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An Assessment of the Status of the Two-Thirds Gender Principle in Kenya's Elective and Appointive Politics

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Abstract:

This study aimed at interrogating the status of compliance with the two-third gender principle in the second term of government under the Kenyan 2010 constitution. The study limited itself to selected units within the three arms of government, namely, the legislature, judiciary and the executive. The study used desk-top research design in its analysis and presentation of findings. The study established that although compliance to the two-thirds gender rule in Kenya is in force, gender gaps still exists in its substantive implementation. The study established that compliance to the two thirds principle has not been adhered to during political party nomination primaries in seeking for elective offices. The study results revealed that in national and county assemblies' women have not achieved the critical threshold through competitive election paving the way for nomination of more women. However, some county assemblies have not complied with the two-thirds gender rule. The results indicate that although attempts to comply with the two-thirds gender rule have been achieved to a greater degree in elective and appointive positions, compliance in other smaller public spaces like the assemblies' committees' membership and leadership. The findings indicated that the Kenyan judiciary has complied on general terms however; the composition of the Supreme Court has not achieved the minimum threshold of 33.3%. The study results reveal that the executive appointments have not complied with the two-thirds gender rule in its appointment of the cabinet secretaries, chief administrative secretaries and principal secretaries. Comparatively, the Kenyan judiciary has complied with greater extent compared to the national and county assemblies, and the executive. The study established that the two-thirds gender principle has enhanced attempts to achieve inclusivity in governance structures in Kenya.

Keywords: Gender, representation, elective politics, appointive politics, gender rule

1. Background

1.1. Introduction

The inclusion of women and marginalised groups in decision-making platforms has been a major concern in both developmental and scholarly discourse (Tamale, 1999). The underrepresentation and exclusion of women in electoral politics and governance structures has been a recurring phenomenon in international, regional, national and local levels (Mokebo, 2015). This marginalization of women in electoral and appointive politics does not only contradict democratic theory, but also limits women's voice and decision-making in the public domain (Choti, 2013).

In Africa, male and female gatekeepers continue erect barriers on the path of women candidates and political office holders. However, new trends are emerging with women making inroads in electoral and appointive politics as candidates and political office holders. These new patterns of women political participation has been attributed to affirmative action laws, quotas, women networks and support from various actors as witnessed in Rwanda and Uganda (Tamale, 1999; Government of Kenya, 2010).

In Kenya, the independent constitution provided for equality in political participation. However, this equality in practice was oriented towards ethnic and to some extent racial premises. Consequently, the independent constitution was gender blind by lacking legal guarantees to women's equitable participation in electoral politics. The nature of the Kenyan state like the majority of the African states has been described as being "male" (Choti, 2013). Most governance institutions and state apparatus have been patriarchal. Women have historical been alienated from public sphere which was largely defined as a male province (Mwangi, 2004). The progress of women in Kenya's elective politics has encountered drawbacks and success stories over time both in practice and legal guarantees.

The gender debate has preoccupied Kenya's public domain for the last two decades. The catalyst for the gender question was the primary concern of the Fourth world Conference on Women held in Beijing 1995 and the recent

Promulgation of the Kenya 2010 constitutional dispensation that sort to address gender disparity in elective and appointive positions at all levels of governance in Kenya. The two-thirds gender principle provided that not more than two-thirds of all elective and appointive positions should be occupied by either gender. This provision has received mixed reactions from majority of male political elite. Their main contention has been on perceived over burdening of the Kenyan taxpayers through the nomination of more women to elective and appointive positions (The National Women's Steering Committee and the Institute of Economic Affairs 2015).

1.2. Statement of the Problem

Studies have shown that gender disparity has existed in Kenya's elective and appointive politics for several decades. This study seeks to assess compliance to the two-thirds gender principle as outlined in Article 81(b) of Kenya 2010 constitution in the legislative, judiciary and executive arms of the government.

1.3. The objectives of the study

1.3.1. General Objective

The purpose of the study was to assess compliance to the two-thirds gender rule principle in Kenya's elective and appointive politics under the 2010 constitution.

1.3.2. The Specific Objectives

The specific objectives for this study were:

- To assess compliance to the two-thirds gender rule in Kenya's elective and appointive politics; and,
- Interrogate the impact of the two-thirds gender rule on gender representation in Kenya's elective and appointive politics.

1.4. Research Premises

This study was based on the following research assumptions:

- There is glaring gender representation gaps in Kenya's elective and appointive politics despite the two-thirds gender principle; and,
- The two-thirds gender rule has enhanced women representation in Kenya's elective politics and appointive politics.

1.5. Significance of the Study

Studies on gender, elective and appointive politics in Kenya under the 2010 constitutional dispensation are scanty. This study contributes to the existing literature on gender, political discourse and affirmative action law in Kenya. The study identifies government as the primary tool of the state vested with the power of addressing injustice and creating an inclusive society.

In interrogating the levels of compliance with the two-thirds gender principle in Kenya's elective and appointive political spaces, the study contributes in laying the premise for evaluation of the respect for human rights, the practice of rule of law and good governance in Kenya. The study further informs the stake holders on the contributions of various international, regional and national legal frameworks and policies advocating for gender inclusivity in governance structures.

This study provides a platform for challenging all political actors to work towards inclusive democracy that places women at the centre of decision-making so as to achieve sustainable development that is consistent with demographic realities in Kenya.

1.6. Scope of the Study

The study focused on all the three arms of governments namely, parliament at the national and county governments, the executive and the Judiciary. The study was limited to the second term under the new Kenya 2010 constitution. Earlier periods are referred to for laying the foundation for the study and for comparative purpose only.

1.7. Limitation of the Study

A cross-sectional survey of one five-year term in appointive and elective positions does not provide absolute true picture of the status of political realities in Kenya due to the dynamic nature reshuffles, re-appointments, resignations and political realignments.

2. Literature Review

2.1 Introduction

This chapter discusses literature review and theoretical review.

2.2. Review of Related Literature

Existing studies reveal that gender gaps in elective and appointive politics in Africa, East Africa and Kenya have been a historical problem (Tamale, 1999, Mokebo, 2015). The marginalization of women in elective and appointive politics has been a dominant phenomenon in colonial and independent African states (Choti, 2013). Gender exclusivity has been prevalent despite legal guarantees and calls for affirmative action. A situational analysis of gender representation in Kenya is highlighted in table 1 below.

Parliamentary Term	Constituencies Total no.	No. of Women Aspirants	Elected		Nominated	
			Men	Women	Men	Women
1963-1969	158	7	158	0	12	0
1969-1974	158	6	157	1	11	1
1974-1979	158	13	154	4	10	2
1979-1983	158	15	153	5	11	1
1983-1988	158	7	156	2	11	1
1988-1992	188	6	186	2	12	0
1992-1997	188	18	182	6	11	1
1997-2002	210	48	206	4	7	5
2002-2007	210	44	200	10	4	8
2007-2012	210	269	194	16	6	6

Table 1: Gender Representation in Kenya's Elective Politics since Independence

Source: Amin And Smoll (1975); Mokebo (2015)

Table 1 illustrates the true gender picture of elective and appointive politics in Kenya since independence. It is visible that the electoral and appointive terrain has been tilted to the disadvantage of women in the national parliament for instance. The exclusion of women as candidates, elected and nominated Member of Parliament has been witnessed in various political transitions in Kenya.

A baseline survey by UNIFEM (2010) established that gender inequality permeated Kenya's public and private sectors concurrently. The baseline report indicated that women were either absent or marginally represented in Kenya's appointive positions within government structures. However during this period under study then, Kenya had not assented to the affirmative law of the two-thirds gender rule principle. Calls for gender equity in governance structure was until then depended on the interests of the ruling regime and the competing political formations who treated women as secondary in political contests (Mokebo, 2015). There is inadequate literature on compliance to the two-thirds gender rule and its impacts in achieving gender parity in elective and appointive positions in Kenya.

2.3. Theoretical Review

This study was based was premised on democratic theory, gender and legal frameworks in its analysis. Democracy as a concept embodies the sense of people's participation in their own public and private affairs. However, the shortcoming of the democratic theory is its inadequacy in the inclusion of the minority through the principle of majoritarian rule (Tamale, 1999; Choti, 2013). The contradiction lays in its blindness to the societal gender picture. Thus, gender approach is incorporated to address the exclusion of women from public decision-making and the perpetuation of unequal power relations between men and women. Gender is used as a tool of analysis by feminists to uncover the origin, spaces and practices that subjugate women in the public and domestic sphere (Waylen, 1996; Mwangi, 2004).

Gender has been conceptualized as a system of social stratification that situates women and men differently at individual, communal and institutional levels (Waylen, 1996; Risman, 2011). Gender therefore determines allocation of tasks and expectation of each gender in the process of interaction. Gender therefore provides opportunities and constraints to women through the public and private sphere ideology enhanced by patriarchy (West and Zimmerman 1987). Consequently, the state becomes male through the monopoly of public spaces at the expense of women who comprise a critical section of the population (Mokebo, 2015).

Given that gender inequalities are deeply imbedded in our institutions and interaction processes, the cure for this gender injustice is the legal framework that is gender sensitive. Kenya has ratified and domesticated international legal instruments and conventions to enhance women's participation in public-decision making spaces. These international conventions include; the Universal Declaration of Human Rights (UDHR) prohibits discrimination and advocates for inclusion and participation of all people in governance structures. This call by UDHR has been reinforced in Kenya's 2010 constitution.

The International Covenant on Civil and Political Rights (ICCPR) guarantees the right of each citizen access to participation in public affairs directly or through chosen representatives. Additionally, guarantees freedom to equal suffrage, transparent and regular elections void of intimidation. ICCPR further shields women from practices that push them to the periphery by guaranteeing their access to equality to the public service of their country (FIDA Kenya, 2013). The Convention

on The Elimination of All Forms of Discrimination (CEDAW) calls on state parties to initiate mechanisms that will eliminate the discrimination on women in political participation. CEDAW directly requires that states make deliberate efforts to put women at the center of governance structures and public decision-making spaces (FIDA, 2013). These international legal frameworks are relevant in interrogating their practical domestication and implementation among state parties, Kenya notwithstanding.

Regional legal frameworks have also played a critical role in advocating for the inclusion of women in governance structures in Africa. These frameworks include African Charter on Human and People's Rights (ACHPR); the African Charter on Democracy, Elections and Governance; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).

At the national level, Kenya has domesticated most of the international and regional legal frameworks on inclusivity of women in governance structures. Kenya's 2010 constitution, Article 27(8) in line with clause (6) the state is expected to implement the principle that not more than two-thirds of members of appointive and elective bodies are of the same gender. Article (81) stipulates that;

The electoral system shall comply with the following principles-(b) not more than two-thirds of the members of elective public bodies shall be of the same gender.

(Government of Kenya, 2010).

Various government agencies such as the National Gender and Equality Commission (NGEC) National Cohesion and Integration Commission, the judiciary among other have played a key role in providing guidance on policy framework that advocates for the implementation of the two-thirds gender principle. FIDA-Kenya, UN WOMEN and a number of developmental agencies have played a big role in pushing for adoption and implementation of gender sensitive legislation that redress on women's exclusion from elective and appointive politics.

3. Research Methodology

This study employed a desk top analysis of existing primary and secondary sources on the status of compliance to the two-thirds gender rule in elective and appointive politics in Kenya. This study had two variables, namely the independent variables and the dependent variable. Gender representation was treated as the dependent variables while compliance to the two-thirds gender rule was treated as the independent variable. In this study, the target population was all elective and appointive units of three arms of government. The study sample size was nine units of analysis out of which three units were drawn from each arm of government through stratified purposive sampling technique. The data collected was qualitatively and quantitatively analysed. The data was presented thematically and presented using simple descriptive statistics.

4. Results and Discussion

4.1. The Status of Compliance to the Two-Thirds Gender Rule in the Kenyan Parliament and County Assemblies

Elective Position	Elected		% Elected Women	Nominated		% Elected & Nominated Women
	Male	Female		Male	Female	
Senate	43	3	6.4%	2	18	31%
MNA	267	23	7.9%	7	5	9%
WMNA	-	47	100%	-	-	100%
Governor	44	3	6.4%	-	-	6.4%
Deputy Governor	40	7	14.9%	-	-	15%
MCA	1334	96	6.6%	97	650	34%

Table 2: Status of Compliance to the Two-Thirds Gender Rule in Parliament and County Assemblies in Kenya

Source: Mokebo (2015)

The results of table 2 reveal that in all elective positions to the national parliament and county government assemblies in Kenya women have an enormous task in achieving parity in elective politics through competitive electoral process alongside their male counterparts. Elected women to the senate accounted for 6.4 % while women elected as members of the national assembly were comprised 7.9%. Elected women to the governor, deputy governor and Member of the county assemblies' was 6.4%, 14.9% and 6.6% respectively. Women reprieve was through the reserved Women Member to the National Assembly (WMNA). In this position the number of women candidates was great compared to other elective offices due to the absence of male competitors. The marginal representation of women to elective offices was responsible for the gender gap that was to be cured by the two-thirds gender rule. The study established that women candidates were significant in pre-party nomination phases. However, they were eliminated during nominations by political parties. The main factor for discrimination of women during nomination was based on the perception that they were not competitive enough as compared to their male competitors

(Mokebo, 2015). Consequently, the study established that, political parties played critical role in non-compliance to the two-thirds gender principle at the very beginning.

The study established that in all the 47 counties in Kenya women were only elected in three counties representing a mere 6.4%. The implication is that in the council of governors meeting the principle of two-thirds gender principle is never complied with despite the counties playing a critical role in devolution politics. In deputy governors' position, women comprised a mere 15% which is further below the 33% minimum two-thirds gender threshold. However, it was observed that deputy governors were running mates of governors. This result implied that in the council of deputy governors in Kenya women are marginally represented.

Elected women MCAs comprised 13% while nominated ones accounted for 87%. Although the number of elected and nominated women MCAs stood average stood at 34 %, twelve county assemblies did no elect even a single woman MCA. Additionally, three counties namely Taita-Taveta, Trans Nzoia and Narok failed to achieve the two-thirds gender rule with women MCAs comprising 32%, 12% and 15% respectively (NDI and FIDA Kenya, 2018)

The study established that women are underrepresented in parliamentary committees in Kenya. On average, women formed an average of close to 24% of all committees of both the Senate and the National Assemblies' committees. In the chairing of the committees, women comprise 11.1% in the National Assembly and 0.0% in the senate committees (NDI and FIDA Kenya, 2018). This underrepresentation of women in parliamentary committees is an outright violation of the two-thirds gender rule. The gender affirmative law has grossly been implemented in committees of both houses.

A random survey of three of the forty seven counties yielded data that concurred with the gender representation in committees of parliament. In all there three county assemblies women membership to the committees were skewed in favour of men in majority of the committees. The survey further revealed that women were marginally given leadership positions as committee chairpersons. Even in the vice chairperson positions women were severely underrepresented. This severe underrepresentation of women in assemblies committees raised a number of questions on whether still the two-thirds principle was applicable in these spaces.

4.2 The Status of Compliance to the Two-Thirds Gender Principle in the Executive Arm of Government in 2018

Government Department	Total Staff Number	Males	%	Females	%	Total %	Compliance Status
Cabinet Secretaries	21	15	71.4	6	28.6	100	Not met
Chief Administrative Secretaries	12	10	83.3	2	16.7	100	Not met
Principal Secretaries	31	22	71	9	29	100	Not met

Table 3: The Status of Compliance with the Two-Thirds Gender Rule in the Executive
Source: Research Data (2018)

The study established that the executive arm of government has not met the minimum threshold in complying too the two-thirds gender rule. The results of table 3 establish that women occupy 28.6% of the cabinet secretaries' slots in Kenya while their male counterparts occupy 71.4%. In the position of chief administrative secretaries in Kenya, women occupy 16.7% compared to men's 83.3%. Women serving as principal secretaries comprise 29% compared to men's 71%. The average for the three afore mention executive positions stood at 24.8%.which is below the 33.3% set under Kenya's 2010 constitution. The study established that the executive arm of government has not complied with the two-thirds gender rule in its appointment of senior state officers.

4.3. Status of Implementation of the Two-Thirds Principle in Kenya's Judiciary

Court	Male	%	Female	%	Total%
Supreme Court	5	71.4	2	28.6	100
Court of Appeal	12	63.2	7	36.8	100
High Court	43	53.1	38	46.9	100

Table 4: Gender Representation of the Judiciary in Kenya, 2018
Source: The Judiciary of Kenya. <https://judiciary.go.ke>

The results from table 4 indicate that gender representation in the Supreme Court is skewed in favour of the male with women comprising 28.6% against their male counterparts at 71.4%. In the Court of Appeal and the High Court, representation stands at 36.8% and 46.9% for female judges respectively. The average representation of these three courts 37.4 % for female judges and 62.6% for the male judges. The study reveals that Kenya's judicial system has not fully complied

to the two-thirds gender principle due to the gender gap at the Supreme Court despite the aggregate average being above the minimum two-thirds gender principle. Comparatively, compliance to the two thirds gender rule has been entrenched in the judiciary than in the legislative assemblies and the executive.

5. Summary Conclusion and Recommendations

This study sought to assess gender representation gaps in Kenya's elective and appointive politics under the two-thirds gender principle. The study established that gender gaps still exist in Kenya's elective and appointive politics in the three arms of government. The study established that during party primaries nomination does not adhere to the two-thirds gender principle. Consequently fewer women are elected to position of responsibility. The two-thirds gender principle has enhanced gender representation of women through nomination to the national assembly, senate and county assemblies. However there are some counties where compliance to the gender rule has not been met. Additionally, compliance to the two-thirds gender principle has not been met in senate and national assembly committees. The study established that attempts at achieving gender parity aim at meeting minimum target and that various smaller spaces within the elective and appointive spaces have not complied to the two-thirds gender rule.

Despite the judiciary leading in the implementation of the two thirds gender rule, still the Supreme Court as a unit of analysis has not meet the minimum threshold of the gender rule. The study established that the executive has lagged behind in compliance to the two-thirds gender principle. The executive is resistance to change and its general and smaller units of analysis average fail the two-thirds gender test.

5.1. Conclusion

In regard to elective and appointive politics in Kenya, implementation of the two-thirds gender principle has met the minimum threshold of 33.3% to greater extent. However, gender gaps in compliance to this rule exist within the legislature at the national and county government. Political parties' nomination primaries have not adhered to the implementation of the two-thirds gender rule. Women candidates seeking elective offices have failed to attain the 33.3% minimum threshold as outlined in the Kenyan constitution except the affirmative action seat of WMNA. The judiciary has surpassed the two-thirds gender rule minimum however; gender gaps remain in regard to the composition of the Supreme Court. Appointments to the executive and the legislative arms of governments have not complied with the provisions of Kenya 2010 constitutional provision on affirmative action. In most instances compliance is based in whole systems whereas non-compliance persists in smaller units particularly in committees' membership and committee leadership positions.

The study further revealed that the two-thirds gender rule has enhanced women representation and participation in elective and appointive positions in Kenya during the second-term under the new constitutional dispensation. The study concludes that gender inequality gaps disadvantage women in all elective and appointive politics in Kenya. Despite the fact that Kenyan judiciary is tasked with ensuring compliance to the two-thirds gender principle, non-compliance still persists in appointive and elective positions in the three arms of the Kenyan government.

5.2. Recommendations

The study recommends for substantive implementation of the two-thirds principle in all elective and appointive positions in every level of position of responsibility and decision-making rather than on the overall average. All the spaces of public decision-making process should adhere to Kenya's 2010 constitutional provision on affirmative action. There is need to abandon the practice of selective application of the two-thirds gender principle because this approach will likely end in being a cosmetic affair and therefore limited in bringing about sustainable inclusive governance. On the election of governors and their deputies laws should be enacted requiring that the candidates running for governor and deputy governor positions for each of the counties should be of opposite gender. These legislations will enhance gender inclusivity in the management of the counties Kenya.

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