



“Is What is Good for the Gander also Good for The Goose?” Gender Quota Implementation in County Governments in Kenya

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Abstract

The gender quota threshold (Two-Thirds Gender Principle) refers to a strategy aimed at ensuring that both men and women are represented in political office and more specifically in reference to this study, in County Governments in Kenya. This stems from the consideration that adherence to the gender quota threshold enables both men and women to participate in decision-making, policy formulation and allocation of resources that is equitable in terms of gender needs within the counties. Although gender quotas have become popular in many countries, there are lots of debates on whether they are effective or not in increasing women’s participation in governance. This study adopted the qualitative research approach and a comparative research design where two Counties were purposively selected based on their gender representation in the County Assembly and County Executive and cultural differences. The data was collected in Makueni and Elgeyo Marakwet Counties and the findings analyzed thematically. The findings for this study were as follows: Firstly, implementation at the County Executive had put a ceiling on women’s representation; secondly, in both Counties, there was evidence of gender sensitive legislation being passed in the Assembly mainly by the women who had benefitted from the gender quota threshold; thirdly, the County Public Service Board had also been implementing the two-thirds gender principle despite the fact that in some professions it was difficult to meet the threshold; the fact that accountability and enforcement of the legislation was done by different actors both at the County Government level and at the National Government level and lastly, the finding that there were no other formal or informal rules to adhere to except considerations for marginalized groups and people living with disabilities. On recommendations, the Governors should set a good example and there is need for sensitization on the gender agenda at the grassroots level. In conclusion, gender quotas work differently in different contexts.

Keywords: Gender Top-Up, County Government, County Executive Committee Member (CEC Member), Member of County Assembly (MCA), Independent Electoral and Boundaries Commission (IEBC), Two-Thirds Gender Rule

INTRODUCTION

The gender quota threshold (Two-Thirds Gender Principle) refers to a strategy aimed at ensuring that both men and women are represented in political office and more

specifically in reference to this study, in County Governments in Kenya. This stems from the consideration that adherence to the gender quota threshold enables both men and women to participate in decision-making, policy formulation and allocation of resources that is equitable in terms of gender needs within the counties. Although the constitutional provisions are clear in articles 197(1), 175(c) and 81(b) amongst others that no single gender should go beyond two-thirds threshold whether in appointive or elective posts, counties have been struggling in the implementation of this gender principle. As Nazneen (2018) puts it,

The provision of reserved seats and gender quotas has ensured women are making inroads in larger numbers in local government, a space where they were largely absent before the quotas were introduced (p.8).

This paper sought to examine the two-thirds gender principal implementation at the County Government level in Kenya and unpack findings on whether “what is good for the gander in as far as representation in governance is concerned, is also considered good for the goose”

The County Governments have been in existence since March 2013 when they first came into being after the promulgation of the current constitution in Kenya. However, little has been done on the implementation of the gender quota legislation with specific reference to the County Executive and Assembly in the County Governments in Kenya. Globally, studies have mainly concentrated on women’s and men’s participation at the national government level as opposed to the local government level (World Economic Forum, 2013). Although gender quotas have become popular in many countries that have carried out electoral reforms, there are lots of debates on whether gender quotas are effective or not in increasing women’s participation in governance. This study therefore sought to contribute to the gender quota implementation debate with specific reference to County Governments in Kenya. It is at the County Level that voters have a better opportunity to closely monitor the performance of their leaders and call them to accountability as compared to the national government.

This study adopted the qualitative research approach and a comparative research design where two Counties were purposively selected based on their gender representation in the County Assembly and County Executive and cultural differences. The total sample size was 53. Out of these, 23 participants drawn from both Counties and other key stakeholders in the area of gender were taken through in-depth interviews whereas 5 FGDs were carried out consisting of a total of 30 participants. Document analysis was adopted too. The data was collected in Makueni and Elgeyo Marakwet Counties and the findings analyzed thematically.

Implementation in the County Executive

In as far as implementation is concerned, what came out strongly was that men are the implementers of this legislation both at the National and County Assembly level and therefore once they felt like their positions were being challenged, they would find an excuse to defer the process. Kenny (2019) alludes to the fact that there was no proper implementation strategy in place for the two-thirds gender principle. Interviewees from the Counties concurred that gender quotas are being implemented despite the fact that people’s perception is such that the a third is for the women while the two-thirds is for the men. This means that the Public Service Board, every committee and different forums must ensure that there is representation by both genders. In addition, because there are gender audits that are done periodically by the Kenya National Audit Office (KENAO) and National Gender and Equality Commission (NGEC) therefore, Counties had to comply lest they are accused of non-conformity to the constitutional provisions.

Some participants wondered why a majority of the Governors who are male did not appoint women for their Deputy Governors and why there was no legislation on the same to ensure gender balance. From document analysis, in the 2013 elections, there were 9 female Deputy Governors in the following Counties: Narok, Kwale, Kericho, Makueni, Taita-taveta Nyandarua, Nandi, Kisumu, Embu, Mombasa and Kitui whereas In 2017, they were in the following Counties: Narok, Kwale, Kericho, Makueni, Taita Taveta, Nyandarua and Nandi (A Gender Analysis of the 2017 Kenya General Elections). For Makueni, Kwale, Kericho and Narok the Deputy Governors were serving their second terms perhaps because the Governors in these Counties were re-elected and opted to retain their deputies.

Indeed, the Kenya 2010 Constitution has provision for reserved seats for 47 Women Representatives each representing a County. There are mainly three types of gender quotas used across different countries. They include: the voluntary party quotas and legislative quotas which set a minimum share of women that need to be included in the candidate lists as legislation or imbibed in the political party statutes; and reserved seats which control the women elected in terms of their numbers. Kenya has adopted both the reserved seats and legislative quotas in the form of nominations to fill the gaps through the Gender Top-Up mechanism. Rwanda, the leading country in the world in as far as gender representation is concerned has adopted all the three forms simultaneously.

But this had come with its own set of challenges whereby women were now being asked to concentrate on their seat and leave the other seats for men to vie for. Therefore, there were similarities in both Counties whereby in as far as the County Executive is concerned, this legislation was being implemented only that in the case of appointments, the women were apportioned a third whereas the two-thirds were given to men more so in the appointments by the Governor. Literature shows that indeed quota provisions produce a glass ceiling by preventing women from being elected and nominated beyond the quota threshold (Dahlerup and Freidenvall, 2010; Krook, 2013).

This is as captured in the excerpt below from one of the participants:

But according to me, I think it is unfair. Yes, although we treat it as fairness but I still feel there is unfairness because of the perspective that we have as Kenyans that the a third is meant for women. Why can't we say that the a third is meant for men and in any case if we cannot be able to treat this fairness well why then can't we say 50/50. Can we apportion it half way? Let the 50 be for women and the 50 be for men so we can say we are being equal. Why can't we be given that 50 percent as women, maybe this country could be rated higher than what it is. (COEM).

Implementation in the County Assembly was as follows: The Assemblies received the lists of nominated MCAs from IEBC at least one month after the elections. From there on, the Speaker and the Clerk would oversee the running of the County Assembly Service Board. The County Assembly Service Board would then hire the staff based at the Assembly and follow the gender quota threshold. The Independent Electoral and Boundaries Commission requires that each Political Party that is participating in the Elections submits the following Party Lists:

Box 1: Summary of Party Lists submitted to IEBC before Elections

- The National Assembly Party List that constitutes of twelve (12) nominees.
- The Senate Party List for Women which consists of sixteen (16) women nominees.
- The Senate Party List for Youth which is composed of two (2) youth nominees.
- The Senate Party List for Persons with Disability which consists of two (2) nominees with disability.
- The County Assembly Party List for the Marginalized Group which consists of eight (8) nominees from the Marginalized groups for each County. This list should contain at least two PWDs, two youth and two people from Marginalized Communities.
- The County Assembly Party List for Gender which constitutes nominees equivalent to the total number of wards in each County.

Source: IEBC, 2017.

Other than the Senate Party list for Women, all the other lists are expected to alternate between women and men in order of priority. Of relevance to this study was the County Assembly Party List for Gender and the one for Marginalized Groups. One of the Counties had twenty (20) wards whereas the other one had thirty (30). Therefore, for the Gender Party List or what is commonly referred to as the Gender Top Up List, each party participating in the elections at the County Level had to produce a list of 20 and 30 nominees respectively. This list was supposed to have qualified nominees from each ward and it would alternate between men and women candidates as indicated earlier (IEBC, 2017)). For example, Nairobi has the largest number of wards and therefore the nomination list was supposed to have 85 names while Lamu with the least wards would have 10. Sing'oei quoted in Steytler and Ghai (2015) alludes to the fact that because of having to use the gender top-up mechanism to fill up for the differences, the numbers of the MCAs have often become large.

A month after the elections, the seats are awarded depending on proportional representation using the formula below:

The number of seats won by a political party divided by total number of seats in the House and multiplied by seats available for allocation in the House

Source: IEBC, 2017

The County Assembly has several sectoral and select committees. Sectoral committees are line committees representing the different line departments. This means that there were corresponding committees for each department. For example, if there was a department of roads, then there will be a Committee of Transport, Roads and Public Works. For the Department of Sports, Youth Affairs, Gender and Social Services, there was a corresponding committee in the County Assembly. The same applies for Department of Education and Vocational Training, Trade, Tourism and Industry, Public Service and Administration amongst others. In one of the Counties there were 9 Departments therefore 9 Sectoral Committees.

In addition, there were also other committees referred to as Select committees. These are committees that do not have direct mandate on a specific department but instead oversee overarching issues. These include: the House Business Committee, Selection Committee, Appointments Committee, Budget and Appropriation Committee,

Delegated Legislation Committee and the Implementation Committee. The MCAs had to apply based on their interest and expertise then the Selection Committee would ensure that there is both gender and regional balance in each committee. However, one was given an opportunity to choose a maximum of two sectoral committees and two select committees. If the first choice was full then one would get the second choice. This is as captured in the quotations below.

Which one did you prioritize? If you prioritized roads, then that should be your number one. Then there is this regional thing or issue, where you are coming from because our County is made up of 4 regions. Marakwet East and West and Keiyo North and South. So these are some of the factors they consider. (JAE).

Also important to note is that the Honorable Members are also encouraged to give a proposal based on your area of specialization before you are there. There could be teacher, who is now an Honorable Member; there could be a doctor who is now an Honorable Member. So when you are a teacher, you are more likely to be in the Education Committee. And whoever was maybe practicing medicine, will lead or will be a member of a committee being a doctor. Or such kinds of skills will also be preferred. (KAE)

In this study, two Focus Group Discussions (FGDs) with MCAs in the committee for Sports, Youth Affairs, Gender and Social Services were done. They discussed the bills and motions that they had been able to pass since getting to office. In one of the Counties, there was a bill on a revolving fund for women, youth and people with disabilities and a motion on motivating the boy child. In the other County, there was a motion on tools that could be used in Monitoring and Evaluation during public participation, a motion on gender based violence, a motion on increasing Early Childhood Development Education (ECDE) schools and teachers, a motion urging the County Governor to contract pro bono lawyers to deal with cases of abuse and injustice in the County and a motion on the need to make one of the hospital's a one stop shop for victims of gender violence where one can get medical services, counseling, and justice in the court amongst others.

Based on the discussion above, it can be observed that in both Counties, there was evidence of gender sensitive legislation being passed in the Assembly mainly by the women who had benefitted from the gender quota threshold. In one of the Counties, only one woman had been elected to the County Assembly whereas in the other County, there was none. This can be verified by the fact that in the 2017 elections, 96 women were elected to serve as MCAs whereas 650 were nominated countrywide. This represents 13 and 87 percent of the female MCAs respectively. (A Gender Analysis of the 2017 Kenya General Elections). In the year 2013, 84 women MCAs were elected and this shows that in 2017 there was an increase by 14.29 percent (CMD-Kenya 2018).

There were 12 Counties in the 2017 elections that did not elect female MCAs. They included: Elgeyo-Marakwet, Kwale, Kajiado, Garissa, Wajir, Embu, Isiolo, Mandera, West Pokot, Kirinyaga, Samburu and Narok (A Gender Analysis of the 2017 Kenya General Elections).

In the County Public Service Boards of both Counties, another similarity was that people prefer men for certain posts as opposed to women e.g in posts such as Director of Health Services and Ward Administrators. In cases where women Ward Administrators had qualified, the people complained and said that they preferred a man

because they felt that a woman did not have what it takes for that position. The following passage captures the voice of the participants:

I can say depending on some of the areas, you find that due to the nature of the occupation, people qualified for some areas are skewed to one gender. For example, in health, initially although it's now changing most of the officers there were ladies. So, you find that a big number of those who are qualified, because that is the minimum entry level, are of one gender. Because of the nature of that occupation, meeting the two thirds is a challenge. We also experience that during the ECD teacher's recruitment. You find that out of almost 900 we could only get less than 7 men. So sometimes due to the nature of the occupation, it's a challenge meeting the threshold. I can say it has been moderately achieved. (JOM).

In a nutshell, it was observed that although the Public Service Board tried to meet the two thirds gender principle, this was coupled with challenges for example when hiring Early Childhood Development (ECD) teachers, nurses, engineers and administrators amongst others. In such cases, the numbers would lean towards one gender. However, they tried as much as possible to ensure that the principle was observed. Kerevel and Atkenson (2015) found that there are stereotypes associated with women candidates however, nonpartisanship and increased religiosity were associated with reduced gender stereotypes. Bouka et al (2019) also found that there are patriarchal perceptions associated with women who get into politics as they are described as "weak".

According to the participants, there were different persons who could be called to accountability for the enforcement of the gender quota legislation in the County. The Governor came first because he/she was responsible for appointing the County Executive Members and these appointments would be done in tandem with Article 197(1) which states that no more than two-thirds of the County Executive and County Assembly shall be of the same gender. The County Secretaries and the CEC members were also responsible for making appointments for different committees. The next organ that was responsible in the County is the County Public Service Board that recruits all the other employees of the County in a competitive manner but is guided by the two-thirds gender principle. However, the County Public Service board is directly accountable to the County Assembly. At the end of every year, the Board prepares an annual report and presents to the County Assembly. The County Assembly Board is responsible for recruitment of staff in the County Assembly.

At the national level, the president could be held accountable because he appoints Cabinet Secretaries, Principal Secretaries, Parastatal Heads and Ambassadors amongst others. The Attorney General could also be taken to task because he is the President's adviser. In addition, Parliament was also responsible because It was the parliamentarians who come up with the necessary legislation. For example, Articles 196(3) and 197 (2a) state as follows respectively:

Parliament shall enact legislation providing for powers, priviledges and immunities of County Assemblies, their committees and members (p217).

Parliament shall enact legislation to-

Ensure that the community and cultural diversity of a County is reflected in its County Assembly and County Executive Committee (p217).

Therefore, Parliament played a pivotal role in ensuring that the right legislation is in place in accordance to the Constitution, for effective operation of the County Assemblies and County Executives. Other related Articles in relation to the role of

Parliament in coming up with legislation in relation to County Governments include: Articles 178(3), 181(2), 190 (1),(3), 194(2) and 200(1).

Lastly, the Judiciary is also a very important organ when it comes to accountability because it received cases brought forth on the gender quota threshold and gave judgement on the same. There are several cases that have been taken to court relating to the two third gender principle. Others have been concluded whereas others are still in court. It came out clearly that there is no significant judgement that has been made so far in relation to this legislation apart from Judge Mativo's ruling. Prior to the ruling by Judge John Mativo, the Kenya National Commission on Human Rights (KNCHR) had presented a petition to court to have Parliament declared unconstitutional for not implementing the gender quota by 2016 which was the deadline earlier extended from 2015. Justice Mativo thereby ruled that "if Parliament fails to enact the two-thirds gender rule, any Kenyan shall be at liberty to petition Chief Justice David Maraga to advise the President to dissolve it" (petition 371 of 2016). So far, although several bills have been brought to Parliament for discussion in relation to this, this has been weakened by the fact that in most cases there was a quorum hitch thereby causing the Chief Justice to advise the president to dissolve parliament for not coming up with the necessary legislation for the implementation of the two-thirds gender principle recently (Kenya Law, 2020)

In a nutshell, at the different levels of government, different people can be called to accountability. However, there is a culture of impunity in Kenya. Indeed, as a nation, in the past we have come up with so many policies but more often than not, implementation is not carried out as expected. Although the legislation is gender neutral, the reality on the ground is such that women have been disadvantaged.

It was also evident from this research that there were no other formal or informal rules to adhere to except considerations for marginalized groups, people living with disabilities and the need to integrate other ethnic groups.

On the enforcement mechanisms, the researchers were informed that audits are carried out every year by both the Kenya National Audit office (KENAO) and the National Gender and Equality Commission. The Kenya National Audit Office carried out audits on all aspects such as finances in terms of the development vis a vis recurrent expenditure, recruitment based on whether it met the two-thirds gender principle, ethnic balance, inclusion of the disabled and marginalized groups and procurement amongst others. On this issue, the participants were in agreement as presented in the excerpts below:

Yes we have audits done by KENAO i.e. the Kenya National Audit Office. You see they audit based on the provisions of the law. Whether it is financial, if you are doing recruitments, if its procurement, it is against the backdrop of a legislation. Now, they are many. One is Kenya National Audit Office which is the statutory, the audit which is required by law and then we have the National Gender and Equality Commission. They do carry out surveys from time to time. (BOM)

On recommendations, firstly, the Governors should set a good example for all by not maintaining the status quo but exceeding the a third for women so that other appointing officers will follow suit. Lastly, there is need for sensitization on the gender agenda at the grassroots level so that people can appreciate the need to bring both men and women on board in as far as governance is concerned.

In conclusion, it can be observed that gender quotas work differently in different contexts. Perceptions on the same differ across different countries even though there are similarities in some incidences. In the case of Kenya, gender quotas have been implemented in the County Governments well although the perception is that the two thirds is for the men whereas the a third is for the women. As Kenya continues with the debate on the Building Bridges Initiative that seeks to amend the Constitution, and expand further the opportunities for women in governance amongst other proposals, it is yet to become clear whether the constitution will be reviewed and whether opportunities that lean more towards the “gander” will be extended to the “goose”.

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