

# **Strengthening Institutions for Good Governance: Representation and Electoral Processes in Kenya**

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## **Abstract**

*The end of the cold war not only signified an end to the conflict between the 'East' and the 'West' but also marked the beginning of an era where authoritarian regimes were being challenged by the emphasis on more accountable and transparent systems of governance and democracy became a 'catch' word in International politics. Consequently, many countries in Sub-Saharan Africa are in the process of institutionalizing democracy and a democratic culture through various means; the most notable being the change to new constitutions that entrench democratic principles. The objective of this paper is therefore to evaluate the current political reforms in political representation and electoral processes in Kenya, as well as the challenges in these processes, while at the same time highlighting the role of the Centre for Multiparty Democracy (CMD) in these processes. In particular, the paper focuses on two key areas; Representation and Electoral reforms in Kenya. Concerning Representation, the paper seeks to address the issue of greater inclusivity and equality with a focus particularly on the inclusion of women and minorities in political representation and decision making processes. On Electoral processes, the paper seeks to address the entrenchment of well organized, transparent and sustainable election processes, with particular emphasis on the need for a strong, independent and trusted election body as well as the legislation to support its work. The paper has made use of qualitative data and research conducted by the Centre for Multiparty Democracy as well as a review of existing literature.*

**Key Words:** Democracy, Governance, Electoral Reforms, Women's Political Representation, Political Parties.

## **Introduction**

Since the end of the cold war in 1989, almost all international donors have insisted on foreign aid allocations taking into consideration democracy, good governance and human rights in recipient countries- otherwise known as forced democratisation. This contributed to changes in many African countries whereby democracy was pursued as a means of transforming the political and economic systems in Africa. 'Whereas pro-western authoritarian regimes had long been praised for their allegedly higher rates of capitalistic oriented economic growth and superior potential for eventual democratization, bilateral donors especially the United States suddenly exalted the virtues of rapid democratization' (Brown 2007: 301). Consequently, the 1990s witnessed the ushering in of multiparty politics in many African countries; in Kenya, there was a transition from the control of the entrenched one party system to multi-partism. The first multi-party general elections in Kenya were held in 1992 amidst great euphoria and hope for change. These national elections may not have brought much change in the political system and in fact returned the incumbent president under the dominant Kenya African National Union (KANU) back into power, but nevertheless, history was made in that the formation of the 'seventh parliament' as it was popularly referred to, was also composed of Members of Parliament (MP) from the opposition. Other multiparty elections were held in 1997, 2002, and 2007 amidst the clamour for a new constitutional dispensation that would further entrench democratic principles.

The promulgation of the Constitution of Kenya on the year 2010 hailed the entry of Kenyans into a new era, as it amongst other things, marked the end of a twenty year struggle for a more open, just and democratic society. The Constitution (GOK, 2010), has introduced many substantial changes which will impact on the nature of politics in Kenya. The Government has also been devolved to forty seven counties, each with their own mandates and budgets, for which citizens elect governors and member of county representatives. It was stipulated that there would be 290 members of Parliament, 47 elected women MPs from the 47 counties and 12 persons nominated by Political parties representing special interests. The Senate would have a total of 67 senators, 47 being elected in the counties and 16 seats for women nominated by political parties while two persons of either gender would represent the youth and two persons also of either gender representing persons with disabilities (Burungu 2010: 2). Whereas Kenya was to continue having an executive president, the powers would be severely restricted because of the consent required from parliament for many decisions. The government would also be restricted to fewer ministers who would no longer be members of parliament.

The new Constitution is a document with a promise for a better Kenya as among other issues; it particularly addresses the needs for representation of women and other marginalized groups in public office. However it is important to note that embracing the constitution does not necessarily mean that the political environment will change overnight and that the myriad of political and economic problems will be automatically resolved. This is mainly because of the strongly entrenched political, social and cultural attitudes that continue to obstruct political, economic as well as social equality. Moreover, despite the importance of democracy and democratic solutions, poorly designed democratic institutions can inflame conflicts rather than ameliorate them. This seems to be the case in Kenya and indeed in most parts of sub-Saharan Africa where efforts at democratization continue to be made. The introduction of democratic politics can be used to mobilize negative ethnicity often turning elections into a 'Them versus Us' situation.

The focus of this paper is therefore on the changes that will impact the political system, particularly in the area of political Representation and Electoral reforms with the overall objective of promoting democratic governance. This paper also examines the role of the Centre for Multiparty Democracy (CMD) in Kenya, in strengthening political parties as a means of promoting democratic governance. CMD's work in the last five years has particularly focused on working with political parties to strengthen their internal democratic mechanisms as well as the participation of women, the youth and other marginalized groups in public and appointive positions.

### **Political Representation**

Political representation is defined as the activity of making citizens' voices, opinions and perspectives present in public policy making processes (Almond, 2004). Representation is key in Democracy because if people are not or do not feel adequately represented, then this forms a basis for conflict. According to (Gerzon, 2006: 14), the promotion of democratic principles is key to mediating crisis. It is generally argued that democratic systems of governance can help develop habits of compromise, cooperation and consensus building. Democratic structures can also offer an effective means for the peaceful handling of deep-rooted conflict through inclusive,

just and accountable frameworks. Democratic systems of government also enjoy a high degree of legitimacy. The focus of this paper is on the unequal gender representation in politics where women are not adequately represented in Kenya. This takes into account the fact that women's involvement in politics and governance is a central feature of democratization. Miguda (2007) argues that the level of women's participation in governance is often taken as an indicator of the general level of democracy in a society.

Before looking at the particular issue of women's political representation, it is important that we look at the conceptual approaches to the subject matter of gender and how it is constructed. There are different approaches used to understand gender relations in society, but for purposes of this analysis, gender is viewed as a socially constructed reality whose maintenance and practice manifests itself in personal identities and interactions in the social realm. In conceptualizing and trying to understand gender relations, Nasongo and Ayot (2007) look at two perspectives. One perspective seeks to theorize the differential roles of men and women in society and views them as socially constructed. In this perspective, cultural socialization experiences transmitted through different agencies such as parents, schools, peers, and media, usually orient girls towards feminine, mothering and wifely roles while encouraging boys into masculine roles that include being aggressive, ambitious and venturing beyond the domestic arena. The second approach, which is the institutional perspective, seeks to go beyond the role of socialization and sees gender as an institutional and interactional enterprise. According to West and Zimmerman (1987: 137), gender is an institutional and interactional enterprise whose idiom is drawn from the institutional arena in which social relationships are enacted. They therefore conceptualize gender as a routine methodical recurring accomplishment. Whereas the earlier theories focus on the individual, this approach focuses on the institutional/macro structural perspective. These approaches are critical in understanding the hindrances against women's political participation and the stereotypes that have informed the debates on gender equity.

The ushering in of the new constitutional dispensation in Kenya not only marked a new era for democratic governance but also the end of decades of marginalization of certain groups in society such as women, the youth, and people living with disabilities and other minorities. The recognition of these groups was achieved through the entrenchment of a value system that recognizes human dignity, equality, non-discrimination and social justice as the guiding principle for State policy, legislation and the citizens own behaviour and attitudes towards each other. Key to representation is the struggle for political representation by women.

Since the 1995 United Nations Fourth World Conference on Women in Beijing, the issue of women's political representation has progressively gained importance and many countries have embarked on improving female representation in their political processes. In comparison to the developed countries, developing countries especially in Africa have clearly lagged behind in this agenda. Until the ushering in of the new constitutional order, Kenya for instance hardly made any effort to promote the inclusion of women in politics. Countries like Rwanda, Tanzania and Uganda on the other hand seem to have put more effort in this regard. By getting the highest proportion of female parliamentarians (at 48.4%) globally in 2003, (Dahlerup: 2006), Rwanda surpassed the record set by the Nordic countries. This brought renewed interest on the matter and provided the much needed impetus for other African countries, especially in the use of affirmative action to increase the participation of women in politics. Globally, 30 percent is

accepted as the minimum critical mass of women's representation in decision making, which includes, yet Kenya still stood at 8.1 percent as at 2007 (Dahlerup, 2006; 2002). The African Union (AU) recommends 50 percent representation; a number of African countries are moving very well in this area mainly due to affirmative action. In the 2013 General Elections in Kenya, there was some slight improvement because of the women seats. 87 of the 416 seats in the newly established National Assembly and Senate are held by women, whereas previously, there were only 22 women in parliament. It is however important to note that the constitutional threshold of two-thirds is still not met.

Politics in Kenya is characterized by what Miguda (2002: 111) refers to as gross inequality in the representation of women. There has also been a particularly slow rate of numerical increase of women members of parliament. In analyzing the causes of this marginalization in Kenya, Miguda (2002: 111) identifies the post colonial structures as particularly playing a big role in the marginalization of women in politics and public offices in general. He argues that the story of women's marginalization in Kenyan politics began with the advent of colonialism when the British rulers introduced modern institutions and structures of state that were associated with men. Colonialism drove African women out of the consciousness and mental maps associated with the newly introduced colonial public structures and institutions, notably parliament. Though women were active participants in the struggle for independence, the emerging post-colonial political system relegated women to the back seat of political life (Miguda, 2002: 109).

Oduol (1992) notes that the male dominated post independence parliament rejected any attempts to ensure reservation of seats for women nominees in parliament. Nzomo (1998) in looking at the post-colonial era argues that the reality of women's exclusion from formal politics and power reflects the gendered nature of the State. This is contrasted with the pre-colonial Kenyan society where according to Nasong'o and Ayot (2007), women enjoyed a status of respect and dignity where for example, women had areas of life where they predominated. They had their own political, economic and cultural institutions whose very existence was unknown to external observers (Likimani 1985: 15). Likimani argues that to the alien observer, politics in pre-colonial Africa may have looked like it was the preserve of men due to the male dominance that prevailed in patriarchal societies but a closer inspection of the intimate details indicates that in different African cultures, women were allowed to participate in politics.

Despite the obstacles Kenyan women experienced in the immediate post-colonial era, they have persistently brought up the matter of women's political representation in parliament and other forums. According to Miguda (2002: 113), as early as the 1960s, Kenyan newspapers were filled with reports in which women demanded representation and countered the conventional argument that there were no qualified women to be elected to parliament. In 1964, the daily nation of 25th April reported that a member of parliament chastised members for promising women a non existent seat in parliament.

The process of democratization that began in the 1990s expanded the space and opportunities for women's political representation and also witnessed attempts to include more women in politics spearheaded by women politicians. Hon. Charity Ngilu moved the motion in 1996 on the implementation of Beijing Platform for Action in Parliament. This was clearly an attempt to introduce affirmative action as a means of enhancing the numbers of women in parliament. This

motion did not however pass. In 1997, Hon. Phoebe Asiyo tabled the first affirmative action bill in parliament and it also failed to achieve anything. Many attempts have been made following these noble actions but Kenyan women have not achieved much success and the progress for women to be in mainstream politics has been slow and challenging. Kenyan women continue to encounter numerous barriers to their full political participation. Attempts have been made to put in place a legal and institutional framework aimed at addressing the continued marginalization of women. Although Kenyan women may be aspiring and working towards new heights of political power, old attitudes and stereotypes still remain.

Kenya's poor record in women's political representation can be attributed mainly to the deeply entrenched patriarchal attitudes and practices that continue to work against women in all areas, especially economic and political empowerment. Women who become powerful are frequently ridiculed and are only accepted when they support men in politics. Mama (1997) argues that while the male dominated state in Africa has been the prime instrument of acquisition and distribution of power and status, it has virtually blocked the majority of women from entering the ruling class. As a result, women's quest for status and wealth heavily depends on aligning themselves with powerful men. The ridiculing of vocal women is a hindrance to political participation. For instance, while profiling former Justice and Constitutional Affairs Minister Martha Karua in 2008 after she was appointed to the cabinet, one *Daily Nation* columnist described her as being 'the only man in Kibaki's cabinet'. To make matters worse, the ridiculing is done not just by men but also by women. This clearly illustrates that the Kenyan woman like many other African women faces severe socio-cultural as well as economic constraints in accessing political power. These can be broadly summarized and discussed under socio-cultural constraints, economic constraints and a violent electoral culture.

### ***Socio-cultural Constraints***

According to Nasong'o and Ayot (2007), the social division of labour where women's primary responsibilities are confined to being wives and mothers limits women's engagement in politics. A political career comes in as a second or third job. The situation is further compounded by the dichotomization of social space between the public and the private spheres where women are meant to belong to the latter. Old attitudes, stereotypes and cultural perceptions on the 'unsuitability' of women in leadership remain strong. These sentiments unfortunately are strongly held by women themselves owing to a strong and long history of social-cultural conditioning of which women themselves are custodians as they are the primary socializers of the young especially at the family level. In fact, this has frequently led to the argument that women are 'their own worst enemies' in politics as they do not support one another despite being the majority of registered voters. Owing to the dictates of patriarchy, it is sadly women who continue to perpetuate these negative values and norms by instilling them in the young. This leads to the strong entrenchment of these stereo-types and perceptions which remain one of the strongest barriers to women's political participation. A survey by Infotrack Harris (2011), at the height of the debate on affirmative action, in response to the question on whether one would vote for a woman presidential candidate, 75 percent of the interviewees indicated that they would readily vote for a woman candidate in 2012. This was a survey sponsored by the CMD, in eight counties. However, the March 2013 elections have proved that this was not the case as women performed dismally in the single member constituencies. Only fifteen women were elected into Parliament apart from the women seats and the nominative positions. The only woman

presidential aspirant did not fare also well (Centre for Multiparty Democracy & Infotrack Harris 2011).

### ***Economic Constraints***

Women who have gathered enough courage and attempted to enter the political arena in Kenya have encountered numerous economic barriers. The female face of poverty is a significant barrier to access to public and political life for women. Economic statistics reveal that women are poorer than men in Kenya. Of the active population in Kenya, 69 percent of women work as subsistence farmers compared to 43 percent of men (Nasong'o, 2005). It is therefore difficult for women to obtain resources to put into politics due to this and a variety of other reasons such as the fact that culturally, women do not also own property, particularly land.

Concerning material resources, it is noted that until recently, women were also by custom and tradition not entitled to inheritance of their family's assets. The aspiration for ownership of land and other valuable assets even if they were able to purchase these by themselves was also culturally frowned upon. As a result, women did not endeavour to do so for fear of social and cultural reprisal. Consequently, they were not able to access credit, which limited their financial status.

Women are also vastly outnumbered by men in government and other institutions including the civil service and are thus not as well networked as men when it comes to mobilizing resources including connections and material resources. The political process in Kenya is a very expensive one for aspirants and without access to these vital assets, funding one's campaigns and other electoral activities by mobilizing financial resources including access to credit becomes an uphill task.

### ***Violent Electoral Culture***

The ability to attract good female candidates is also limited by the past episodes of violence meted out on women candidates. Brute force in the form of physical as well as emotional and psychological violence has been frequently used against women political aspirants during electoral process to 'discourage' them from entering arenas 'not meant for them'. This has made women very wary of joining elective politics. The legislation on election violence is a good step towards addressing this vice though it needs to be implemented well so as to ensure a safe environment for all candidates and especially women candidates who have had nasty incidents such as having their hair pulled out and have been violated in many other ways.

### ***Affirmative Action and Representation***

The constitution recognizes women's social, economic, cultural and political rights in all institutions of Governance including Political Party structures and other organs of decision making. It entrenches the two thirds principle for either gender in appointive and elective positions. Chapter seven (7) of the Constitution (GOK, 2010) spells out the principles that the electoral system should comply with. Among them is the principle of Gender equity; that is the not more than two thirds of the members of elective public bodies shall be of the same gender. The Constitution therefore offers a reasonably large scope for promoting women's political representation.

The need to accelerate women's representation in decision making is supported by many International instruments including the Universal Declaration of Human Rights, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Beijing Platform of Action and the Millennium Development Goals (MDGs). The Beijing platform of Action in particular required governments to work towards gender parity in public administrative and legislative bodies. It also encouraged governments to establish targets and take measures to integrate women into elected and non-elective positions. Global requirements for gender parity are given support by regional women's rights movements and intergovernmental bodies.

Article 27(8) of the Kenyan Constitution stresses on the equality provisions by requiring the State to enact laws and take other measures to implement the principle that not more than two thirds of the membership of elective or appointive bodies shall be of the same gender. The Constitution therefore provides for affirmative action to comply with the gender requirement. With regard to women, in both the National Assembly and the Senate, a number of seats are set aside for women candidates which are 47 for the National Assembly (Article 97 (1) (b), and 16 for the Senate (Article 98 (1) (b). The National Assembly seats are filled through elections at the county level in which only female candidates participate. The 16 Senate seats are filled through party based nominations according to the proportion of each party's elected membership in the Senate.

With the above background on the Constitution of Kenya and women representation in both the National Assembly and Senate, we look at the concept of affirmative action. The definition of affirmative action is very contextual in the sense that different people in different circumstances may define it differently. Affirmative action for purposes of this paper is defined as a set of measures adopted by governments, public and private institutions such as political parties, educational establishments, corporations and companies to redress a history of systemic discrimination and exclusion of particular social groups, or to encourage the efforts of particular social groups in the interest of certain development goals (Dzodzi 2009:5). Affirmative action is expected to improve development indicators by reducing inequalities and facilitating the contribution of particular social groups. Whereas affirmative action may or may not arise from the agitation of disadvantaged groups, the state and its institutions are central to its design and implementation.

Affirmative Action is a strategy used worldwide to ensure increased participation of marginalized groups in different sectors including political office. In recent years, affirmative action in politics is implemented in the form of Quotas. This means that a State puts in place a legal requirement either through the Constitution or political parties to ensure that a certain minimum of political parties candidates are women. Quotas for women entail that women must constitute a certain number or percentage of the members of a body whether it is a Political Party candidates list, parliamentary assembly committee or government. Quotas draw legitimacy from the discourse of exclusion according to which the main reasons for women's under- representation are viewed as the exclusionary practices of political parties and political institutions as a whole (Dahlerup 2011: 141).

The two most common types of quota systems for women's political representation are candidate quotas and reserved seats. Candidate quotas specify the minimum percentage of candidates for

elections that must be women and apply to political parties' lists of candidates. Reserved seats set aside a number of seats for women among representatives in legislature specified either in the Constitution or by legislation. For example, in the Kenyan case, there are the 47 women seats for the National Assembly and 16 women seats in Senate.

Emphasis on the use of quotas represents a relatively new shift in addressing political representation for women and is seen as a means of 'fast tracking' the inclusion of women into political office as quotas place the burden of candidate recruitment not on the individual woman but on those who control the recruitment process. The 'incremental track' method used in developed countries like Sweden and other Scandinavian countries though successful is challenged by the fact that women do not have the same political resources as men. According to Dahlerup (2006:192), the incremental track is associated with the classic liberal notion of equality ('equal opportunity') or ('competitive equality'), whereas quotas represent a shift towards 'equality of results'.

Around the world, quotas have become a part of the electoral landscape. The adoption of quotas for women reflects a growing consensus that women should have greater representation or even equal representation with men. Quotas are supported by the arguments that they compensate for the actual barriers that prevent women from taking political seats as well as the arguments that women just like other individuals in society have a right to equal representation.

Other arguments are based on the premise that women's experiences are needed in political life and that women in decision making positions will tend to generally advocate for women's issues. It is argued that this is one of the reasons why the Nordic countries where affirmative action strategies for women's political representation have been effectively implemented, have the highest quality of life and political stability in the world. On the contrary, men dominated legislative bodies will champion the interests of men. The political representation by women brings into politics, perspectives, experiences and interests that are particular to them. Women are also more likely than men to introduce legislation regarding education, health, child care and violence against women (Rabe, 2001). However, these arguments can be challenged because women may not necessarily champion the interests of women once elected. One common counter argument is that quotas go against the principle of equal opportunity since women are given preference.

The Kenyan Constitution, and particularly the affirmative action requirement entrenched therein, is seen as the avenue that will help to change the gloomy situation concerning women's representation in the political process. But what exactly does this affirmative action requirement entail and how practical is it? Affirmative action in Kenyan is being implemented mainly through political party mechanisms thus making them crucial in this discourse.

### **The Role of Political Parties in Affirmative Action**

According to Oloo (2007: 91-92), the term 'political party' can be used to describe an organization whose aim is to exert permanent influence on the formation of public opinion and hence require permanent organizational structures and programmes. Parties aggregate diverse demands into coherent political programmes and translate these programmes into effective action once they have legitimate control of political office. Political parties exist to participate in

elections and to obtain power and influence. The principal of representation in a democracy therefore hinges on the existence of parties.

The Political Parties Act (GOK: 2011) represents a major milestone in institutionalizing political parties within the democratic governance of Kenya. The Act requires political parties to have a national character by recruiting not fewer than one thousand (1000) registered voters from each of more than half of the counties. A further requirement is that those members should reflect regional and ethnic diversity, gender balance and representation of minorities and marginalized groups. By implication, Political parties are required to adhere to the constitutional provisions as regards gender equity and recruit as well as nominate women to vie for political positions. Even though the Constitution and other pieces of legislation such as the Political Parties Act are very specific on this requirement, the obstacles to women's political representation still remain. A review of most political parties by CMD, indicate that women are not adequately offering themselves for political competition by joining political parties and even when they do so, they are not elected into decision making positions within the party; this presents a challenge towards affirmative action.

Presently, the agreed mechanism for affirmative action is based on political parties presenting party lists to the Independent Electoral and boundaries Commission (IEBC) before the elections. The Constitution provides for closed 'Party Lists' which cannot be altered once they have been submitted to the IEBC, at least 45 days to the General Elections. The Political Parties Act (2011) provides that 'a Political Party shall not change the candidate nominated after the nomination of that person has been received by the Commission'. This therefore means that each Political Party will be allotted seats in accordance to the number of seats won. An example is that if a Party wins half of the Senate seats which are 47, it will then be allocated half of the sixteen seats reserved for women, which would then be eight seats. Eight of their top candidates on the list will consequently qualify to become senators. The implication here for women representation is that they must be on the political party lists in order to stand a chance of being nominated. This could be realized if decision making positions within the party structures are also occupied by women. As Oloo (2007) argues, the main feature of political parties is their participation in elections to obtain power and influence. It is for this reason that individuals within the party must occupy positions of power in order to exert influence.

Owing to the gender requirement in the Constitution, many parties who are represented in CMD indicate that they have complied with the Constitutional gender requirement, but on closer inspection, this may not actually be the case. However, in cases where the requirement has been met, women have not been given key decision making positions in the party. Parties are very much aware of the significant female capital in their organizations as women have always been part and parcel of political processes, but unfortunately they are often used, coerced or hoodwinked to support male participants rather than aspire for these positions themselves. It is important to note that the laws especially when enforced tend to create 'tokenist' behaviour in the male-dominated political parties where women are handed peripheral positions and activities just so as to appear to be complying with the laws. Women may even be kept away from these positions by being promised nominations (essentially being handed the easier option but keeping them away from competitive more lucrative positions.) It is also notable that as elections

approach, political parties tend to nominate men to run for political positions as it is assumed that they are more focused on winning the seat.

Genuine commitment to gender equity therefore represents the exception rather than the norm. This calls for women to work towards taking their rightful place in political party leadership, so as to avoid being used by their male counterparts. The presence of more women in political party decision making positions could help preserve, guarantee and promote more equitable conditions for their political participation and allow parties to offer voters a better gender balance in their candidate list. Though affirmative action measures are important in bridging the gap, it must be realized that this represents only one link in a long chain of steps that a woman must take if she seeks a political career. Women's political participation is much more complex, and barriers as noted may start at the basic level of joining a political party and getting nominated to run for office. Affirmative action within political parties should therefore be seen as just one of the mechanisms for ensuring greater participation. It should be viewed as a means and not an end in itself.

In the new political dispensation in Kenya, it is argued that women unlike men have an advantage in the sense that they have not previously held political positions. Consequently, they may not be involved in corruption and other malpractices that are likely to jeopardize their chances. The Constitution provides stiff penalties for parties that nominate persons who do not subscribe to national values and principles of good governance. Article 10 of the Constitution and article 72(2) of the Elections Act (2011) state that a political party which knowingly nominates a candidate who does not meet the requirements of Constitution shall be disqualified. Logically, women candidates should be able to take advantage of this clause and avail themselves to take up political offices. However, it is easier said than done. Apart from the barriers at the political party level, women as mentioned earlier encounter numerous constraints.

### **The Representation of Other Marginalized Groups and Minorities**

Addressing the needs of other marginalized groups such as the youth and people with disabilities and other minorities is also critical to the discourse of inclusivity. In democratic systems, citizens make political decisions by majority rule but it is argued by political scientists that majority rule must be coupled with guarantees of individual and Human Rights that must in turn serve to protect the rights of minorities; whether ethnic, religious, or simply losers in a debate over a controversial issue. The rights of minorities cannot be eliminated by majority vote and are protected by law because democratic laws and institutions protect the rights of all citizens.

In Article 100, the Constitution directs Parliament to enact legislation for special representation of certain groups, women, persons with disabilities, youth, ethnic and other minorities and marginalized communities. Article 98 (1) further provides for gender balance in filling the seats set aside for youth and for persons with disabilities. The two nominees representing each of these interests must consist of opposite gender; in other words, it must be a man and a woman. The inclusive nature of these clauses further enhances representation of the various groups within society. Though these other groups have not received as much attention as the women's movement, they have in the last decade organized themselves into groupings that have been agitating for recognition and special treatment based on their special circumstances. CMD actively engages with a number of these groupings and has been at the forefront championing

their rights. It has, for instance, worked with the youth in political parties to come up with the National Youth Charter, which guides the inclusion of youth into various public offices. In the last general elections, it is noted that there was some progress in this regard as there is representation from people with disabilities in parliament.

### **Electoral Processes**

The legal framework of electoral processes is supported by the Constitution (GOK, 2010) and the different pieces of legislation such as The Elections Act and The political parties Act. The Independent and Electoral Boundaries Commission (IEBC) is the body mandated to spear-head the electoral processes in Kenya. The IEBC Act (2011) sets out the operationalizing provisions of the Commission. The Constitution has assigned the Commission certain responsibilities such as; the continuous registration of voters, regular revision of voters' register, delimitation of constituencies and wards, settlement of disputes, voter education, regulation of campaign financing, and the development of a code of conduct for candidates and parties participating in elections among others. This is a broad mandate and so the body is tasked with the ultimate and central responsibility for managing elections in the country.

Since the advent of multiparty politics in Kenya, elections have been marred by conflict leading to some instances of violence. However, the 2007/2008 post electoral conflict that led to violence sent the country to the brink of a civil war. This was a clear indication that there was need to reform the electoral processes in order to avoid a recurrence of the violence while taking into account the fact that the conflict was based on perceived malpractices by the then Electoral Commission.

In his analysis of the 2007 Post-Election mediation process, Mwagiru (2008) discusses the conflict areas and identifies the electoral conflict as based on the perception of vote rigging at the tallying centre, which clearly points a finger at the Electoral Commission. It was alleged that the Commission was manipulated to declare a winner who had actually lost and so the credibility of the Commission and its leadership was questioned. Clearly this is an indication that the independence and professionalism of election bodies is critical to a successful election where parties feel satisfied that they either won or lost. Elections are about perceptions. This means that any negative perception dents credibility in the eyes of the public. Lack of public trust on the outcomes of the electoral process can lead to violence as evidenced in Kenya and other African countries.

According to Mwagiru (2008), 'The Concerned Citizens for Peace' group led by Ambassador Kiplagat and General Sumbeiywo who were acting as mediators in the conflict, issued a seven point plan that they felt could be used as guideline for negotiations. Top on the list was the issue of Constitutional reforms addressing an improved electoral framework. The USA Assistant Secretary of State, Jendayi Frazer also stated that the mediation would have to address the fundamental challenges that triggered the conflict. Among the challenges identified were; the need for constitutional reforms to clip the imperial powers of the President, and also addressing social grievances and strengthening governance institutions such as the then Electoral Commission of Kenya to forestall a similar crisis in the future. The reform of electoral processes is therefore one of the core issues in ensuring credibility of the political system. This is of great importance taking into account that the overall legitimacy and acceptability of any election

depends on the integrity or perceived fairness of the administration of elections. The process by which parties reach an outcome impacts significantly on the quality of the outcome in elections. It is therefore important that all the electoral processes must aim to be above reproach.

The Independent Electoral and Boundaries Commission (IEBC) is already in place after a lengthy, open and transparent recruitment process. One critical role that the IEBC must play is to regulate the political environment, encourage voter registration and voter turnout as well as offer political education. In representative democracy, citizens vote in order to select those who will determine policy and act as their leaders. The act of voting provides all citizens with a direct interest in the actions of their government. The results of the vote give those elected the entitlement to govern. Voting is therefore central to governance. One way of impacting on voter turnout is by carrying out information campaigns to address the fundamental processes of registration. They can also engage in motivational advertising to ensure that people take part in voting.

Dispute resolution mechanisms are also an important element in the management of electoral processes. In Kenya, reforms have also targeted the judiciary. A strengthened judiciary and specifically the political parties' tribunal to handle election disputes plays a key role in this regard. The Political Parties Act establishes a Political Parties Dispute Tribunal to determine disputes arising from the activities of political parties such as disputes between the members of a political party; disputes between a member of a political party and a political party; disputes between different political parties; disputes between an independent candidate and a political party; disputes between coalition partners; and lastly, appeals from decisions of the Registrar of political parties under the Political Parties Act (2011).

Civic education is key to the success of the electoral processes. The aim of civic education is to promote general awareness of democratic principles, the practice of good governance, the rule of law and constitutionalism. This would consequently lead to the consolidation of a mature political culture. The success of this new dispensation cannot be left to chance but a concerted effort must be put in place to influence awareness, enhance civil skills and give full support for democratic values and political participation through civic education.

### **Role of the Centre for Multiparty Democracy (CMD-Kenya)**

The Centre for Multiparty Democracy (CMD) is a body founded by political parties in Kenya, who are also its members. It was registered as a Trust in 2003 and its basic quest is to work with political parties in terms of capacity building and institutionalization of democracy and democratic values. This is captured in the vision of CMD which is *'To Promote the Institutionalization of Vibrant Democratic Political Parties Capable of Enhancing and Perpetuating Multiparty Democracy'*.

CMD has taken a leading role working with political parties to enhance multiparty democracy. According to the new Constitution, political parties are eligible to receive public funding on condition that they meet certain criteria as set out in the Political Parties Act as well as meeting the criteria of internal democracy. CMD works with political parties to strengthen their internal structures as well as their engagement in politics since this is an important cornerstone in democratic governance.

The new constitution calls for change in the overall political system and particularly for political parties. The new dispensation challenges political systems to re-invent themselves from the current overly personality oriented parties to become more programmatic oriented parties. Out of the recognition of these needs, the CMD and other partners are working towards assisting political parties to achieve these goals.

In regard to representation, CMD has facilitated parties to review their legal instruments in accordance with the gender requirements of the constitution. It is also involved in designing training programmes that assist in creating awareness among women politicians within the political parties, to ensure that they are actually aware of the opportunities that now exist for them in the political sphere. It holds capacity building workshops on the various topics specific to women's representation including how to package themselves for elections.

On affirmative action, CMD has played a vital role in identifying various mechanisms for ensuring that women are elected into political office. CMD together with other partners such as UN women have organized meetings between political parties and members of parliament to try and get a formula that can be used to attain the required number of women as per the requirements of the Constitution. It is important to note that though the constitutional provision for the inclusivity of women is already in place, the methodology to achieve it in a wholesome manner is not provided for. The means of achieving the constitutional threshold of not more than two thirds of the same gender in the National Assembly and other appointive bodies has not been provided for in the Constitution. This raises the debate on how the numbers of women, who are the minority, shall be increased. CMD has therefore worked with different organizations to come up with the winning formula. For example, CMD supported the Constitutional Amendment Bill (2012) that would require political parties to fill the gender gaps by presenting 'zebra' party lists. This meant that the party lists would for example have a male nominee followed by a woman nominee or vice versa. It is hoped that through the party lists, political parties will give equal opportunities to their party members who include women. CMD has also engaged with women to ensure that they join political parties, offer themselves for political office and take an active part in the overall political system.

CMD runs an inclusivity programme that takes care of other marginalized groups including the youth and people living with disabilities. CMD has brought these groups together and worked with them to articulate their issues and find their space in political representation. The work involves training and capacity building programmes for these groups. CMD is also involved in tracking the implementation of the Constitution and interrogating the various bills before they are passed. It organizes cross party workshops that sensitize parties on the progress of the implementation of bills and also assists parties in training in order to understand the functions of the new institutions, such as the devolved governments, that are being created.

## **Conclusion**

As the March 2013 General Elections approached, there was a sense of hope and optimism that the elections would bring peace, security, social justice and prevent conflict. On representation, the government was obligated to come up with a formula that would ensure that women and other marginalized groups attain the minimum requirement as per the Constitution in order to

address the disadvantages suffered by groups or individuals in the past. However, the debate on the matter was not conclusive. There were two options being evaluated. One option was to amend the Constitution so that Political Parties could present 'Party lists' to the IEBC. It was a requirement that these closed party lists have women representation. The other option was based on attaining the requirement progressively; this was the more popular option particularly with male members of parliament who argued that it was not possible to have the required numbers of women at one go but that this could be realised progressively. The two thirds threshold has not been yet been met; it requires more women to be nominated in order to attain the required numbers as per the Constitution. Looking at the forgoing, it is important to note that legislation alone does not bring change. Change comes as a result of changed attitudes for both gender. This presents the biggest challenge to the empowerment of women to take up political office. Besides the constitutional legal requirements, women, marginalized groups, and people with disabilities need to engage political parties and take up their rightful positions and compete for the political positions. As CMD engaged with women in political parties all over Kenya, it was becoming evident that women for example may lose out on the expected gains if they all focused on the women seats. In future, it will be important for women to go for other elective seats and not limit themselves to the so called 'women seats'.

The reform of electoral processes is another political milestone in Kenya. The reforms within the IEBC starting from its formation where the IEBC commissioners were not handpicked by the President, but were subjected to a rigorous transparent selection process including approval by Parliament was a big step in consolidating the management of electoral processes in Kenya. The process included confirmation on how it would administer and manage the general elections, which was a step in the right direction. Another reform included the utilisation of technology to enable election results be transmitted electronically from polling stations to a central tallying centre. This was meant to lend credibility to the whole electoral process. In its various areas of electoral administration and management, the IEBC was expected to perform much better than its predecessor. However it as was witnessed in the concluded General elections of 2013, the IEBC is still faced with many challenges. For instance, the election outcome at the tallying point was disputed on the perception that it was not fair and transparent. The utilization of technology failed miserably and the country is more polarised than ever before due to these elections. One would be tempted to put all the blame on the IEBC, but it should also be noted that elections under the new Constitution posed logistical challenges, not to mention the Political Parties Act and the Elections Act which introduced new legal requirements that voters needed to understand and appreciate.

Lastly Political Parties in Kenya are still very ethnicized and have not reflected the national character that they are expected to reflect. They are more than ever challenged to be issue-based and engage in meaningful debate as well as come up with original Party Manifestos. The level of party democracy must grow considerably to the level where both party leaders and voters begin to think about issues rather than personalities.

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