish University (Parliament of Kenya, 2017). She was born on 23rd November 1956. She has been a member of the Departmental Committee on Education, Research and Technology from 2013 to 2017 and the Departmental Committee on Justice and Legal Affairs. Lastly, in Nyamira County, the first woman politician who was elected in parliament was Alice Nyanhoka. She managed to trounce other aspirants and emerge as the winner with 72,562 votes on an ODM ticket. She is a journalist who used to work at Egesa Radio- the Kisii local station of Royal Media Services. In parliament, she was appointed to the committee of Parliamentary Library and Broadcasting. On Wednesday 19th October 2016, the politician supported a bill to have the P3 form simplified in order to expedite the remedial processes of affected victims (National Assembly Hansard, 2016).

CONCLUSION

Article has demonstrated how the ushering in of the 2010 constitution and brought a new dispensation in 2013 in terms of the gains that were made for women political leaders. What is clear is that the opening up of the democratic space through the sections of the constitution enabled

more women in Nyanza to access political leadership. Of particular focus is Kisii, Nyamira and Migori counties that had never had representation by female politicians since the first parliament in 1963. What is still in contention is the full implementation of the Gender rule and the removal of obstacles that still impede full participation of women in political leadership.

RECOMMENDATIONS

Based on the findings, the study recommends the following:

The legal framework governing women's leadership should be fully implemented. This includes the full implementation of the two thirds gender rule set by the Kenyan Constitution. Best practices from successful countries who have implemented the rule on women's leadership should be borrowed. Obstacles that are still hindering women's participation in politics ought to be overcome. More research should be carried out to establish how best women can be integrated in leadership

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