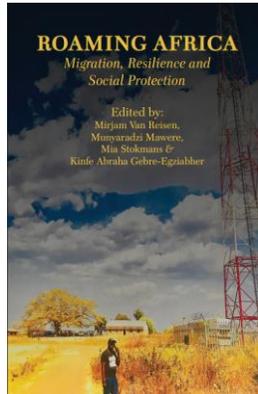


Moving Through the Policy Window: Women in Constitution Making in Kenya

Stella Maranga

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Moving Through the Policy Window: Women in Constitution Making in Kenya

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Introduction

The importance of constitutional reform to women's rights and gender equality cannot be understated. This is especially so in Kenya with its fragile post-colonial political order. Unfortunately until the constitution was passed in 2010, the Kenyan government had largely failed to assure women of their rights and retained many laws that legitimised the subordination of women. Moreover, the structures and administration that support these laws and the socio-economic realities in Kenya are stacked against women (Kameri-Mbote, 2003;

Domingo, McCullough,

Simbiri & Wanjala, 2016). The 2010 Constitution of Kenya was a product of years of social pressure as a result of democratisation and by political movements keen to address the failings of the prevailing political order. Until that time, gender injustices and women's empowerment had not emerged strongly as social justice issues in the mainstream in Kenya, but during the constitutional review process

The rule of law is critical to ensure inclusive societies and political participation. This chapter investigates how political participation was increased as part of Kenya's constitutional review process in 2010, opening a policy window for women's rights and gender equality to be placed firmly on the decision-making agenda. The women's movement in Kenya united to move swiftly through this policy window, in what has been hailed as one of the most successful feminist engagements of our time, resulting in the inclusion of what some consider to be radical gender equality provisions in the Constitution of Kenya.

these issues garnered national attention and the women's movement emerged as one of the most effective mobilisers for constitutional reform.

This chapter examines the role that the women's movement and feminist thinkers played in the constitutional review process during the passing of the Constitution of Kenya in 2010. In the years since then there have been a number of articles and books written to document the role of women in the constitutional review process. Notably, in the book *Time for Harvest*, Wanjiru Kabira (2012) narrates her first-hand experience with women's engagement in the review process. A paper published by the Overseas Development Institute (Domingo *et al.*, 2016) also analyses the role women in Kenya played in influencing both the gender equality provisions and social norms and how they participated in the constitution-making process. The point of departure of this chapter is that it examines how women used the policy window opened by the constitutional reform process to bring about what has been hailed as one of the most successful feminist engagements of our time, resulting in the inclusion of what are considered by some as radical gender equality provisions (Tripp, Lott & Khabure, 2014; Domingo *et al.*, 2016). The chapter asks three key questions: *How was the gender question articulated as an agenda in the constitution review process? How did the women's movement organise itself to form a negotiating block? And, finally, what strategies were used to ensure women's presence at the table at all times?*

The chapter reflects on the achievements, but also identifies some of the gaps, in Kenya's constitution-making process, both in terms of who was at the table and what issues made it onto the agenda. Kingdon's multiple streams approach and the concept of a policy window are used to guide the analysis (Kingdon, 2006). The chapter is based on a secondary literature review of publications and reports prepared before, during and after the Constitution of Kenya was passed in 2010. The chapter relies primarily on the articles that were presented at a gender conference organised as part of the preparations

for the review process¹ and on literature developed after the passing of the constitution.

Opening a policy window

The multiple streams approach (Kingdon, 2006) provides a theory of how new ideas enter the policy agenda. Drawing inspiration from organisational development theory, the framework looks at the dynamics of the entire policy process from agenda setting to decision making and implementation and identifies three streams that flow through the policy system: the problem stream, policy stream and political stream. Each is conceptualised as separate from the others, with its own dynamic and rules. At critical moments ‘policy windows open’ and the streams are coupled, dramatically increasing the chances that policymakers will adopt a specific agenda.

The multiple streams approach is part of complexity theory and acknowledges the ambiguity around policy processes (Zahariadis, 2007). It is based on the premise that governments are complex units and not all actors understand the policy process; members know their roles, but are unclear how their job fits with the whole. Participants drift in and out and turnover is high, legislators come and go, and non-government actors exercise significant influence over decisions. People often do not know what they want, forcing politicians to make decisions without having formulated precise preferences (Kingdon, 2006; Zahariadis, 2007). A central premise of the approach is that there is no rational explanation for why some problems are on the agenda (list of subjects that those in government are paying serious attention to) and others are not. The central idea of a policy window is that policy making may not be as straightforward as we assume.

The argument that policymaking is not always a linear process has also been discussed by others. In her analysis of European Union development cooperation after the end of the cold war, Van Reizen observed that change is often assumed to a linear process, whereas, in reality, significant changes are not always the direct product of

¹ The National Women’s Convention was held in Kenya in 1992.

policy setting or decision making (Van Reisen, 2009). Van Reisen further observes that major changes can happen without a plan or strategy and without policymakers necessarily anticipating the change. She also points out that one event can trigger a series of changes and raise a series of questions. As part of their work towards changing the policy agenda, Fourie, Perche and Schoeman (2010) conducted an ethnographic study of donor assistance for AIDS in South Africa to determine respondents' views regarding their role in the AIDS policy process. This study is of particular interest as it looks at a policy process in which prevailing values and attitudes were an impediment to policy change. This is comparable to the issues of gender and affirmative action during a constitution-making process, where the emergence of a policy window can provide an opportunity to pass policies that might otherwise face resistance.

Benefiting from a national mood

One of the most remarkable phenomena around the time of the constitutional review process in Kenya was public perception of gender inequality and affirmative action. Prevailing social attitudes towards these issues were negative, or were assumed to be negative. Indeed, parliamentary debates on gender equality and affirmative action were always defeated based on the argument that these were elite issues and not priorities for grassroots women (Kabira, 2012). Moreover, gender issues were considered contentious enough to have contributed to the failure of earlier constitutional review attempts. Theories of heuristic biases (Kahneman, 2011) purport that human beings are not always capable of perceiving everything in their environment, so attention is drawn to the most prominent information available. Kahneman states that people tend to make mental short cuts and judgements based on hasty conclusions, or on the information available to them at the time of making these decisions. People's emotional evaluation of outcomes also plays a central role in guiding decision making.

In Kenya, the gender equality and affirmative action proposals were presented to the public as part of a much-anticipated package of

institutional and policy reforms that Kenyans were extremely excited and motivated about. Two aspects were especially pivotal in engaging the public mood: the potential for a reduction in presidential powers and the devolution of power to the regions. Devolution was especially emotionally charged, as most Kenyans considered it a solution to economic and social inequality and an opportunity for the redistribution of economic benefits. A hypothesis for the very positive perception of the gender equality provisions and affirmative action is that they were perceived by the public to be desirable outcomes for most Kenyans. Later actions would demonstrate that this view changed once the public and policymakers looked at the provisions through another lens.

The constitutional review process²

Until 1992, Kenya was a one-party state, formalised by constitutional amendment in 1982. Political power was vested in the executive branch and many state organs were weakened by consecutive authoritarian regimes. Political inequalities had contributed to growing unrest and social protest, opening the way for a push for constitutional reforms. In 1992, the section in the constitution that established Kenya as a one-party state was formally repealed. In 1997, the Constitution of Kenya Review Act was enacted, opening the way for a people-driven constitution-making process. This was followed closely by the Constitution of Kenya Review Commission in 2001 (Fitzgerald, 2010). At least four constitutional drafts were produced. The first was the ‘Bomas draft’, which was presented at the national conference in 2004. This was followed by the modified ‘Wako draft’, which was put to a national referendum and defeated in 2005. Following a contentious election and post-election violence in 2007, the constitutional reform process was reinitiated and formalised through the Constitution of Kenya Review Act of 2008, which established four organs: the Commission of Experts (the main technical drafting body made up of nine experts), the Parliamentary

² It is not the aim of this chapter to discuss in-depth the process of the constitutional review in Kenya, but to contextualise women’s engagement in the process.

Select Committee, the national assembly and the referendum body (the Kenyan people). This process produced the third version of the constitution, the 'harmonised draft', which was presented to the Parliamentary Select Committee. The Parliamentary Select Committee was tasked with discussing and resolving the contentious issues before producing a revised draft, which was returned to the Committee of Experts, which produced a final version that was put to a referendum and approved by a 68% margin.

Gender equality and affirmative action

Broadly speaking there were two gender questions that received attention leading up to the constitutional review. The first was 'gender equality' and what that meant for women's rights in the constitution and the second was 'affirmative action'. Despite the fact that they are related, they were tackled quite differently by gender activists. Affirmative action received more publicity and engagement, sometimes overshadowing other gender questions. In terms of who engaged, the gender question was articulated primarily by feminist thinkers and interest groups, whereas affirmative action seemed to galvanise the women's movement more broadly.

In articulating gender equality, the first challenge dealt with by gender experts and feminist thinkers was what gender equality meant. The discourse seemed aimed at bringing constitution experts, and specifically the constitution writing team, up to date on the current global gender equality debate and the gaps in Kenyan law in relation to women's rights. In reading the papers presented at the various preparatory conferences, one comes away with the feeling that the public and policymakers understanding of gender was very limited. Each of the papers started off by providing a very basic definition of gender and gender equality; followed by an argument for why gender equality was not a foreign or Western concept, but one embedded in African culture and values, and religious principles. The papers then all proceeded to demonstrate the impact that gender inequality had on African women's progress.

Translating gender equality into actionable points for the constitution was not always easy; while some questions were quite straightforward, some were a little more complex. For example, no one seemed to argue that gender equality meant granting women equal citizenship status to men, whereas the situation was less clear when it came to issues like inheritance. It is debatable whether a clear definition of gender equality was needed for the process to move forward, but this was not achieved.

The overarching paper that seems to have guided how gender was handled in the constitutional review process seems to have been the one written by Patricia Kameri-Mbote. In her paper, she provides a broad definition of gender, feminism and women's rights. She highlights what provisions had been included in constitutions in other countries and what gaps were present in Kenyan law as it stood at the time. In making her case for women she made the following observation: "The danger here is that we may ignore the fact that women suffer double jeopardy as social beings in terms of both class and sex" (Kameri-Mbote, 2003, p. 156). In making the case for affirmative action, she argued for the differential treatment of women, defined as "one of the ways in which the principles of distributive justice can be implemented to foster the realization of substantive equality between men and women" (Kameri-Mbote, 2003, p. 145).

Other writers have expanded the discussion on gender and women's rights and how these issues should be handled in the constitutional review process. Christian feminists engaged in the process to argue that gender equality was part of the religious doctrine or to raise their objection to some of the more radical feminist positions. The majority of the writers of the papers for the conference seemed to argue that there was an African interpretation of feminism that was more acceptable to the mainstream Kenyan population than the positions taken by women activists. However, it is significant to note

that they all resorted to an almost identical definition of gender equality.³

Social and cultural anthropologists have argued for a more contextual interpretation of gender within the Kenyan context. Monica Mweseli (2003), for example, argued that feminism has strengths and weaknesses and promoted 'African Womanism' as a more acceptable approach to analysing gender in the constitution. African Womanism, she argued, is less individualistic and takes on board the intersections and unique circumstances of African woman, instead of adopting the more Western-influenced concept of feminism. She identified lesbian, gay, bisexual, transgender and queer (LGBTQ) rights and the rights of commercial sex workers as some of the ideas that African Womanism rejected. She emphasised that African women's rights must be seen within women's role as mother and nurturer and identified the focus on divorce as a potentially divisive issue. Pala Achola (2003) made similar arguments about the issue of gender within African culture.

Violence against women

Even at this early stage of the gender equality conversation, there were certain discourses that were absent. In her initial paper, Kameri-Mbote (2003) highlighted violence against women as one of the key issues that the constitution needed to address. In her definition of violence, Mbote included issues that were quite radical and varied, like marital rape, sexual harassment, and female genital mutilation, as issues that the law needed to address. She emphasised the need to address negative cultural practices that perpetuate violence against women. However, the conversation does not seem to have been picked up by the mainstream and all the current provisions on violence against women in Kenya are gender neutral and do not identify violence against women as a specific issue of concern.⁴

³ This is surmised from analysis of the papers presented at the Constitutional Review (Gender) Conference in Bomas, 2003. The papers presented at this conference are quoted extensively in this chapter (see Kibiti, 2003; Mweseli, 2003; Namyalo, 2003; Nasimiyu, 2003; Nzomo, 2003).

⁴ Articles 25 and 29 prohibit violence against persons and Article 53 prohibits violence against children, but all are gender-neutral in language.

Polygamy

The careful wording of certain issues that were of concern to women was a common feature of the constitution negotiation process in Kenya. In some cases, such as in relation to violence against women, women downplayed their concerns. By presenting violence as gender neutral, a number of the nuances that had been articulated by Kameri-Mbote and others at the beginning of the discourse were missed (Kameri-Mbote, 2003). In the case of polygamy, the language in the constitution was so careful that a law has since been passed that allows men to marry many wives if the first wife allows it.⁵

In summary, despite the fact that there was almost unanimous agreement that gender equality was the desired goal for women in the Kenyan Constitution, there was less clarity on what exactly that meant and whether it was equally applicable to all women. Contentious issues were either ignored or downplayed; the question of inheritance, for example, was downplayed, because certain religious groups were against an explicit clause providing for women's inheritance. Minority issues, such as LGBTQ issues, were completely ignored, as was the issue of freedom of choice in relation to reproductive rights. Presenting domestic violence as a gender-neutral issue may have made it acceptable to the general population, but it did not reflect the reality on the ground, where women are disproportionately affected by domestic violence.

The emergence of affirmative action

The issue of affirmative action did not emerge for the first time during the constitutional review process; rather, it had been debated in Kenya since the early 1990s. To understand the modern-day struggle for women's participation in the constitution we look to the National Women's Convention in 1992 (Kabira, 2012; Nzomo 1993, 1997). The keynote presentation at the convention was made by Maria Nzomo (1993). In her paper, Nzomo argued that women in Kenya face a number of barriers to equally participating politically, economically and socially, and that they could not hope to compete

⁵ In 2014, the Kenyan Parliament passed a law that allowed polygamy in some cases, with the consent of the first wife.

equally or effectively unless measures were taken to ensure their participation. The paper and conference were set against the backdrop of the United Nations Women's Conference, which took place in Kenya in 1985 and in which commitments had been made to promote gender equality and women's participation in politics and decision making. This conference seems to have mobilised women nationally and was successful in articulating why affirmative action was needed in Kenya. The challenge remained making it a reality.

In 1997, affirmative action became part of the agenda in mainstream Kenyan politics when then member of parliament, Honourable Pheobe Asiyo, tabled a motion in parliament for affirmative action to be entrenched in the Kenyan Parliament. The proposal was modest and well thought out and had the support of all women, and some men, in the parliament – but when it came to a vote, it was defeated. Despite its defeat, the motion by Asiyo seems to have brought affirmative action to the forefront in Kenya in ways that had not been considered before. The motion also coincided with growing efforts for a more inclusive governance structure and more diversity in representation.

Affirmative action in the 2010 Constitution

The affirmative action provision articulated by Honourable Member of Parliament Pheobe Asiyo in 1997 formed the basis of what was to be the policy position of Kenyan women over the next 20 years or so in the struggle to pass it into law. The provision has three key elements:

- It requires all registered political parties to nominate at least one-third women candidates to participate in national and local elections
- It introduces a constitution provision to create two parliamentary constituencies in each province exclusively for women candidates
- It links political party funding to the number of women candidates nominated by the party

The affirmative action bill tabled in 2000 added to the petition by asking each district to nominate a woman representative to parliament, based on lessons from other countries in the region. The petition also added an element of political savviness to the process by incorporating other minorities to gain broader support when the vote came up in parliament. The bill was not debated in parliament, but rather referred to the constitutional review process.

In 2006, when the constitutional review process appeared stalled, there was another attempt to introduce minimum reforms by revising constitutional boundaries; once again women attempted to get affirmative action into these reforms. The Ministry of Justice and Constitutional Affairs introduced a bill in 2007 to increase the number of constituencies as a minimum reform prior to the constitutional review process. The affirmative action clause requested that 50 seats be reserved for women. This process was also defeated in parliament.

Affirmative action and the gender quota in the 2010 Kenyan Constitution

The Constitution of 2010 contained the following provisions on affirmative action:

Section 81 (b): Not more than two-thirds of the members of elective public bodies shall be of the same gender.

Section 90 (b): Except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed.

Section 97: In relation to members of parliament, there shall be:

- (b) Forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency
- (c) Twelve members nominated by parliamentary political parties according to their proportion of members in the National Assembly,

in accordance with Article 90, to represent special interests including youth, persons with disabilities and workers

Section 98: In relation to members of the senate, there shall be:

- (b) Sixteen women members who shall be nominated by political parties according to their proportion of members in the Senate elected under clause (a) in accordance with Article 90
- (c) Two members, being one man and one woman, representing the youth
- (d) Two members, being one man and one woman, representing persons with disabilities

Section 100. Parliament shall enact legislation to promote the representation in Parliament of:

- (a) women
- (b) persons with disabilities
- (c) youth
- (d) ethnic and other minorities
- (e) marginalised communities

Further affirmative action provisions are also contained in Article 27 of the constitution

Article 27(6): The State shall take legislative and other measures, including, but not limited to, affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination.

In addition to the measures contemplated in Article 27(6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Kenyan women's movement

The modern women's movement in Kenya has its roots in the precolonial period, when women organised largely around improving the material conditions of women. At that time, the women's

movement was based primarily on self-help groups. These were primarily focused on building women's skills within their traditional roles as wives and mothers and for economic development. Since independence, these groups have grown into strong organisations with their own established structures and values (Kabira, 2012).

After the 1985 United Nations Women's Conference in Nairobi, the women's movement started to gain momentum and became more political in advocating for women's rights, especially their right to participate in politics. Women started to broaden the remit of the precolonial women's groups, with a much more explicit feminist and gender equality agenda. Another pivotal moment in the movement was the National Women's Convention that took place in 1992, which was organised by the National Council of Women of Kenya. The conference brought together over 2,000 women and had a very clear political agenda. This conference addressed issues on women's participation in politics and, more importantly, raised concerns about the barriers to women's participation in politics. The keynote presentation at the conference by Maria Nzomo on women's economic, social and political participation in Kenya is still seen as pivotal in inspiring political activism (Nzomo, 1993). It was at this conference that women acknowledged that without affirmative action there was no possibility of participating equally in politics (Kabira 2012, p. 19). On the vision or aspirations of Kenyan women, Kabira had this to say: "Nothing, however, has taken so much energy from women than the efforts towards increasing women's representations in political bodies" (Kabira, 2012, p. 19).

The shift that happened in 1992 was not just in relation to agenda setting, there also seemed to have been a shift in the way that women organised and mobilised. Several special interest or issue groups emerged and new coalitions started forming. Although this chapter does not look at the women's groups in Kenya in-depth, but as the organising was a critical part of the strategies, this section looks briefly at the three key categories of women's organisations that were pivotal in campaigning for affirmative action in the constitution.

Political groups/coalitions and alliances

Political groups have always been at the forefront of advocacy work in the women's movement in Kenya. They have articulated women's issues to the mainstream, given women access to the political decision makers, and helped women from the newer groups and grassroots women to understand how the mainstream worked. Although these political groups relied on feminist thinkers to articulate and conceptualise the issues, it is important to note that the feminist thinkers were also members of these groups. Some of the groups that stood out in this period are: the Kenya Women's Political Caucus, which later split to form the Women's Political Alliance, League of Kenya Women Voters, and Kenya Women Parliamentarians Association. The Maendeleo ya Wanawake Organisation also needs to be mentioned here as a national women's organisation. This organisation became politicised by default, after being co-opted into a political party when Kenya was a one-party state.

Special interest and issue groups

Special interest and issue groups have existed in various forms in Kenya since 1992. Although they came into the constitution-making process to promote their special interests and the provisions they wanted included in the constitution, almost all of them supported the affirmative action agenda. Affirmative action was seen as an issue for all women. The special interest groups contributed to the process by mobilising and organising their interest groups, as well as developing thinking on the issues. Some of the key groups here include the Federation of Women Lawyers, Coalition on Violence Against Women, African Women's Development and Communication Network, Association of African Women in Research and Development, Federation of African Women Educationalists, Education Centre for Women in Democracy, and Collaborative Centre for Gender and Development.

National machineries and national women's organisations

National machineries and national women's organisations were pivotal in reaching grassroots women and organising women. Maendeleo ya Wanawake Organisation, for example, has members in each district in Kenya, and it was impossible to reach women at the

district levels without working through such groups. Another organisation that was pivotal in organising the National Women's Convention in 1992 is the National Council of Women of Kenya. These national machineries become a force for women's empowerment in Kenya after the 1985 and 1995 United Nations women's conferences in Nairobi and Beijing, respectively. These national machineries were housed within the Department of Social Services, where most women's self-help groups were housed. These groups worked together to register women and get them to attend national events.

Strategies and counter-strategies to put affirmative action on the agenda

The realisation that women were never going to be able to compete fairly in Kenyan politics was clearly expressed during the National Women's Conference in 1992. Women realised that the only way to get into the political scene was by getting a special provision passed that would bring affirmative action into law. Many strategies were used towards this. Perhaps the simplest and first strategy for women was to articulate what they wanted in terms of policy options. Once the policy options for affirmative action had been articulated, they did not change much – a few requests were modified or adapted depending on the response in parliament, but the basic demands were consistent.

Women working together

When the first affirmative action motion was defeated in 1997, women quickly realised that they had a serious battle on their hands and that they would not succeed without standing together. So perhaps the strongest strategy that women adopted was to work together. To this end, women adopted both formal and informal ways of organising and forming coalitions and groups, learnt to speak and communicate with one voice, and learnt to accommodate differences. Uniting women meant transcending political, tribal and class barriers and establishing networks and linkages between the national, district and constituency levels. From 1998, when the constitutional review process started in earnest, until the passing of the Constitution in

2010, all national meetings included a quota for women, as well as representatives from the constituency to the national levels. Another level of organising was the formation of steering groups (the Affirmative Action Steering Committee was one such group), and determining where each of the women's groups' strengths lay (for example, there were technical working groups and lobby groups).

Women negotiating: Gaining a seat at the table

Having a united front was a key step for women in the negotiation process – the next step was to gain a seat at the table. Between 1998 and 2010 there were several processes related to the constitutional review process. In order to ensure that both their participation and their agenda were part of the dialogue, Kenyan women:

- ensured the inclusion of women in the constitution drafting team (five out of twelve member drafting team were women)
- negotiated for a participatory and inclusive process, meaning that any draft would be subjected to grassroots consultations, which would include women
- ensured that women's organisations would be recognised as nominating bodies
- ensured that 30% of representatives from civil society, commissioners and district representatives would be women

On how the women performed once they were at the negotiating table, a number of writers have highlighted the engagement of women not just in gender and affirmative action issues, but in mediating between the parties when the processes stalled. Kabira had this to say: “They coordinated themselves on a daily basis, prepared their positions, met before the meeting to agree on positions they would take, and agreed on who should lobby who” (Kabira, 2012, p. 36). This proved very effective.

Building alliances and overcoming obstacles

The very first obstacle that women faced when the issue of affirmative action came before a parliamentary debate was whether women were capable of being leaders and whether affirmative action

was necessary. When the issue came up for debate in 1997, three arguments were presented to oppose the motion. The first was that women were not by nature or nurture meant for parliament. The second was that affirmative action was going against the principle of universal suffrage (one man, one vote) and, finally, that elected men in parliament were already adequately representing their constituents, including women.

As already mentioned, the 1997 motion was defeated, so the arguments above had enough male sympathisers to defeat the motion. However, there was also a large percentage of men who supported the motion, and made very eloquent arguments for why affirmative action was needed. Women, on their part, started to understand that the notion of women speaking for themselves was new to some of the elected members of parliament and that they would need to tackle the issues delicately, but firmly.

I want to respond to that by saying that by nature a woman is capable of taking dual or multiple responsibilities quite effectively. We should therefore, not be told about our maternal duties when we ask to participate in leadership. (Karua, M., quoted in Kabira, 2012 p. 24)

Another criticism levied against affirmative action was that it was an elitist feminist agenda that lacked the support of grassroots women (Kabira, 2012). This was actually two related accusations: the first was that the agenda itself did not reflect the issues or needs of women at the grassroots, the second was that the negotiations were being undertaken by an unrepresentative sample of women. In other words, women from certain communities and from the grassroots were not at the negotiating table. The irony that the first accusation was levied by men who had spoken for women almost their entire lives was not lost on the women and gender activists, as evidenced by this observation by Kabira: “Public knowledge of women has always been articulated by men. Men claim knowledge about and on women without any regard to what the same women think or feel” (Kabira, 2012, p. 21).

The second accusation took on quite serious proportions, as it threatened to break the strong alliance that women had formed. A section of the women's movement filed a court case to demand that the selection of commissioners for the Constitution of Kenya Review Commission be revisited. The conclusion by the women at the forefront was that this was an attempt by the opponents to affirmative action to put in women who were more malleable.

Conclusion

Perhaps the strongest message sent by women in the process of Kenya's constitutional review was that when they presented a united front, women were capable of achieving anything. Their engagement with the constitutional review process made it possible to include all the gender provisions and gains in the constitution. It also enabled the entire process to move forward when political shenanigans threatened to stall it.

One of the loudest criticisms of the advocacy around affirmative action was that it was an elitist movement driven by urban well-educated women. While this was considered a tactic by men to derail the petition, at the same time it was a genuine criticism of the women's movement in Kenya. Despite the fact that all the processes leading up to the constitutional review process involved grassroots women, it is not clear what their input was in the process. Most of the documentation shows the women being given information or engaging in sensitisation programmes on the constitution, however, there is little evidence of them being substantively engaged or of a genuine attempt by the leaders of the movement to seek their views, especially on affirmative action clauses.

Gender issues were among the most contentious issues in the constitution. While women presented a fairly harmonised front on all gender and affirmative action issues, it is interesting to look at the issues that were ignored or not entirely embraced by the women's movement. Issues of inheritance where practices differed between religions and cultures, for example, were downplayed for the sake of

presenting a harmonised front. Issues of LGBTQ rights were raised early on, but were panned by broader civil society and the women's movement. On the question of reproductive rights, a woman's right to choose (abortion) was dropped as it was considered to be too radical for the largely Christian population in Kenya. Finally, on the question of polygamy, the constitution left a loophole that allowed parliament to pass a law that allowed polygamy in certain cases.

One of the key arguments of the multiple streams approach is that, because of the complexity of decision making and ambiguity surrounding policy processes, there is no rational reason why certain policy positions are more acceptable than others. This seems to be the case for affirmative action in the Kenyan Constitution. There is no evidence that the policy positions resisting affirmative action had shifted in favour of women participating in politics; instead, women seemed to have been very effective in making use of the window of opportunity presented by the constitution review process. In an Overseas Development Institute report on how women shaped the constitutional review process in Kenya, the authors remarked that: "No single strategy explains the gains the women achieved through the constitutional reform process. Institutional change is an uneven process" (Domingo *et al.*, 2016, p. 9).

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