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## Time for Harvest

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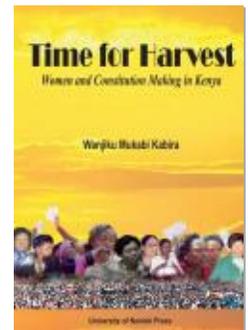
Published by African Books Collective

Kabira, Mukabi.

Time for Harvest: Women and Constitution Making in Kenya.

African Books Collective, 2012.

Project MUSE.[muse.jhu.edu/book/39992](https://muse.jhu.edu/book/39992).



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## *Women's Strategic Choices*

### **Introduction**

As the struggle for women to negotiate their way to the centre of the country's political, social and economic management system and decision making positions continued, the need to be strategic was critical. Women moved away from dancing from the sides to taking their place on the dancing floor with others. They made strategic choices, some of which are discussed in this chapter. These include: focusing on Affirmative Action for women's representation in political and appointive bodies; searching for a better electoral system that would be inclusive, democratic and women friendly; rejecting/raising awareness on gender based violence; and, creation of structures for organising and coordinating women in the process.

Affirmative Action for women's representation was the overall rallying call that kept women together and whose progress has been monitored with passion. It became the fulcrum around which women talked, lobbied and strategised. Women have been so passionate about this strategy that when the Parliamentary Select Committee (PSC) removed the principle of 30 per cent in the National Assembly, women believed that all their gains had been scrapped. The focus on Affirmative Action in this chapter is in recognition that this policy of utilizing positive action for women's representation in parliament and in other electoral bodies and appointive positions became the fulcrum around which the Women's Movement revolved. After the first National Women's Conference in 1997, through the Hon. Phoebe Asiyo motion to amend the constitution and increase women's representation, Hon. Beth Mugo's motions on the same in 1999 and 2000, through negotiating for space in the review process from 1998 to 2010, and negotiating through Constitution of Kenya Review Commission (CKRC), Bomas, the Referendum Draft and finally, the Harmonised Draft constitution 2010, Affirmative action came to mean 30 per cent women's representation. It became the heart and soul that bound women together throughout the process. This chapter discusses in some detail, the philosophy and the theory behind the struggle to move towards the centre.

### **Affirmative action: the critical unifying factor**

The focus on Affirmative Action for women in decision making has been a struggle since 1992. When Prof. Maria Nzomo, then a member of Association of African Women in Research and Development (AAWORD) introduced the idea of 30 per cent as the critical mass necessary to make any significant impact in any decision making bodies, Kenyan women took the concept and ran with it. It was also one issue that has consistently brought women together. They were precise. This bore some fruits even as the struggle for a new constitutional dispensation was going on. These fruits includes the presidential directive of 2006 for women's 30 per cent requirement in public service, Affirmative Action for girls at universities, and awareness creation among various political parties. Women argued that this strategy would focus on remedying both past and continuous discrimination based on gender/sex, ethnicity or even race as it was used in South Africa, Uganda, Tanzania and many other countries.

The passing of the motion on April 19<sup>th</sup> 2000 seeking leave to table Affirmative Action Bill by Hon. Beth Mugo for increased women's representation in parliament and local authorities was only but the beginning of a long and tedious struggle for women's liberation in Kenya. Women applied every tactic available. The concerted efforts and utilisation of all available human resources, skills and expertise as well as financial resources from the various women NGOs and development partners was used. Women developed and shared lobbying and advocacy materials on Affirmative Action. They built support to create national momentum on Affirmative Action with the general public, in both print and electronic media. They also built partnerships and collective ownership of the Affirmative Action strategy, particularly for women's representation in parliament, local government and appointive positions for all Kenyan women.

Women's organisations lobbied political parties, sensitised women at the grassroots level, lobbied all MPs using face to face methods; held round table discussions with small groups of MPs and wrote letters and memoranda. They also did individual lobbying and engaged in development and dissemination of lobbying and advocacy information packages for the MPs and other stakeholders, identifying influential individuals, especially women leaders, to lobby specific MPs, among other strategies. Women dialogued at national and grassroots levels. They negotiated with CKRC, with Bomas delegates, Kilifi talks, with the Committee of Experts and faith based organisations.

Women also explored strategies for the implementation of the Affirmative Action in the Kenyan context. Given the social-political climate, focus was on the district representation system that appeared most appropriate. Women even organised a meeting on September 4<sup>th</sup>-5<sup>th</sup> 2000 which was attended by Hon. Minister Mary Nagu of Tanzania, and Hon. Winnie Byanyima and Hon. Hope

Mwesigye, both of Uganda in order to consult with their regional counterparts and share lessons learnt in Tanzania and Uganda.

Apart from representation in political leadership and appointive positions, women also looked at existing Affirmative Action programmes and actions such as the lowering of one mark for entrance to public universities and deliberate Affirmative Action for specific regions which are either geographically marginalised or lack resources. They noted that the state had often taken special measures to stimulate development. This was reflected in school feeding programmes, provision of extra resources to the constituency fund in some areas, utilising the equalisation principle; hardship allowances for teachers and the quota system in the education sector, among other initiatives. This they did in order to justify that Affirmative Action had been utilised for the benefit of many other categories of people and therefore there was no reason it should not be used to address historical and cultural discrimination against women.

Women, however, focused on Affirmative Action for women's representation in political and elective bodies such as political parties, the national legislature and the local governments, in addition to appointive bodies and public service employment.

It is to be noted that this focus was successful—the new constitution is a testimony to this success. For ten years, women had monitored specific clauses and had clear indicators of success or failure. That is the reason it was absolutely unforgivable for the Parliamentary Select Committee on the constitution to remove the provision of 30 per cent from the National Assembly in the Harmonised Draft, 2010.

Some of the provisions that demonstrate how focused women were in ensuring entrenchment of the Affirmative Action are in the committees on National Goals and Values, Representation of the People, Devolution, and the Legislature where women were very active so as to ensure the 30 per cent representation. These provisions are captured in the summary of women's gains under the section titled "Basket of Fruits of Bomas Negotiations" in this chapter and in a summary form at the end of Chapter 8.

### **Why the struggle for affirmative action**

Frene Ginwala (1998) in her forward in *Women in Parliament Beyond Numbers*, observes:

"The seeds of democracy lie in the principle that the power to make decisions about people's lives, society and their country, should derive a choice by those who will be affected. For many centuries, the basis of this legitimacy was limited and many were excluded from making a choice: slaves, those without property or formal education, those not "civilised" or

not part of the dominant culture or religion in society, people of colour, of a particular race, of ethnic group, indigenous people of countries and overwhelmingly, women” (p.14).

It is evidently clear that participatory democracy must take into consideration the voices of those who will be affected by decisions being made. Conscious and deliberate steps must be taken to ensure that even the minorities or any other disadvantaged group that were initially marginalised are included in decision making and mainstream development processes. This is based on the fact that any laws passed affect these groups that were deliberately left out by the definition and operation of the ideology and theory of democracy.

Proponents of the traditional definition of democracy for centuries did not see or even consider that the concept and the reality of its implementation excluded majority of the people. It is surprising that patriarchal leadership in our country has for long refused to acknowledge this fact. It required individual leaders like Julius Nyerere, Nelson Mandela, Paul Kagame, Yoweri Museveni, Mwai Kibaki, among other leaders, to recognise this fact and implement the same. The new constitution promulgated on August 27<sup>th</sup> 2010 is a milestone in addressing the issue of affirmative action not only for women but for many excluded groups including minorities, persons who are physically or otherwise challenged, among others. When you are dealing with centuries of oppression, of exclusion, of marginalisation, what appears in the constitution in terms of Affirmative Action for women’s representation and other marginalised groups is no mean achievement. This strategy that requires deliberate plans that seek efforts by state and other institutions to combat discrimination and promote equal access to positions and resources in order to promote equitable development, is a milestone in our country today.

At independence, the provision of an Affirmative Action initiative to promote African participation in business by lowering the fee for putting up business within the country’s central business district in Nairobi saw the increase of higher participation of Africans in business. In turn, Africans were able to improve their businesses. Later, the lowering of entry requirements for female students at the public universities saw an increase in women’s participation at university level. The quota system of education also saw the rise of greater participation of groups in various regions where girls and boys with lower grades were admitted into national and provincial schools in order to create opportunities for communities in less developed areas.

In the struggle for affirmative action, Kenyan women looked at other countries that have used the quota system for increased women’s representation at different levels. According to Women’s Rights Series-W-10 Leslie (2006), the Labour Party in Britain, Ethiopia, Tanzania, Uganda and Rwanda have been able to use the quotas to ensure women’s representation in their various parliaments. Representation could be party quotas as the Political Parties Law

(2008) indicates for leadership organs of political parties or through party candidate quotas. France, for instance, has considered quotas through law, through local, regional and European elections. For them, women's representation moved from 22 to 47.5 per cent in 2001. The Series also indicate that in Germany, the Green Party introduced quotas in 1980, the Social Democrats in 1988, and the Christian Democrats in 1996. Candidate quotas are adopted more frequently under the Proportional Representation (PR) systems but they have a position of female representation regardless of the electoral system and a greater impact on the party quotas. During the 1997 general election, the Labour Party in Britain nominated 158 women; 101 of them were elected (63.9 per cent). The Conservatives Party had 67 women of whom 13 were nominated (19.4 per cent). As for Liberal Democracy Party, women were nominated for unwinnable seats. The introduction of systems involving PR for elections to the Scottish Parliament and National Assembly for Wales and European Parliament obliged participating parties to adopt a list system (Fawcett, 2006).

Women of Kenya have tried to sell the quota system for a long time as evidenced by the Phoebe Asiyo motion of 1997, Hon. Beth Mugo's motions of 1999 and 2000, and Hon. Martha Karua's Bill of 2006. This is a living testimony to their efforts. They even discussed the possibility of a twinning system during the debate on 50 seats and proposed this to the political parties for debate. In the twinning system, members of the constituency vote for a man and a woman. For women, the argument by the Parliamentary Committee on Constitutional Review that they had to get rid of the 30 per cent provision for women in the National Assembly to address the "bigger picture" of equitable representation did not hold water because they then went ahead to increase the constituencies. We argued that instead of dividing the constituency physically, we could have used the twinning system where instead of dividing the constituency into two, each could be represented by two people, a man and a woman, thereby increasing women's representation and address the "bigger picture".

Women in this country agree with the critical mass theory that once the proportion of women in the legislature rises to around 30 per cent, there would be a change in the policy agenda to reflect more accurately, the interests of both men and women. Hon. Oki Ooko Ombaka argued thus in 1997 in parliament during the tabling of the Phoebe Asiyo motion.

International evidence has shown that the only way to significantly increase the number of women in parliament is through the use of positive action measures. Countries that top the international women's representations including Rwanda, Sweden, Norway, Finland, Denmark and Sri Lanka; all use the quota system. Rwanda, a country emerging from genocide and major political upheavals, has through the positive action, topped the world in this area with

48.8 per cent. In Rwanda, they have 53 directly elected women in parliament. South Africa and Mozambique both have close to 30 per cent (Tan, Anamah, 2006).

Adoption and implementation of Affirmative Action, is the most effective route to ensure greater participation of women in decision-making positions, including parliament. It is the route Uganda, Tanzania, Rwanda, South Africa, Mozambique, Ethiopia, Eritrea; even Somalia (a nation starting to rise from the ashes of war) recognise. Many other nations have moved in the same direction. Through this system, progress is being made world wide. In 2005, thirty nine countries that held elections used positive measures. The average ratio of women parliamentarians in these 39 countries was double that of other countries. As of 2006, 90 countries had used special measures to ensure greater representation of women in parliament.

In 2005, the Labour Party of Britain used positive action through shortlists in winnable seats and doubled the number of women from 62 to 121. Rwanda women were 48.8 per cent from the 2006 election, the highest in the world then, while South Africa and Mozambique were 30 per cent. Nordic countries have adopted the quota system guaranteeing that 40 or 50 per cent of a party candidate list are women. The ten highest ranking countries in terms of women's representation all use proportional representation electoral systems. Political parties in various countries have also introduced quotas e.g. Germany, Ireland, Sweden, and the United Kingdom Labour Party. These parties indicate positive leadership that our political party leaders need to learn from. The emphasis here is that countries with majoritarian electoral systems like Kenya have proved to be the worst possible systems for women. Women in Kenya have consistently argued that there is need to increase women's representation in parliament by a substantive percentage through positive action.

If the 10 highest ranking countries in terms of women's representation, use proportional representation in their electoral system using party lists, it can be argued that party lists offer more opportunities for women to be included without simultaneously excluding men (Fawcett, 1966).

In arguing a case for quotas in the Pacific Region, Dr. Lesly Clark (2006:2-3) in her *Affirmative Action—Gender Representation in Parliament: Quotas, Political Parties and Reserved Seats*, argues as follows:

- Quotas for women do not discriminate, but compensate for actual barriers that prevent women from their fair share of the political seats;
- Women have the right as citizens to equal representation;
- Women are at least 50 per cent of the population so they have a right to an equal share of the decision making that affects their lives;
- How can it be justified that men occupy more than 80 per cent of the parliamentary seats around the world?

- Several internationally recognised conventions on gender equality have set targets for women's political representation including Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and BPA;
- The presence of women gives greater legitimacy to parliament;
- More than 90 countries from all continents have adopted some form of quotas and have benefited by the contribution of women;
- Women experiences are needed in political life;
- Men cannot adequately represent the interests of women;
- Only many women can represent the diversity of women;
- Women are just as qualified as men in their own way but women qualifications are downgraded and minimised in a male dominated culture;
- Quotas do not discriminate against individual men. Rather, quota rules limit the tendency of political parties to nominate only men;
- Quotas need only be used until the barriers preventing women from entering parliament are removed;
- The history of women's representation in parliament proves that there are no other alternative methods for significantly increasing the number of women in parliament in a short period of time;
- For the voters, the opportunities are expanded, since it now becomes possible to vote for more women candidates;
- Quotas may produce conflicts but only temporarily;
- Pacific countries are facing enormous challenges in the next two decades that will require the brain power of all its citizens to solve. It makes no sense to ignore 50 per cent of the problem solving power of a country that women can contribute to;
- The countries that include women in their decision making will have an advantage over those that limit themselves to men's perspectives and solutions;
- The leadership style of women which stresses consensus, collaboration and partnership is more likely to avoid intra and inter country conflicts with its resulting economic and social cost.

In Kenya, much has been discussed and the media has captured many debates about Affirmative Action. It is now almost clear to the public that Affirmative Action is a deliberate, though temporary measure.

The following is a highlight of some affirmative provisions in the 2010 constitution.

*i) Membership of the National Assembly*

97. (1) The National Assembly consists of:-

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;

- (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 of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers.

*ii) Membership of the senate*

98. (1) The Senate consists of:-

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of 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.

*iii) Devolved government*

Principles of devolved government

175. County governments established under this Constitution shall reflect the following principles-

- (c) no more than two thirds of the members of representative bodies in each county government shall be of the same gender;

177. (1) A county assembly consists of-

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
  - (b) the number of special seat members necessary to ensure that no more than two thirds of the membership of the assembly are of the same gender;
  - (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
  - (d) the Speaker, who is an ex officio member.
- (2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.
- (3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

These provisions and many other not highlighted here are no mean achievements.

### *Other affirmative action efforts*

During the Kenyatta Day celebrations in 2006, President Mwai Kibaki directed the civil service to ensure that at least 30 percent of recruitments, promotions and appointments of all public service jobs were women.

In his speech, he said:

“The women of Kenya have provided a critical mass for the economic development. The enterprising nature and innovativeness of Kenyan women is clearly evident in our towns, market places, farms and in the service sectors. There are many more women qualifying from our colleges and universities today than was the case in the past. However, there is a serious imbalance between the women employed in the Public Service and Private Sector and in the leadership in the country in general. The development of this country depends on how efficiently we utilise our human resources” (*Kenyatta Day Celebration, Presidential speech, October 20<sup>th</sup> 2006*).

The head of the Public Service, Ambassador Francis Muthaura, issued a circular to all public service institutions to implement the directive. However, the implementation of the same has been painfully slow. The amendments to the Constituency Development Fund (CDF) Act 2007 tabled by Hon. Julia Ojiambo for adoption of the 30 per cent principle for women's representation in the composition of the various management committees on CDF, were not passed in parliament. The Constitutional Amendment Bill, 2007 tabled by the then Minister for Justice and Constitutional Affairs Hon. Martha Karua proposed creation of 50 special seats for women in parliament but it did not take off. There were not enough MPs in the house to discuss a Constitutional Amendment Bill. The MPs had conveniently absented themselves. So, the bill was shelved.

A Bill on Employment which was tabled by the late Hon. Newton Kulundu, Minister for Labour and Human Resources Development, provided another opportunity to test the spirit of Affirmative Action. Women's Political Alliance of Kenya (WPAK) in collaboration with Collaborative Centre for Gender Development (CCGD) shared the Gender Action Duty Bill with the Minister and other key officials in the Ministry of Labour and Human Resource Development in an effort to have the Ministry table it in parliament. The amendments to the Employment Bill tabled on October 9<sup>th</sup> 2007 by Hon. Julia Ojiambo were shelved by parliament. The debate on the amendments generated several recommendations from members of parliament. Key among them was from Hon. Moses Akaranga, the then Minister for Public Service who noted that implementation of Presidential Directive on 30 per cent women's representation in the public service fell under the docket of his

ministry and that a process had already begun on how to ensure effective implementation of the directive. The Ministry of Gender, Children and Social Services, the Women Enterprise Fund, the Presidential Directive of 30 per cent (although it had no mechanism for implementation), indicate that during the Kibaki administration, it was the season for harvest for women's struggle. The climax was the promulgation of the new constitution on the August 27<sup>th</sup> 2010 after 67 per cent of Kenyans resoundingly said 'YES' to the 2010 Draft Constitution. It was the most heartening moment for women of this country and for many other marginalised groups.

Women have used many strategies to move the affirmative action agenda in all fronts. We must build on strategies that organisations and women leaders have used which have borne fruits. Chinua Achebe (1996) in *Things Fall Apart*, talks of Eneke the bird who, when asked why he flies without perching said it was because men have learnt to shoot without missing. We need to continue working with women leaders, women's organisations, women councillors, women in civil service and in private sector to building linkages and ensure that the fruits of this struggle are translated into reality for all.

### ***Changing our electoral systems***

As discussed earlier in this Chapter, in an effort to identify a more women friendly electoral system, one that could accommodate interests of others and move away from "first past the goal post" electoral system, women diligently studied "the first past the post" majoritarian system of elections and compared it with other electoral processes. We had position papers from experts such as Mr Francis Ang'ila and Mr Wachira Maina, among other experts. The reason for this was that women, in their hearts and souls, believed that there should be a different system of electing leaders in Kenya without the aggressive, violent and divisive characteristics of our current process. The idea that politics is a dirty game, that you have to bribe, you have to have your local militia, you have to collect all the dirt you can get to use against your opponent, did not seem right. That cannot be the nature of politics, they said.

Women have developed their systems of elections at the grassroots level and in many cases, the election of leaders has gone on without much acrimony. In addition to this, it has been much more a leadership of service than a job where you are paid to lead. In women's views, parliamentary elections, for instance, have an ideology that is contrary to what the Women's Movement has stood for. Parliamentary elections have been about the philosophy of "eating"; that is, accumulating wealth, legally or/and illegally and how one can go to parliament to ensure he/she is "eating" too. This eating philosophy was reflected in Kenya's tenth parliament in the way it put its self-interest at the fore front, deciding on its salaries and allowances thereby conning the taxpayers and the nation as a whole.

The attempt to change the political system and to introduce the proportional representation by women has been a way of humanizing the political system and expanding democratic space to various members of society. The cry of minority communities such as the Ogiek, Njemps, Sengwer, the Oromo people, persons with disability, and women, among other marginalised groups, resonated well with the Women's Movement. It is recognition of the fact that some of these minority communities will never find representation on the policy decision making bodies because of their numbers while for others, it is because of the nature of institutions, culture and lack of economic power. Women fall in the latter category. Yet, we recognise that the experiences of these groups will enrich our institutions of governance and also take the interests of those communities into consideration at all times. The need to break through the politics of *Me, I, Myself* and reject the traditional Machiavellian type of politics so as to adopt a new definition that is more humane, more inclusive and more sensitive to our society's needs and interests cannot be over emphasised. This is what the women hoped for when they continued to hold on to the Proportional Representation (PR) as the "better option"<sup>21</sup>. Women believed that this would promote development of more healthy political parties, that would move away from the focus on the individual who, we mistakenly believed would make it possible for the rest of us to "eat". We would, as a nation, focus on the governing and nurturing of our national philosophy and policies and deliver services to the people. We believed, and still do, that PR would help us develop political institutions that would ensure that we celebrate our diversity, we identify issues that bind us together as a nation and for which we would elect a government that would give meaning to our national anthem's "*Justice be our shield and defender....*" where we " *dwell in unity, peace and liberty*" and plenty would be "*found within our borders*" – and even outside our borders. We want Somalia, Uganda, Ethiopia, Sudan, indeed, the whole of Africa, to have plenty within their borders! Africa to be a continent that can feed its people, protect its people, have institutions that would promote peace, security and the well being of its people. Women want to promote creation of better, more inclusive, political institutions so that we move towards transformative institutions.

In May 2009, I had a discussion with Hon. Paul Muite, the then MP for Kikuyu constituency and a very good friend of mine. He told me that I needed to read the South African Constitution because that was the route Kenya should have been aiming at taking in matters of electoral processes. I said to Hon. Muite,

"But women have tried since 1999 to sell this system to the politicians to no avail. It is now ten years and women have been singing PR."

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<sup>21</sup> Adapted from Safaricom Corporation's slogan. Safaricom was the leading mobile service providers in Kenya (2012). Others were Airtel Kenya, Orange Kenya and Yu.

Hon. Muite, who has a good sense of humour said to me, “But Wanjiku, when will you ever learn? You have forgotten that *kīa mūdũ mūka gītīkagio kīarara*. (a Gikūyũ saying roughly translated to mean a woman’s word or advice is only believed after some time or after staying overnight and after subsequent events show her advice should have been taken beforehand, not afterwards?) He went on,

“Maybe now we believe you; so let us sell the PR or at least Mixed Member Proportional Representation (MMPR).”

I said, “Fine.”

I have often shared my thoughts with Hon. Muite, a much focused politician, always ready to share his thoughts on politics. There were many times when he told me that things would not go as planned or as women hoped, and he turned out to be right. This time round, I hoped that he would be right; that time had come for Kenya to adopt a more people friendly electoral system.

Women wanted to move away from “first-past-the-post” system which was not a good system because it excluded them, other marginalised groups and minority communities too. Women thought of improving our political system through using Mixed Member Proportional Representation (MMPR) reflected in the CKRC Draft 2002 and the proposals for creating the fifty seats for women in 2006 Draft Bill that did not take off in parliament. In both cases, we argued that party lists could be used to bring in women and marginalised groups into political leadership. South Africa and other countries had done it.

In the case of the PR system, we argued that every vote counted. Vote turn out would be usually higher than in the majoritarian system or “winner take it all” system. We argued that the PR system, multi-member constituencies and party lists were more conducive to higher levels of women’s representation; that women were more likely to find their place in leadership than with the traditional majoritarian system.

For close to fifteen years, we had discussed it. It had been, like Affirmative Action, a unifying factor for women. We decided to walk that path until we ensured Kenya had an electoral process that was inclusive, democratic and unifying. Women argued that there was need to adopt and promote the concept of democracy and universal suffrage in the political arena. They lobbied for a redefinition and expansion of understanding of the democratic process to ensure inclusivity and greater representation. They addressed all forms of exclusivity. They argued that, in nominating the women, parliament could use either nomination through party lists after the elections, which could be done through either the College of National Executive Councils of political parties, through women wings or congresses.

The women, however, preferred representation through party lists before elections. This meant that before the elections, each party would have a list of

names that they would nominate to the National Assembly or Devolved Assemblies. The list would be in the order of priority and after the election, those seats would be distributed according to the party strength. It also meant that the names would be gazetted before the elections and the electoral commission would just gazette the list of nominees. Women also often proposed that the list would be prepared by the college of NEC in collaboration with the women congress/league/wing of each party in order to ensure the criterion was met. Consideration would be given to regional representation, ethnic minorities and other categories.

It was the view of women that this would make women whose names appeared on the list, mobilise support and campaign for the party, therefore, getting very involved in the political process. By so doing, women would then bring an added value to political parties by marketing the parties beyond ethnicity and constituency boundaries. This would expand space for democracy and enhance political parties as structures of governance.

The benefits of party lists and PR through party lists was explained to members of parliament and leaders of political parties emphasising that the processes was good for political parties because it would encourage all parties to aim at achieving an agreed upon threshold of votes, guaranteeing that women and minorities would easily be represented and have a level playing field. Women even argued that this electoral system was good for promoting party ownership, socializing women with the party in order to play active role in the electoral campaign. However, all these arguments fell on deaf ears. Most political party leaders and many members of parliament were not interested.

Arguments such as using proportional representation, party lists, colleges, as well as direct elections to improve our electoral process, make our political party more inclusive and diverse and have a better reflection of our society, did not seem to change their mind.

All, however, was not in vain. The following provisions show some progress:

In the chapter on Representation of the People under Allocation of party list seats, article 90 (1) notes:

- Elections for the seats in parliament provided for under Article 97 (1) (c) and 98 (1) b, c and d,
- and for the Members of the County Assemblies under 177 (1) (b) and (c) shall be on the basis of party lists.
- Article 177(1) on County Assembly indicates that article 1(b) the number of special seat members necessary to ensure no more than two-thirds of the membership of the assembly are of the same gender will be (2) nominated by political parties in proportions to the seats received in that county as per (article 90)

We note that Article 97 (1) (c) refers the 12 members nominated by political parties to Membership of the National Assembly; 98 (1) (b), (c) and (d) refers to Membership of the Senate; while 117 (1) (b) and (c) refers to membership of the County Assemblies. The struggle for a more friendly political systems continues.

### **Working with political parties**

In 1996, women's organisations, led by the CCGD, recognised political parties as strategic partners in their struggle for political participation. This was in relation to recruitment and participation at various political party structures including the National Executive Councils, nominations for candidates during elections and even in party management. During the 1996-1997 efforts to work with political parties, Fredrich Ebert Foundation was very supportive. At the time, two critical women's programme officers, namely: Jacinta Makokha and Wanjiku Mbugua worked closely with women's organisations.

Women worked with major political parties including:

- Democratic Party of Kenya (DP);
- Ford Kenya;
- Kenya African National Union (KANU);
- Social Democratic Party (SDP);
- Safina;
- Liberal Democratic Party (LDP).

Political parties, mainly in the opposition, were very receptive to women's concerns. We insisted on the implementation of one third women's representation in all structures of the parties. We reviewed their party manifestos for gender sensitivity and presented the results at a political party meeting in Pan Afric Hotel. At this stage, parties such as LDP, DP, Ford Kenya, Safina and SDP promised to implement women's recommendations. In 1997, we actually audited DP grassroots elections for the party's implementation of the Affirmative Action for women's representation at their structures. The then Chair of DP, Hon. Mwai Kibaki, committed himself to ensuring that DP would ensure Affirmative Action for women's representation at all levels of the party structures. At an earlier meeting in Ngong Hills Hotel the same year, Hon. Kibaki had expressed his interest in this agenda, arguing that Affirmative Action was the right way to go. It was not surprising then that in his tenure as president, Affirmative Action was translated into reality through his Presidential Directive in civil service and in other areas. The leader of LDP at the time, Hon. Raila Odinga, supported this process strongly and as shown in Part I, the two leaders often walked with the women.

In principle, working with political parties became one of the strategies towards enhancing women's participation in political leadership for a number

of organisations including: CCGD, Women's Political Alliance of Kenya (WPAK), Women Political Caucus (WPC), Education Centre for Women in Democracy (ECWD), The League, among others. It was a departure from focusing on women and educating them to ensure that institutions of governance and democracy would open up space for them and recognise that women in political parties would bring new values and perspectives to the parties. This was an important strategic choice that women made.

### *The struggle against gender based violence*

While Kenya women's organisations were joined at the hip by Affirmative Action, there were those organisations that closely focused on gender based violence for almost twenty years. This was another struggle that united women. At one time, women mobilised and formed the group "Mothers in Action" in the early 1990s after the St. Kizito tragedy where boys from a school in Meru invaded a neighbour girls school and raped them: 19 girls died. "Mothers in Action" group, though short-lived, was able to create awareness on issues of gender based violence. Ms Njoki Wainaina, the then Director of African Women Communication and Development Network (FEMNET), was at the forefront of this programme. Later, those organisations which focused on gender based violence came together under the Coalition on Violence Against Women (COVAW). Many women, including Hon. Adelina Mwau, Ms Atsango Chesoni, Ms Anne Gathumbi, Hon. Millie Odhiambo, and Ms Faith Kasiva, among others, were at the forefront of this. The International Federation of Women Lawyers (FIDA) under the leadership of Mrs Martha Koome, Hon. Martha Karua, Ms Jane Kiragu, Ms Jean Kamau, Ms Jane Onyango, Ms Nancy Baraza and Ms Patricia Nyaundi, were at the forefront.

Efforts to bring to parliament a *Family Protection Bill* had been made more than ten years earlier but bore no fruits. Some of these efforts gave birth to the now famous Hon. Njoki Ndung'u's *Sexual Offences Act* which was a milestone in the struggle against gender-based violence. This was another area that had united women all along. The FIDA and COVAW spearheaded the struggle while the Caucus for Women Leadership, WPAK, League of Women Voters, CCGD, Maendeleo ya Wanawake (MYWO), among other networks, spearheaded the Affirmative Action programme. Appreciation goes to all these women's organisations. We also appreciate them for keeping alive the spirit of 16 days of violence against women to remind Kenyans that women's bodies are the temples of God—they must never be violated.

The new constitution presents very progressive provisions in the Bill of Rights that protects and enhances women's position at the family level and in society, as well as individuals and outlaws any form of gender-based violence or any form of discrimination against women. Some critical provisions include Article 26 Sub Article (3) and Sub Article (4) which protects the life of a pregnant

mother and which was contested by the Church leaders in the 2010 referendum. This clearly supports the view that while abortion is NOT allowed in the constitution, the caution to accept abortion when the mother's life is in danger endorses the right to life of the pregnant woman including the right to equal opportunities in political, economic, cultural and social activities. Article 27 (3) recognises that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Article 27 (4) states, "The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, conscience, belief, culture, dress, language or birth." Article 45 (3) states, 'Parties to marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage'.

Article 53 (1) states, "Every child has the right:

- to a name and nationality from birth;
- to free and compulsory basic education;
- to basic nutrition, shelter and health care;
- to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;"

These are only a few of the rights that take women's interests and views into consideration.

I have gone into details on the issues of rights for women because, in their view, women identified violence at family level, cultural violence, issues related to wife beating, inheritance of property, sexual harassment and rape, as areas where they needed to be protected. It is noted too that during "the women only" sessions, the issue of violence at family level and community level was prevalent; women articulated these issues very clearly.

### ***Lessons learnt from women's movement and the review process***

History shows that women, being the underdogs in society, have always organised together in groups to deal with their needs, both practical and strategic. In the presentations reflected in Part II, we notice that there were many women's groups that presented the views of women. Women came together during the review process and moved together throughout the process; but we cannot ignore the fact that women also belong to ethnic communities, and at times when these conflicts come, they are caught up in the same web as everyone else.

However Women's Movement made critical choices that moved their agenda forward. The movement has tried to define the type of electoral system that we should have and the reasons for devolving power to the people, among other decisions. The need for transformative, more inclusive electoral processes was been identified as critical. Women at the grassroots level have also moved in designing their own structures, *strategies* and their own philosophy. At the beginning of this story, we talked about grassroots Women's Movement and their efforts to mobilise and manage their institutions. We need to reflect on these movements, these initiatives and look at women's experiences and ensure that their experiences are used to transform our societies, our political, economic, religious and cultural institutions.

Experiences have shown that Kenyan women have created structures that have been very useful for women in this struggle. The coordination around Mothers in Action, the creation of Women's Political Caucus (1997), Women's Political Alliance (2000), Coalition on Violence Against Women (COVAW) 1998, the constituting of the Committee on Affirmative Action in (1999), constituting of the National Women Negotiating Team (2007), the creation of the Women Lobby Team (1999/2000), creation of Women's Organisations Coordinating Committee for protecting women's gains (2009/2010), G10 group formation (2009), Caucus for Women's Leadership Regional Assemblies, even Warembo na 'Yes' (2010) is heart and mind warming. Also the creation of Women Mobilisation Networks by the Collaborative Centre for Gender and Development (1999) show that women can create structures that hold them together and move their agenda forward. We need to acknowledge these structures and build on them and see how they can continue to serve women, for as Adrienne Rich (1985:186) wrote:

“Only when the centre of gravity is shifted will women really be free to learn, to teach, to share knowledge, to explore, to scrutinise and to convert knowledge to power.”

Women have learnt many things during the last twenty years of the struggle. They have learnt to speak, share with each other, explore different strategies, and to scrutinise their initiatives. We need to clarify our ideology, and philosophy, distil the knowledge gained from our experiences and form flexible inclusive structures that we have been creating at the national and grassroots levels; then we need to translate this knowledge into power. One can easily argue that these structures we have been creating are inclusive, horizontal, and dependant on individual commitment: they have represented different skills, have considered age and experience, are multi-ethnic, are across political parties and respect different expertise. It is to our credit that we have come together at crucial moments, even without resources, and have coordinated ourselves to push an issue we were passionate about.

Women have risen to the occasion many times and kept the Women's Movement together. We can and should continue action and reflection and come up with strategies that keep us together at critical moments. In the wake of the debate on the Harmonised Draft, donors, under the false argument that Women's Movement was in tatters, decided to fund male based and male headed NGOs. This did not stop women from coming together and mobilising to safeguard their gains. Federation of Women Lawyers, Women's Political Alliance-K, and Caucus for Women Leadership, among others, mobilised the women again with very little financial support.

When we think about how women struggled in *negotiating the double covenant*, we must recognise pathfinders and those who walked with them sometimes under great difficulties. As we climb up the mountain and as we lift each other on our way up, we need to stop and look back at the journey we have made without losing focus and remember that, in the first place, we aimed at the peak of the mountain. We also need to look back at those falling behind and help them climb up with us. We need to continue assessing and re-assessing our experiences, and learn from these experiences at all levels of our society in order to influence the centre of gravity and make it shift. We are concerned with exploring values and other required skills in order to listen to and appreciate our worldview.

We must continue to nurture the structures we create, ensure they harness our experiences and extract the knowledge generated from these structures and experiences and bring them to bear on public knowledge and public policy. Those factors that are unifying, such as women's representation through Affirmative Action, improved electoral systems, struggle against gender based violence in all its various manifestations, institutional frameworks for women networking and collective bargaining and the mobilising structure, must be watered, nurtured and celebrated. Our knowledge about decision making, political leadership and development emanates from our experiences and are unique. The skills we have developed as women, skills of sharing, listening, reflecting and emotional commitment to the development of a better social order need to be harnessed for positive action, for social engineering and for greater wellbeing of women and all other members of our community.

However, let us not forget that even within these struggles for power, women expressed the feminist behaviour as the alternative to patriarchal behaviour. They constantly looked for options of least resistance. For women, the male aggression, male struggle for raw power is not what they bargained for. If we look at history, dominating violent leaders have been labelled great men. These include Alexander the Great, Julius Caesar, Napoleon and Stalin. Others such as Jesus Christ, Martin Luther King, Mahatma Gandhi, Nelson Mandela and Julius Nyerere, among others who offer love and peace, are considered empowering leaders.

We continue to learn from the way women organise themselves to transform the world around them. Promoting equitable distribution of what they have is something we need to capture. Women groups promote the spirit of sharing, respect, understanding and appreciation, freedom, justice and love. That is why they will think about the elderly whose support mechanisms may no longer be there. That is why they will think about taking turns to borrow what they put together every month or every weekly and repay the money so that the next person can borrow. These activities and *strategies* need to be scaled up for. As Andre Lorde (1984:126) notes,

“The master’s tools will never dismantle the master’s house... The true focus of revolutionary change is never merely the oppressive situations which we seek to escape, but that piece of the oppressed which is planted deep within each of us and which knows only the oppressors’ tactics, the oppressor’s relationship.”

New tools are needed in order to transform our societies. Women have a lot to offer in this area. History and Oral Literature show that there exists the story of women’s resistance that keeps on being ignored and buried. We have to find our past in order to deal with the present and celebrate the river of resistance. Margaret Ogola in *The River and the Source* locates the women’s struggle for liberation in the context of the struggle for justice. We must recognise that Women’s Movement will at times rise to the occasion, and like the river during the rainy season, it will be very forceful. At other times, it will break into tributaries and continue to move slowly finding its level. There will also be those times when it will disappear underground as Margaret Ogola says, but it will always be moving. When the time is ripe, it will appear again on the surface and continue its journey more visibly.

The story of the women’s group movement in this country is a unique case and we need to appreciate it. By organizing themselves to buy land and other properties, by coming up with structures of governance where another woman becomes a guarantor, a kind of “title deed,” the women have created parallel governance structures informed by their own values and philosophy. These are poor women. Some of them have never gone to formal schools. Yet, by the time of going to press, this movement was celebrating 50+ years. Those who started it in the mid sixties were now in their eighties and nineties. Many have passed on but the movement continues to grow. Their female children have taken over from them—these female children seem to have pledged their loyalty to Mother Earth and to life too. The struggle to create alternative structures and alternative ideology and new cultures, new communities is on.

After this harvest, we must continue the journey towards a better social economic order.

