

TWO-THIRDS GENDER RULE IN KENYA: A MYTH OR REALITY

"Let us all work to break down the barriers preventing women from being elected to the political offices"- Martha Karua, Party Leader of Nark Kenya

It is preconditioned that for any democracy of any country to thrive, both men and women should have equal access to the implements of power. They should also be involved in the decision-making process and the overall leadership of the government. This is in line with [Article 21 of the Universal Declaration of Human Rights](#), which gives cognizance to the right of every person to be part of the constitution in the government of their country. Contextually, [Article 1](#) of the Constitution recognizes the sovereignty of the people and their right to elect democratic leaders of their choosing.

However, despite the constitution ensuring that the interests of women are considered during the election period by virtue of article 1 of the constitution, women have continued to be underrepresented if not excluded from power and the process of decision-making. In retrospect and against the backdrop of women's marginalization in participation and involvement in governance, this article analyzes the whole issue. It proposes ways of ensuring the right to public participation and equal representation of women in the government is observed and implemented to the core and follows the supreme law's spirit about equal representation and opportunities.

The promulgation of the 2010 Kenyan constitution shone a ray of hope and a promising future for the women domiciling or born in Kenya. With its promulgation came the guarantee of significant fundamental rights and freedoms of which the right of women's participation in governance was explicitly articulated therein. Articles 26(6),27(8),81(b)[Articles 26\(6\),27\(8\),81\(b\)](#), as contemplated by the drafters, aimed at eliminating gender imbalances prevalent in the positions of leadership by

proposing the idea of affirmative action. The idea was /is to ensure that not more than two-thirds of members elected/ appointed to any elective or appointive seat shall be of the same gender.

As contemplated in those provisions, the issue of affirmative action recognized the historical injustices that marginalized groups, especially women, face regarding the nation's political system. Consequently, the principle of the two-thirds gender rule as embroidered under the fabric of affirmative action required the state to enact measures to guarantee the right to equality that was missing in action pre-2010. The interpretation of such a right to equality manifests in its push to eliminate the trends of discrimination and prejudice, which not only disadvantage but also catalyze the exclusion and the subordination of women.

Despite the robust human rights framework under the blueprint of the Bill of rights chapter coupled with the ratified international treaties and conventions such as [The Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) by virtue of [Article 2 \(6\) of the Constitution of Kenya 2010](#), finding an operationalization framework remains to be an elusive dream. The lack of political goodwill influenced the 11th and 12th parliament not to pass the two-thirds gender bill. This unwillingness to pass the two-thirds gender bill within sixty days led to former Chief Justice David Maraga writing an advisory opinion by the jurisdiction constitutionally conferred upon the Supreme Court to dissolve the 12th parliament.

The [lack of an operationalization framework](#) and political legislature goodwill endangers gender equity and equality, perpetrating the status quo of women's subjectivity to historical exclusion on leadership, public decision-making, and governance. This means that the statutory provisions providing for affirmative actions and women's participation in governance serve no meaning unless executed. Therefore, there is a need to recalibrate the national approach towards gender

mainstreaming in policy-making and overall governance at the two-tier government, that is, both the national and county governments.

From the foregoing, this article recommends the following [strategic approaches](#):

Firstly, there is a need to support the female candidates who did not clinch the various seats they vied for. Consequently, they should be encouraged to negotiate for the nomination slots to achieve affirmative action in the government's various elective and appointive positions.

Secondly, all stakeholders need a collaborative approach to push for the passing of the two-thirds gender bill that has stalled in parliament for over five years.

There is also a need to reimagine how we amplify the quest and the clamor for equal representation of women in governance. In this respect, there is a need to address the areas that pertain to the prioritization of women's involvement and participation in governance issues at the national and county levels.

In conclusion, the issue of equal representation of both genders in governance and policy-making is an issue that has not been given the attention and the push for implementation that it deserves. Consequently, this has been characterized by the lack of goodwill from the legislators. Therefore, there is a need for a concerted effort and a unified push to see the realization of gender mainstreaming and affirmative action at all levels of the government.

About the writers

Co-written by Nyanaro George and Enock Kipkorir

