

# THE WALLS WE CAN'T SEE

Public Policy Lethargy on Women's Political Participation in Kenya

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## Kenyan Women's Journey In Their Quest For Affirmative Action

Concept Paper

Prepared and Presented By

WAMBUI KANYI (MARY)

# THE WALLS WE CAN'T SEE

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### SUMMARY

This article presents the historical journey of Kenyan women in pursuit of an affirmative action legislative framework for increased women's representation in public decision-making institutions. Although the women's struggle for representation started way back in the colonial times, this article predominantly focus on the period when women strategically focused their energies on providing an affirmative action legislative framework starting with the tabling of the affirmative action motion for increased women's representation in parliament, by Hon Phoebe Asiyo in 1997. This period culminated in the Constitutional Reforms and the subsequent entrenchment of the affirmative action in the Kenya Constitution (KC) 2010. The Constitutional affirmative action quota provides that "not more than two-thirds of the members of elective or appointive bodies shall be of the same gender", KC 27:8). Implementation of the constitutional affirmative action quota has seen increased number of women in the county assembly, the county executive, the national assembly, senate and the national executive as well as in appointive bodies such as commissions, the Judiciary and land Boards, among others. Although some institutions such as the national assembly, are yet to comply with the constitutional two-thirds gender rule, the challenge ahead, for the women's movement is to move the struggle for representation to the next level of representation beyond numbers by ensuring that the increased number of women in decision-making, brings women's dream of representation to reality. Thus the struggle continues.

*Kenya*

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

### INTRODUCTION AND CONTEXT

There is significant literature on the factors contributing to women's marginalization in decision-making in Kenya. Women continued to be denied their right to representation and remained an oppressed lot subjected to many injustices and inequalities at all levels of society. Table 1 illustrates the level of women's representation in the national assembly from the first independent parliament in 1963 to the first national assembly under the constitution of Kenya 2010 in 2013.

Table 1: Women's representation in Kenya's 1st to 10th Parliament, National Assembly

Parliament	Duration	Constituency Elected MPs		Nominations		AA Elective Seats		Total	
		Men	W	M	W	M	W	Men	W
1 <sup>st</sup> Parliament	1963 -1969	158		2	0				
2 Parliament	1969-1974	158		1	1				
3 Parliament	1974-1979	158		14	2				
4 Parliament	1979-1983	158		11	1				
5 Parliament	1983-1988	158		1	9				
6 Parliament	1988-1992	188		10	0				
7 Parliament	1992-1997	188		12	1				
8 Parliament	1997-2002	210		9	5			214	
9 Parliament	2002 - 2007	210		4	8			222	
10 Parliament	2007 - 2012	210		6	6			222	
11 Parliament	2013 -	274	16	9	3	47			66
		1 speaker							

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

Increased awareness of their right to representation led women to reclaim their democratic space which they had been deprived for many years. This paper focuses on the period when women started pursuing an affirmative action legislative framework, between 1997 when Hon Phoebe Asiyo tabled the first affirmative action motion in parliament and the Constitutional Reforms that saw the affirmative action for increased women's representation enshrined in the Kenya Constitution (KC) and its immediate implementation in elective and appointive public bodies.

The struggle for women's representation started before independence. In 1961 Priscilla Ingasiani Abwao, was nominated by the colonial government as the first African woman and only woman to sit in the Legislative Council. In 1962, she was the first Kenyan woman to initiate a women's caucus and she was involved in the organization of Kenya African women's seminar at Limuru whose aim was to help women "catch up" to enable them benefit from the colonial government scheme/programme to "Africanize" government jobs.

Other organizers of the Limuru seminar were, Ms Margaret Kariuki Gecau, Mrs Jemina Gecaga and Mrs Ernestine Kiano and Mrs Ruth Njiri, the American-born wives of politicians Gikonyo Kiano and Kariuki Njiri, Mrs Phoebe Asiyo, then a superintendent with Kenya Prisons, Mrs Muthoni Likimani, Ms Judith Ayako and Ms Hilda Otieno. At the conference, Mrs Abwao advised women to rise up and earn their space and to engage in nation building.

Though the struggle did not pick up momentum at the time, the embers kept alive in the hearts of these women.

During the period spanning between 1970 and 1990 the women's struggle baton was carried forward by a generation of younger women among them Achola Pala, the late Grace Githu and Rose Waruhiu, Kavetsa Adagala, Micere Mugo and Waniku Kabira. This group worked tirelessly to move the women's agenda forward.

It was not until the early 1990 that the great awakening of the Kenyan women's struggle for empowerment took place. This was linked to a more conducive external environment. There was an international movement aimed at promoting women's empowerment that positively impacted on Kenyan women's struggle. Some of these included the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which is considered an international bill of rights for women, is adopted in 1979 by the United Nations General Assembly and ratified by 188 states, the World Conference to review and appraisal the achievements of the United Nations Decade for Women: Equality, Development and Peace held in Nairobi in 1985. The conference came up with Nairobi Forward-looking Strategies for the Advancement of Women. This conference was a precursor of the Beijing Conference in 1995. Kenyan women actively participated in these international fora and conferences which was very instrumental in articulating their agenda.

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

In the 1990s Kenyan women became increasingly conscious of their social economic and political rights and the struggle for their individual and collective emancipation gathered momentum. The first step of the journey to reclaim space in society by transforming institutions and structures that were oppressive and discriminative to women started in earnest in February 1992 when women were brought together by the National Council of Women of Kenya (NCWK) and Africa Women's Development and Communication Network (FEMNET) for a National Women's Convention whose agenda was how to access political power. Women declared that they were on a journey to elective leadership and other leadership positions. They never looked back. The next twenty years saw a focused Women's Movement mobilized around key issues and building a network of many different organizations and retaining the spirit of the 1992 National Convention in many ways. They focused on a struggle for institutional framework for gender mainstreaming (Kabira & Kimani 2012).

Another global factor that gave impetus to the Kenyan women's struggle was the United Nations Security Council Resolution 1325 (UNSCR 1325), which was unanimously passed on October 31st, 2000.

This was a major boost to Kenyan women's struggle for empowerment particularly because of its recognition of the important role of women in all efforts to maintain and promote peace and security such as the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stressed the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. It urged all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. In order to ensure collaboration and coordination throughout the United Nations system in the implementation of the Security Council resolution, the Interagency Network on Women and Gender Equality established the Interagency Taskforce on Women, Peace and Security.

A key priority in the women's long catalogue was representation in decisions making institutions and structures. Conscious of the many hurdles to women's participation in decision-making institutions, policy making institutions such as parliament and the local councils, which included discriminative cultural practices, feminized poverty, lack of political good will, among many others, women sought to put in place a legal framework to increase their representation in these institutions. Their journey towards this goals traversed a period of about twenty years marked by a number of key milestones as outlined in the following sections.

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

Kenyan women's vision was clear, that a critical mass of women's representation in decision-making institutions such as parliament and the Local Authorities, the current County Governments, would de-masculine the deeply embedded institutional male political culture and replace it with a more democratic culture and translate into influencing policy and programmatic actions (Nzomo 2012) to be responsive to the needs of poor women in the allocation of national budgets.. The first step, the Kenyan women took, was to clearly articulate the women's agenda including their vision. This involved the collection of factual data in regard to women's representation at the different levels. Clear articulation of the impact of this marginalization was an added advantage. At this stage, those actively involved included elite women, among them the academia, lawyers and politicians. It is at this point, in Kenya's history, that a lot of literature on women exists.

While weighing the different options for enhancing women's participation in decision-making, the women opted for the Affirmative action principle. These are some of the efforts pursued by women:

i. In 1997, Hon. Phoebe Asiyo tabled a motion on affirmative action to increase women's participation in leadership and decision making in parliament and local authorities to at least 33%, a motion which was soundly defeated (Amnany. 2013). Hon. Koech, while opposing Phoebe's motion, noted that the Minister of State, Office of the President, explained that there was no need for this motion

because male MPs represented everybody women and men and that there was already one assistant minister for culture who was a woman.. and ...The constitution did not prevent women from coming to parliament (Hansard).

The defeat of the Asiyo motion gave women energy an unprecedented collective determination to walk together to ensure that their issues were moved to the centre (Kabira & Kimani 2012). This saw the formation of the Kenya Women Political Caucus in 1998. The caucus became the centre for the struggle. Hon Phoebe Asiyo was elected as the chairperson for the Caucus. Under the banner of the Kenya Women Political Caucus the women's organizations and women leaders from the different walks of life, including academicians, lawyers, women parliamentarians, further articulated their issue of women's representation.

ii. On April 12th 2000, Hon. Beth Mugo, in collaboration with women's organizations and the support of Affirmative Action Committee returned to parliament with an affirmative action motion seeking leave to table the affirmative action bill to ensure at least 30% women representation threshold in parliament. Women's organizations had mobilized grassroots support and the affirmative action had become a national women's movement, but a few days before the tabling of the motion, women realized it had a technical error, as it did not seek to amend the independent constitution so as to provide for the affirmative action for increased women's participation in parliament. A quick fix was worked out and a motion to amend the motion on the

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

floor of the House so as to provide for the constitutional amendment was draft. Political differences among the parliamentarians led to shelving of the motion. Upon consultations, women agreed to have the initial motion tabled as it was. The motion garnered enough support and it was passed.

iii. Women quickly went back to the drawing board as the affirmative action motion could not enable them realize their vision. The tabling of the AA motion had raised the consciousness of many other Kenyan groups such as the PWD, the Youth, the Muslim, and the Marginalized communities who felt that the affirmative action was the mechanism to address their marginalized. All these groups enjoined the women and a joint technical working committee coordinated by the women, was formed.

An motion seeking leave to table the affirmative action bill to ensure representation of the various marginalized groups, including women was moved by Hon Beth Mugo in November 2001, but the Motion was amended by the Attorney-General to require that the contents of the Bill be considered by the Constitution of Kenya Review Commission which was just embarking on the comprehensive constitutional review. This meant that the Commission had to address the policy of affirmative action for the increased representation of women in Parliament and Local Authorities. Women and minority groups in the affirmative action technical committee embarked on a serious exercise to educate and mobilize their constituents to effectively participate in the constitutional review process.

Throughout the constitutional review process women within the process remained faithful to the women's agenda and ensured women's interests were safeguarded at every level. Thus, during the negotiations for the constitutional review framework, women had highly become conscious of the importance of critical mass of women's representation in decision-making institutions. Therefore, the women who got to the negotiating table prioritized women's representation in all the organs of the review at the different levels. These included, among others:

- The Affirmative Action for women's representation at all levels entrenched;
- Women's organizations as nominating bodies entrenched in the law;
- That 30 per cent of the 25 per cent of civil society representation went to women;
- That 30 per cent of the commissioners would be women;
- That 30 per cent district representations at the National Conference were women, that is, at least 1 out of 3 district representatives were women (Kabira 2011)

At every stage, the women's groups conducted vigorous research, identified the various mechanism for the implementation of the Affirmative Action principle. Through consultations and consensus building the best mechanism for the Kenyan social-political context was identified. Some of the mechanisms included:

### i. Funding of the Political Parties

Women sought to transform Kenyan Political Parties which were perceived as belonging to rich men who heavily funded them, to public institutions through their funding from the consolidated kitty. The women proposed that fifty percent of the funds be shared among all political parties based on the number of women elected to the councils and the national assembly through the party. This was later hijacked by the male politicians and though the concept was adopted and entrenched in the constitution, the linkage between women's election and the sharing of the political parties' fund removed.

### ii. Proportional Representation

The women proposed the PR electoral system as in South Africa where it has been applied with great results. The PR system was seen as having many Advantages compared to the first past the post system. Some of the advantages cited including: that lists represent the country's diversity, enhancing national unity; in proportional representation systems, all votes count unlike in the case of the first past the post system; reducing the violence and sometimes the fatal competition that characterizes the first past the post system; ensuring proportionality between votes cast and the numbers in parliament because it is not possible for a party with fewer votes to get more seats and vice versa. This has happened in Kenya several times, including in 2007; PR ensures that small parties are represented in political parties and sometimes in government; this system is

less expensive for the country, compared to proposals to increase the numbers in the national assembly. Furthermore Proportional representation system of elections strengthens political parties by entrenching internal democracy, forcing parties to have a national outlook and ensuring that political parties are guided by ideologies. It is simple considering the fact that voters will just vote for parties.

### iii. Women's seats

Women sought to have elective women's parliamentary seats based on the administrative regions agreed upon during the constitutional negotiations. And, the balance for the realization of the affirmative action principle brought through the political parties. Women's elective seats were realized through the Women County Representatives. However, the mechanism to ensure realization of the Affirmative Action at the National Assembly was not provided for.

A major milestone was realized with the entrenchment of the affirmative action principle into the review law. The law to review the constitution thereafter ensured that women were all the structures. The institutions nominating delegates to the National Constitutional Conference, including the Local Councils, the Religious and other interest groups, and the NGO Council were mandated to ensure at least 1/3 of their nominees were women. This brought women to "the centre" of the Constitutional Review Process "and even the media



# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

moved women's issues to the front page and on the editorial pages (Kabira & Kimani). This saw a critical mass of women's representation in all the structures that including the Constituency Consultation Committees (3Cs) and the National Constitutional Conference, (NCC).

There was a strong unity of purpose among all the women in the women's movement comprised of those in the constitutional review structures, particularly the commissioners and the delegates, and those outside the process. The different women's skills were harnessed in the interest of ensuring women's agenda was entrenched in Kenya's constitution. Awareness creation, training and capacity building was at the core of the initiatives that were adopted by the Kenyan women. Numerous Awareness creation, training and capacity building forums targeting women leaders at the different levels, were held at national and grassroots levels. Women devised clear information sharing mechanisms at the different levels to ensure that all women were well informed and articulated the affirmative action principle. The women's diversity, such as age and experience, multi-ethnic or ethnicity, multi-parties and social relations became an added advantage enabling women to access and lobby support from all sectors of the society and stakeholders.

Effective allocation of resources by women's rights groups during the Bomas Constitutional Review process led to very gender positive outcomes in the Draft Constitution, including affirmative action.

However, the period following the failed 2005 referendum was characterized by a constitutional impasse. Women continued to agitate for the reforms by calling for the political leadership to give Kenyans a new constitution, and women lobbied, negotiated, prepared and presented memoranda to key institutions and individuals including the Cabinet and Parliament.

In charting a way forward for the constitutional review process a Multi Sectoral Forum was established in 2006 to map the progress of the constitutional review process. The women's movement vigilantly lobbied for affirmative Action principle in the membership of the Forum. The Multi-Sectoral Forum collapsed but women continued to lobby with key institutions and individuals to ensure delivery of the constitution to Kenyan citizens.

In compliance with the National ACCORD Agenda 4, the Constitutional Review Process was jumpstarted in 2008 with the establishment of the Committee of Experts (COE). One of the key roles of the COE as outlined in the Constitution of Kenya Review Act 2008 was to review the existing draft constitutions and identify the issues already agreed upon and not, and through a consensus building process come up with a resolution on the contentious, and deliver the New Constitution through a national referendum, thus bringing the entire Constitution Review process to a logical conclusion. Women's groups lobbied key stakeholders, including MPs and members of COE to ensure that women's agenda was not categorized a contentious issue.

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

As the country raced towards the final stages of years of the constitutional review process, with the scripting of the COE's Draft Constitution of Kenya, affirmative action was securely anchored in the draft and scripted under articles 27(8), 97, 175 and 177(b), among many others. They mobilized their constituency to come out in large numbers, at the national referendum, and vote in support of the proposed Constitution of Kenya. On 4th August 2010 67% of Kenyan who voted in support of the Proposed Constitution of Kenya. .

In their pursuit of the Affirmative Action principle, women encountered various challenges. The strong patriarchal social system and the negative stereotypes against the rights of women saw strong resistant to Affirmative Action principle among some sectors of the society and women had to spend extra energy to convince them why AA was important. There was a general lack Political Good will in support of affirmative action in the constitution and its implementation thereafter.

Women utilised diverse strategies including seminars, workshops, conferences and media, to ensure effective networking women from the national and grassroots level so as to equip them then with the relevant knowledge and skills to effectively participate in the constitution review process at all levels. All this had huge financial implications. Many women, as individuals and organisations, made tremendous sacrifices of both human resources and finances in the pursuit of the affirmative action and entrenchment of women's agenda in the constitution.

Sometimes external factors slowed the entire Constitutional Review process, including the dissolution of Parliament just as the delegates to the National Constitutional Conference had congregated at Bomas in December 2012: forced to wait for the new parliament and start negotiating and lobbying with the new parliamentarians to support the women's agenda.

There was information gap between women at the national level and those at the grassroots with the latter not have full information. This was a great hindrance for their effective participation in the entire process including the constituency public hearings

Still, there was a successful referendum and promulgation of a new constitution in august 2010. However, despite a legislative framework providing for the affirmative action principle, officials continued to act without consideration of the requirements of the new constitution. The next challenge was creating general awareness. Once again a caucus was formed known as the National Women's Steering Committee on the Implementation of the 2/3 Gender rule scrutinized all government appointments to ensure that they complied with the constitutional affirmative action principle. Despite the lack of political good will the caucus made a deliberate effort to ensure compliance in public appointments. The number of women who have gained access into appointive positions such as constitutional commissions (CIOC, ICBC, CRA etc) and other public bodies.

Given the fact that no mechanism was provided for in the constitution to ensure realization of the AA in the National Parliament, the NWSC took lead in the search of a mechanism to ensure that the AA was realized at the first election under the new constitutional order. Through research and broad consultations the National Women's Steering Committee (NWSC) identified appropriate mechanisms for the implementation of the 2/3 constitution gender rule in the national assembly and within the Kenyan cultural and political context. The NWSC would then create awareness and build consensus among the women on the specific mechanism and rally them to lobby support from the various stakeholders. The following mechanisms were proposed:

**i. Rotate a quota of the 290 / 4 constituencies at every election**

290 constituencies putting together 4 adjacent constituencies and select one of them by lot to be reserved for women and any political party fielding a candidate in the constituency or an independent candidate MUST be a woman. This would give a total of 290 divided by 4=72.5 at every election. This would guarantee 73 + 47 women county representatives = 120 women members of the National Assembly. Considering 117 women MPs are required to realize the constitutional gender rule, this would guarantee realization of the AA at every election. The mechanism did not get support from the member of the 10th Parliament and the women had to once again return to the drawing board and search for another mechanism.

**ii. Constitutional Amendment to provide for AA seats in the National Assembly and the Senate as flows:**

**Amendment of Article 97 of the Constitution on Composition of National Assembly:-**

(a) in clause (1), by inserting the following new paragraph immediately after paragraph (b)-

(ba) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender;

(b) by inserting the following new clauses immediately after clause (1)-

(1A) The members contemplated in clause (1) (ba) shall be nominated by political parties in proportion to the National Assembly seats received by the political party at the general election.

(1B) The filling of special seats under clause (1) (ba) shall be determined after the declaration of elected members from each constituency

**Amendment of Article 98 of the Constitution on Senate Composition:**

(a) in clause (1), by inserting the following new paragraph immediately after paragraph (d)-

(da) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender.

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

(b) by inserting the following new clauses immediately after clause (1)-

(1A) The members contemplated in clause (1)(da) shall be nominated by political parties in proportion to the Senate seats received by the political party at the general election.

(1B) The filling of special seats under clause (1)(da) shall be determined after the declaration of elected members from each county.

The proposed amendments did not materialize as the Attorney General went to the Supreme Court to seek interpretation of the Constitution in regard to the Gender Rule and whether it had to be realized at the first General Election under the Constitution of Kenya 2010. Four out of five of the Supreme Court judges ruled that the constitutional gender rule was to be realized progressively and a mechanism was supposed to be in place by 2015. Only the chief Justice Willy Mutunga differed from the other judges as he believed the constitutional affirmative action principle was supposed to be implemented immediately. This ruling meant that the country was to go to the elections without a mechanism to ensure realization of the Gender Rule in the National Assembly and the Senate.

Though the Gender Rule was not realized at the National Assembly and the Senate, following the first elections under the new Constitutional era, tremendous gains have been made in the representation of women in elective bodies, including the national assembly, senate, the national executive, the county assemblies and the county executives. The 11 Parliament, comprised of the National Assembly and the Senate has the largest representation of women in Kenyan history as illustrated in the table 2. While the affirmative active principle have not been fully realized in the National Assembly and the Senate, it has been better complied with in the county governments, both the executive and the County Assemblies as a majority of them have complied with the provisions of article 175 and 177(b).

As Kenyans set out on the new path, the question that lingers in the minds of the heroes of the second liberation is whether the female critical mass will live up to the vision. Will they have the passion, the commitment and the interest to advance the gender agenda in their respective positions? Will those in the policy making institutions of National Assembly, Senate and the County Assemblies sponsor laws that address women's empowerment? It is unity of purpose and persistence in pursuing women's agenda that will see the realization of women's dream in the transformation of the lives of Kenyan women and more so for *Wanjiku*.

# THE WALLS WE CAN'T SEE

## Public Policy Lethargy on Women's Political Participation in Kenya

### CONCLUSIONS

While great strides have been made towards addressing women's marginalization in decision-making institutions, many more strides need to be made to ensure empowerment, particularly of poor women who though having passionately supported the reforms are yet to realize the fruits of the new constitutional era. This is because the AA has also created a division among the women with the *Wanjiku*'s still remaining marginalized from decision-making institutions and process. Thus, a critical need to work towards the empowerment of all women, regardless of their socio-economic and/or socio-political status. The main challenge, in regard to the AA action is that the change predominantly occurred at the policy level while majority of *wanjiku*'s still remain ignorant of such changes. The full empowerment will be attained through all women working together and forming a collective state of consciousness that promotes and encourages change. Above all they must be good role models in leadership. This may include but not limited to delivery of services. However, more still needs to be done so as to level the ground for all Kenyan men and women. This will require a change in the value system that idolizes ethnic; wealth; political patronage; masculinity; able bodied; dynasty and age above capacity and skills. This is what will transform the society and ensure a level play ground for all, including *Wanjiku* and her children. Otherwise, the struggle for empowering women will remain but a mirage for *wanjiku* and her children and so the struggle, to ensure realization of women's dream for representation, continues until every Kenyan woman is emancipated. *Aluta continua.*

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"The new Constitution creates for Kenya a moment of hope ..."

[www.global-briefing.org/2011/01/interview-with-john-githongo](http://www.global-briefing.org/2011/01/interview-with-john-githongo) Cached

Scenarios for Kenya's Constitutional Referendum

[www.sidint.net/docs/Search\\_for\\_More\\_Perfect\\_Union.pdf](http://www.sidint.net/docs/Search_for_More_Perfect_Union.pdf)

The Historical Journey of Women's Leadership in Kenya

[www.ku.ac.ke/.../stories/...of-Women-Leadership-in-Kenya.pdf](http://www.ku.ac.ke/.../stories/...of-Women-Leadership-in-Kenya.pdf)