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ABSTRACT

The phenomenon of women’s underrepresentation in institutions of governance is a global one, though more dominant in the global south. This article examines whether law reforms on citizen participation in governance structures can be used as tools to right this wrong, and as pathways to socio-political development. With focus on Kenya, it specifically focusses on legislation that calls for not only descriptive and but also substantive gender representation for purposes of meaningful engagement to counter the underrepresentation of women.

The issues addressed are outlined in three sections. The first section argues that gender stereotyping, male resistance to women’s participation, limited access to resources, and male dominated political structures have significantly contributed to underrepresentation and/or limited participation by women in political processes.

The second section explores enactment of laws as tools of empowerment in the face of counteractive socio-cultural dynamics. Using Kenya’s Maasai\(^1\) as a case study, this section highlights the impact of the oversight on conflicting interests in the achievement of socio-political development as envisioned by the gender equality laws. This is achieved through the analysis of effective participation principles and how they are applied in the context of Maasai communities.

Finally, this article will draw on the preceding sections and case study to demonstrate that transformative laws rely on the acknowledgment of existing power structures in communities, and in finding ways of managing interest groups and navigating the shift of power from a minority for the benefit of the majority. This is done using preliminary findings from the author’s ongoing research on Participation, Power and Cultural Politics of Space among the Maasai in Kenya.

\(^1\) The Maasai are an ideal case study for Kenya as they are a good example of a patriarchal community.
INTRODUCTION: GENDER AND THE GENDER EQUALITY AGENDA

As a concept, gender varies across cultures. It therefore is a construct of the observer and subject to changes with time. Biologically, identity is linked to brain development and hormones, while socio-cultural models view gender as a “complex internalization of cultural systems of meaning and subject to variation across cultures and historical periods” (Newman, 2002:353). Such differences and a lack of a universally agreeable definition of the gender concept play out under considerations for nature versus nurture. Consequently, gender is characterised by a fluidity in understanding and operation among different subjects. For purposes of this study, gender takes on the socio-cultural dimension as described by Karen Beckwith:

The concept of gender emerges from the stereotypes about male and female behaviour; from characteristics and behaviours conventionally associated with women and men; from normative assumptions about appropriate behaviours of men and women; from assumptions about biological difference; and from social structures of power and difference (Beckwith 2010:160).

These assumptions signify differences in gender relationships within the wider socio-economic and political environments. Like all social relations, Kabeer (2005) expounds, gender relations embody ideas, values and identities, and assign authority, agency and the power to make decisions. This introduces imbalances in gender relationships, especially in the face of changes in the socio-economic space. Addressing these imbalances therefore calls for an integrated approach to the intersectionality of gender and other inequalities – both the deeply institutionalised and the context specific – so as to effectively address gender inequality.

The movement for gender equality is a history of the changing relationship between men and women. In Africa, struggles and resistance to patriarchy happened concurrently with the opposition to colonialism. Women were part of the fight for liberation but did not receive

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equal regard in post-colonial discussions and negotiations for the formation of democratic states. The gender struggles in this context were subordinated by the struggles against colonialism and racism. Presently, the feminist movement in Africa finds itself a construct of local, national and transnational agendas.

The Universal Declaration of Human Rights in 1948 provided international legal recognition for gender equality. Equity and equality have been adopted as strategies to promote fairness, with the former being focused on equal opportunities and resources, and the latter concerned with equal treatment of men and women. Gender equality and women empowerment was the third of eight Millennium Development Goals (MDGs), with increasing the proportion of seats held by women in national parliaments as one of its targets. Post 2015, it remains the fifth of seventeen Sustainable Development Goals (SDGs), with two of its targets relating to the involvement of women in politics and public affairs. Target 5.5 is to ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life and, Target 5c is to adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels. That this agenda retains priority in development debate hundreds of years after the gender equality discourse begun, is a clear indication of the importance it holds. It also demonstrates that despite the progress realised so far, much more is required for the goal to be achieved.

It has been widely stated that gender equity, especially in politics and policy making, is crucial for economic growth and genuine democracy, and redressing gender inequality is important in paving the way for women’s increased involvement in public office (Goetz, 1998)⁵. Through affirmative action, gender equality is defined as “a deliberate move to reforming or eliminating past and present discrimination using a set of public policies and initiatives designed to help on the basis of colour, creed, geographical location, race, origin and gender among others” (WiLDAF, 2010 in Kaimenyi et al., 2013)⁶. As Lovedunski and Norris (2003)⁷ report, women's presence as elected representatives legitimizes their concerns

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and promises a wider recognition of their interests. However, women remain underrepresented in governance structures globally. The table below shows the number of women in national parliaments as of 1st June 2016.

**Table 1: Women in National Parliaments**

<table>
<thead>
<tr>
<th>REGIONAL AVERAGES</th>
<th>Single House or lower House</th>
<th>Upper House or Senate</th>
<th>Both Houses combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nordic countries</td>
<td>41.1%</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Americas</td>
<td>27.7%</td>
<td>27.0%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Europe - OSCE member countries including Nordic countries</td>
<td>25.8%</td>
<td>24.7%</td>
<td>25.6%</td>
</tr>
<tr>
<td>Europe - OSCE member countries excluding Nordic countries</td>
<td>24.3%</td>
<td>24.7%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>23.1%</td>
<td>21.9%</td>
<td>22.9%</td>
</tr>
<tr>
<td>Asia</td>
<td>19.2%</td>
<td>15.1%</td>
<td>18.8%</td>
</tr>
<tr>
<td>Arab States</td>
<td>18.4%</td>
<td>12.1%</td>
<td>17.5%</td>
</tr>
<tr>
<td>Pacific</td>
<td>13.5%</td>
<td>36.0%</td>
<td>16.0%</td>
</tr>
</tbody>
</table>

Source: [http://www.ipu.org/wmn-e/world.htm](http://www.ipu.org/wmn-e/world.htm)

Except for the Nordic countries, women representation in global politics remains at less than 30%. This, Kabeer (2005) explains, is not so much a result of conscious discrimination, but due to various forms of bias in civil society institutions and the political sphere whose operations exclude women. In Africa, history shows that the images and ideologies the societies have of women's place render them passive and invisible (O’Barr, 1975)\(^8\). 50 years after this observation was made, it would seem that nothing much has changed. Referring to the work of Paul Spencer, Hodgson observes that amongst the Maasai community for instance, women are still considered men’s possessions. Spencer describes Maasai women as

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“passive bystanders, commodities owned by men, with little power in the face of the patriarchal principles that structure Maasai social organization” (Hodgson 2005:350). It therefore follows that beyond voting exercises, women’s participation in politics remains low, a pattern that is repeated in many African contexts.

Noticeably, there is a global trend towards constitutional and legislative amendments in order to increase the percentage of women in political party representations in the last decade. In 2005 alone, more than 40 countries introduced electoral quotas by amending constitutions or introducing different types of legislation. This, Krook (2008) points out, can be accredited to the realisation by states that incorporating women in public life through political institutions is strategic for improving their socio-economic well-being. Post-colonial African states have however been accused of focusing on the rhetoric of women empowerment, gender equality and mainstreaming as a political tool. There are accusations for the lack of honest commitment to gender equality, leading to the situation where very few African states can report any tangible success on the subject.

In Kenya, Significant strides in achieving gender equality in the political realm were made in the 1990s, through aggressive participation by women in national politics after the introduction of multi-party politics (Nzomo, 1997). At present there is a record high of 68 women out of 290 positions in the national assembly. This is reasonable progress considering that there was only one woman in parliament in 1990.

A study on the effects of a new political structure on the position of Kenyan women in the political economy is therefore timely. In the following sections, this paper explores participation within Kenya’s devolution context, as a voice platform and the promotion of active agency among Maasai women. It investigates engagement mechanisms in designing, planning and executing development efforts within the new governance structure. This is informed by an assessment of the political realities of localised understanding and meanings

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10 As reported by Drude Dahlerup for the International Institute for Democracy and Electoral Assistance (http://www.idea.int/publications/wip2/upload/4_Increasing_Women’s_Political_Representation.pdf).


of gender roles and active agency among the Maasai. It investigates the relevance of Kenya’s new Constitutional provision on participation as a pathway to increased and improved development agency for Maasai women. This is done by identifying factors that have contributed to the increased marginalisation of Maasai women in Kenya’s public/political spaces, and examining current engagement processes of Maasai women in decision making within the new devolution structure.

**POLITRICKS OF GENDER EQUALITY IN KENYA**

Kenya is actively engaged in the gender equality and empowerment discourse. Kenyans, a slight majority of whom are women\(^\text{13}\), overwhelmingly voted for a new Constitution in 2010. A transformative feature of the Constitution\(^\text{14}\) was the establishment of the Kenya National Human Rights and Equality Commission under Article 59. The commission has the mandate to promote gender equality and equity, as well as coordinating and facilitating gender mainstreaming in national development. Pursuant to Article 59, the National Gender Equality Commission was established by an act of parliament in 2011, with the promotion of gender equality and freedom from discrimination as its core objectives.

Under Article 97(b) of the Constitution, the descriptive representation of women was increased through the creation of the ‘Women Representative’ position in all 47 Counties. Minority and Marginalised Groups are given special focus as provided for in Article 56, while Article 81(b), the two thirds gender rule, stipulates that no more than two thirds of any elective public body representatives shall be of the same gender. Substantive representation is mainly guided by provisions in Parts VIII and IX of the County Governments Act No. 17 of 2012, which set out guidelines for Citizen Participation and Public Communication and Access to Information respectively.

All these aspects of Equality and freedom from discrimination are a fundamental right in accordance with Kenya’s Bill of Rights as laid out in Chapter Four of the new Constitution. Kenya’s Cabinet Secretary in the Ministry of Public Service, Youth and Gender Affairs, Ms Sicily Kariuki, clarifies that;

\(^{13}\) 50.1% according to the United Nations Department of Economic and Social Affairs: Population Division (http://countrymeters.info/en/Kenya).

The Bill calls for recognition and protection of human rights and fundamental freedoms in order to preserve the dignity of individuals and communities and to promote social justice and the realisation of the full potential of all human beings. Article 27 (3) gives women and men the right to equal treatment, opportunities in political, economic, cultural and social spheres while part (4) provides against State discrimination of whatever form. The State is compelled in part (8) to 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” and emphasised in article 81: “not more than two-thirds of the members of elective public bodies shall be of the same gender” (Kariuki, 2016)\(^\text{15}\).

Franceschi et al. (2015)\(^\text{16}\) expound that the Constitution of Kenya 2010 introduces national values and principles of governance, which include sharing and devolution of power, the rule of law, democracy and participation of the people, good governance, integrity, transparency and accountability, and sustainable development among others. Under the banner of public participation as laid out in Chapter 11 of the Constitution, the newly devolved governance structure is aimed at increasing the percentage of women in public life through political institutions and especially in legislature and public administration.

The overall implementation of the Constitution however remains marred by differing interpretations, stemming from various cases of ‘uncertainty of language’. This has become a major cause of the slow down for the popular two-thirds gender rule, with the Supreme Court’s ruling on its progressive realisation by 27\(^\text{th}\) August 2016 remaining unfulfilled\(^\text{17}\).

\(^{15}\) S. Kariuki, ‘Implementing two-thirds gender rule is a gain for society: Equality and freedom from discrimination is a fundamental right’ Available at <http://www.nation.co.ke/oped/Opinion/Implementing-two-thirds-gender-rule-is-a-gain-for-society/-/440808/3202226/-/jpl3ij/-/index.html> Accessed 10/06/2016.


During the March 2013 elections, only 16 women were elected as Members of Parliament (290 positions) with none who vied for the governor or senator positions winning (Ndeta, 2013)\(^\text{18}\). As a result, Migiro (2013)\(^\text{19}\) notes, Kenya has the lowest number of women parliamentary representatives at 19% compared with at least 30% in all its East African neighbours: Rwanda has 56%, Tanzania 36% and Uganda 35%. This is however an improvement from the previous 9.8% representation, and is attributable to the 47 Women Representatives’ positions (Maina, 2013)\(^\text{20}\). As aforementioned, the 47 positions are determined by Article 97(b) of the Constitution.

Though aimed at increasing the number of Women Representatives, this provision has created a situation whereby women limit themselves to these positions as they are regarded to be the only guaranteed winning spots. In exploring whether Kenya’s new constitution was helping or hindering women’s political participation, a respondent is quoted by Leigh (2012)\(^\text{21}\) as saying:

> Women make up more than 51% of Kenya’s population, if they wanted to elect a female president they could, but they chose men; if you want to empower women focus on educating them. Quotas lead to misunderstanding and a skewed system.

This can be argued to be the result of the male dominated nature of Kenyan politics which also requires a lot of financial resources and is ruled by a male dominated patronage (Brownsell & Gatabaki, 2013)\(^\text{22}\). These conditions limit the capacity for women, and especially those with limited financial resources, to fully engage in party politics and legislation in general. Media outlets, which could essentially provide alternative support channels for women to be politically engaged, can become barriers.


According to Steel et al. (2015), the media is particularly harsh on women Members of Parliament, accusing them of everything from incompetence to even promiscuity. Brownsell and Gatabaki (2013) posit that these threats and questions on personal issues such as their marital status and sexuality demotivate women from political engagement. Ultimately, this system of male dominance, patronage and the financial resources required for active participation in politics has created a barrier for a majority of women. Kenyan politics remains a male domain.

It is not surprising therefore, that five years after the Constitution’s promulgation, less than 19% of the National Assembly and a mere 27% of the Senate comprises of women, a clear indication that the country is far from realising the gender equality principle (Steel et al, 2015). An amendment bill presented to parliament to make it easier to fulfil the two-thirds gender rule failed to muster two thirds of the National Assembly’s vote. In April 27th 2016, it garnered 195 votes, with 28 MPs voting against it, and at least 24 parliamentarians refusing to vote or indicate their abstinence. Upon realising that the numbers did not meet the threshold to get the bill subjected to a second vote, the speaker of the National Assembly invoked standing order number 62 (2):

Whenever a Bill or a special Motion the passage of which requires a special majority in the Assembly fails to obtain the required majority and the vote results in a majority of the “Ayes” but the “Noes” have not numbered at least one third of all the Members of the Assembly, the Speaker may, direct that a further vote be taken on the particular question, and the further vote shall be taken within five sitting days from the day the first vote was taken (National Assembly, 2013).

A week later, on May 4th 2016, the bill was once again rejected. This occurred despite extensive lobbying by the Kenya Women Parliamentarians Association, civil society organisations and calls for support by the executive and opposition leaders.

In this instance, Kenya’s male dominated assembly evidenced that patriarchal attitudes continue to limit women’s political space. This validates the assertions by Nzomo (1997) that

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gender stereotypes, male resistance to women’s participation, limited resources and political structures and processes have contributed to the under-representation of women in decision making processes and positions.

Maina (2013) laments that this continues to prevail despite the massive amounts of funding that have gone into capacity building, gender mainstreaming, gender activism, mobilizing and such other initiatives. These imply that a lot of work is being done at the grassroots level to get women participating in politics in a meaningful way, but with little success. Brownsell and Gatabaki (2013) provide insight on this, by highlighting the case of civic education on the new Constitution whereby the same was not provided in vernacular languages but English and Kiswahili - the national languages. This excluded a large number of women – mostly rural, not conversant in either language and in some circumstances, illiterate, further reinforcing male dominance in politics.

**GENDER POLITICS AMONG THE MAASAI**

According to statistics by the New World Encyclopedia (2015)\(^\text{25}\), the Maasai community makes up 841,622 of Kenya’s 44.35 Million population. Though considerably small in comparison, the community plays a big role in the embodiment of traditions in a largely modernised country. They also tend to inhabit areas around national parks, making them important actors in the critical tourism sector of the country’s economy. Their minority status notwithstanding, they ought to be engaged in the design and implementation of citizen-engagement processes.

As Omwami (2011)\(^\text{26}\) however notes, patriarchal considerations far outweigh any interventions that would change the relational space in male dominated environments such as the Maasai. Marginalisation of women thus becomes inevitable, frustrating efforts to improve women’s position within the political realm (Ibid, 2011). Among the Maasai, gendered separation has resulted in women’s absence from political spheres of public meetings and

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delegations, resulting in a lack of involvement in politics and public affairs (Hodgson, 1999)\(^\text{27}\).

In examining Maasai women’s experiences in the complexity of literacy, Taeko (2014)\(^\text{28}\) notes that women's voices are heard and have an impact on the implementation of projects within their created space of women groups, but have almost zero effect on the community’s decision-making processes. This, he explains, is because they rarely attend political initiatives to challenge discrimination and prejudice. Notably, there is only one Maasai woman elected to parliament in Kenya today - Mrs. Peris Tobiko. The dominantly Maasai counties of Kajiado and Narok have a total of 11 parliamentary seats. She is also the first Maasai female Member of Parliament in the country’s history. To achieve this, she had to overcome threats, alienation and curses from Maasai elders for ‘trying to be a man’ (Ndonga, 2013)\(^\text{29}\).

Customary rules of civic engagement and separation of power among the Maasai can be traced to the incorporation of subjects into the state system under colonial administration. The pre-existing complementary, interconnected responsibilities of men and women were divided into “spatially separated, hierarchically gendered domains of ‘domestic' and 'public/political' and the consolidation of male control over cattle through the commodification of livestock, monetization of the Maasai economy and targeting of men for development interventions” (Hodgson 1999:43). The incorporation reinforced male political authority and economic control by expanding the bases for political power and introducing new forms of property relations.

Hodgson reiterates that this led to women's access to, and participation in political decision-making processes being curtailed, thus their relegation to the domestic concerns of home and homestead (Ibid, 1999). This intersection of favoured position of economic interests and patriarchal influences has perpetuated the disadvantaged socio-political and economic status of Maasai women.


Maasai women’s freedoms of expression and socio-economic development have been affected by a lack of direct access to resources, limiting their capacity for development. Colonialism replaced the multifaceted property systems with a homogenous system of private property among the Maasai (Hodgson, 2001). This undermined women's property rights and ignored their pre-existing role in public political decisions, as ownership rights shifted from being communal to private, and under male authority. It is on this premise that Paul Spencer’s ethnographic study of the Maasai, describes the women as powerless and passive bystanders in the Maasai social organisation structure.

Characteristic of this patriarchal set-up, considerations for age and paternity pay a big role in establishing power relations. At the core of it, women are supposed to respect men and do their best to avoid confrontations in both private and public spheres. Defiance invites physical abuse in the domestic front and shunning or even curses in the public space. Respondents in the author’s ongoing study reported that widespread fear of curses from men pervades and is believed to affect future generations. With widespread Christianity, most do not believe in the power of the curses but a woman will still avoid contradicting and confronting men publicly as this would taint her image and soil her family name. This phenomenon limits women’s freedom to participate and contribute to public affairs, choosing instead to complain in the safe space of women group meetings, with the hope that their counter arguments will reach the decision makers through the groups’ chairladies.

Ageism and male dominance also play a big role in denying women justice. Women are expected to respect all adult men, even if they are younger than the women. It is therefore very common that cases reported to the Chief fall through the cracks, especially if they involve injustices carried out by men. As one respondent narrated:

In places like this, the chief is a Maasai as our men. The chief is head in his house and carries this attitude to the office and so he will side with the man…You cannot even go reporting a man no matter what he does. No one will listen to you unless you find one (a chief) who is not a Maasai or if you report the matter to a higher office. Otherwise no one here pays any attention. (Female Respondent, N. Enkare).

Cases of unfair sale of land and livestock, and Female Genital Mutilation (FGM) and early child marriages are therefore not properly dealt with. Chiefs opt to settle such matters with

male leaders, obstructing justice. Lack of access to higher authority leaves women prone to injustices orchestrated and perpetrated by the men. Citing the case of an old man who married a child, female respondents narrated that he was arrested and the child was sent back home and back to school.

He was a really old man with adult children, but he was only held for a few hours and later released. He can speak to the chief and explain that they are of the same age set and stuff like that and next thing you know, he has been released (Female Respondent, Ngong).

A prominent case on this matter is the death of Christine Kapaaya from Rombo in Loitokitok: After taking intoxicated tea during the mourning period at a neighbour’s home, she was accosted and raped by nine men, thrown into a ditch and later died on arrival at the hospital. The council of elders decided that her family would be given 49 cows in compensation, a solution her family refused. They reported the matter to the Chief and local police but got no alternative assistance and it was only after the story got media attention that the government stepped in to investigate the case31. It is yet to be solved.

Christine’s case highlights the little worth women hold in the eyes of men within the community. They are considered the men’s property, granting them no power or authority to make decisions or control resources. Many women have fallen victim to domestic violence from engaging in activities considered men’s roles.

There is a strong correlation between educational attainments, employability and income generation. Maasai women have low literacy levels, with as much as 26.8% of them being illiterate, compared to men’s 16.1% (CBS, 2004)32. This highly undermines their capacities in the hierarchical socio-economic structures as literacy promotes self-reliance, problem solving and is a tool for critiquing man-made social structures (Taeko, 2014). This view is supported by Kabeer (2005) in her assertion that changes in women’s cognitive ability not only changes power relations in the household, but most importantly enables women to question, reflect and act in ways that promote the gaining of more information and ideas on how to improve their lives.

31 NTV (http://ntv.nation.co.ke/news/national/-/2725528/3173694/-/km0931z/-/index.html).

Women’s issues are multi-dimensional; socio-cultural, traditional and economic factors influencing their status are interlinked. Articulation of their needs is therefore important so as to address the same. Taeko (2014) reports that Maasai women tend to remain silent due to concerns about their security in the community. Parsimei (2013) reiterates this assertion, noting that male family heads and other male relatives can become oppressors and exploiters within Maasai families, leading to an inferiority complex in most women. Maasai women thus become dormant on matters relating to public engagement, with limited critical thinking and acting upon solving community problems leaving them increasingly unaware of social and political injustices (Ibid, 2013). These conditions exacerbate the socio-political and economic underdevelopment of Maasai women.

The combination of a patriarchal social organisation and illiteracy have promoted a culture where Maasai women remain at the lower position in power structures, with very limited chances of being uplifted to an equal status with men. The Constitution of Kenya 2010 therefore presents itself as a fitting instrument to right this injustice.

**DECENTRALISATION, PARTICIPATION AND EMPOWERMENT**

Decentralisation shifts power and with it, resources. Consequently, political variables are at the centre of its implementation, making it impossible to ignore specific socio-political realities. Crook (2003) points out that shaping the decentralisation structure and the extent of its acceptability especially for the ruling elite is very much determined by the politics of ethno-regional conflicts. Lowndes (2005) explains that local governance is a matrix of rule sets that reflect power relationships existing in historical and spatial contexts. This, she notes, influences the interpretation, adaptation and implementation of rules as influenced by power relations and positions of authority.

Decentralisation efforts have taken place in many African countries, but as Crook argues, despite the enhanced participation, there is little to show in consequences of the same as far as pro-citizens policymaking is concerned. Using the case of Ghana, he illustrates that

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35 V. Lowndes, *Something old, something new, something borrowed...How institutions change (and stay the same) in local governance*, 26 Policy Studies, No.3-4 (2005), 291-309.
“participation is a necessary but not sufficient condition for greater responsiveness”. (Crook, 2003:79). This, he notes, is because responsiveness does not automatically follow from increased participation or representation of the marginalised. Rather, it calls for effectiveness, through accountability and changes in institutional behavior among government bureaucracies.

This transformation demands for dedicated efforts to strengthening and broadening accountability mechanisms on both local and national levels. This is echoed by Wunsch (2001)\textsuperscript{36} in his argument that many decentralisation efforts in Africa are experiencing problems which often grow from difficulties in translating initiatives for reform into workable processes and operations at the local level. This, he explains, is due to the combined reluctance of central governments to relinquish authority in key areas and the complexity in redesigning organisational structures to support decentralisation (Ibid, 2001). The presence of actors ‘in the centre’ trying to retain authority and resources therefore becomes a great barrier to effective decentralisation.

The main argument for decentralisation remains that it brings the government closer to the people, promoting political participation by the citizens and ultimately, responsive policy making by the government (Crook, 2003). John Gaventa explains that participation has in itself become a fundamental human and citizenship right, and a prerequisite for making other rights claims (Gaventa 2002:3)\textsuperscript{37}.

Participation emphasizes a bottom-up approach focused on locally defined priorities and perspectives for the generation of knowledge for action (Cornwall & Jewkes, 1995)\textsuperscript{38}. Used flexibly, Holland & Blackburn (1998)\textsuperscript{39} argue, it allows for the involvement of different community members in the articulation of complex and non-quantifiable cause-and-effect processes. This legitimizes their knowledge and redefines expertise in ways that provide spaces for the experiences of those affected by social policies. Their involvement provides


\textsuperscript{38} A. Cornwall, and R. Jewkes, What is participatory research?, 41 Social Science and Medicine, No.12 (1995), 1667 – 1676.

room for the emergence of alternative interpretations of needs and therefore alternative policy solutions (Cornwall & Gaventa, 2000).  

Properly executed therefore, decentralisation promotes good governance characterised by power sharing in decision making, providing a process for developing the common good through civic engagement. As Bingham et al (2005:548) argue, it is crucially about “the processes that public managers, citizens, and stakeholders use in determining what shape policy, its implementation, and its enforcement will take”. Furthermore, participation through decentralisation provides a platform for the empowerment of the otherwise marginalised. Notably key for this study, is the assertion that improvements in self-identity and worth can help break down customs of inequality and discrimination, and that this can be achieved through local level political participation (Johnson, 2001).

With this in motion, participation alone becomes beneficial even though the desired outcomes may not be realised. This argument is supported by evidence from the author’s aforementioned ongoing research on negotiated public spaces among the Maasai where women reported that even though there were no elected female Members of the County Assembly, the position of the Women Representative alone was a source of confidence for increased opportunities for the inclusion of women. The position provides hope that the public space is slowly opening up to women, and that there eventually will be an equal engagement platform.

Chapter 11 of the Constitution of Kenya 2010 spells out the objects and principles of devolved government. This is backed up by the County Government’s Act 17 of 2012. The Act sets the rules of operation under the devolution structure: specifying the coordination and facilitation of public participation in the development of policies and plans and the delivery of services. Part VIII of the Act focuses on participation, with specifications on among others, the Principles of public participation in counties, Citizens right to petition and challenge and Establishment of modalities and platforms for participation.

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The Constitution devolves power from the national government to 47 county governments. The counties have, at their foundation, a village council and village administrators who communicate the citizens’ concerns to ward representatives. The ward representatives report to sub-county administrators who are answerable to the county chief officers. It is the duty of these officers to forward all concerns to the county secretary who then communicates to the county executive – governor and the deputy. This structure provides room for improved citizen participation that was otherwise unavailable under the previous constitution. Figure 1 below shows the current operational and relational structure of decentralisation in Kenya, which evidently has citizen engagement at its core.

**Figure 1: County Governments Organization Structure based on Officers**

The following section discusses findings on the actualisation of the decentralised structure in Figure 1, with particular focus on the bottom three levels. This is done using excerpts from the aforementioned ongoing study by the author, under the working title; ‘Participation, Power and Cultural Politics of Space: The Case of Kenya’s Maasai Women’. The areas of study are Loitokitok and Ngong Sub Counties in Kajiado County and Narok East Sub County in Narok County, all part of the predominantly Maasai South Rift Valley region in Kenya. It explores the application of this structure, within a community socially charged with what can arguably be termed as an unsupportive environment for women’s participation in politics and public affairs.

**EXPECTATIONS VS. REALITY: A QUICK REVIEW**

This section uses the Evaluation Criteria proposed by Rowe and Frewer (2000) to analyse Maasai women’s public participation. Rowe and Frewer (2000) propose the division of the public participation Evaluation Criteria into Acceptance and Process Criteria. In justifying the criteria, they point out that: ‘‘If a procedure is effectively constituted but perceived by the public to be in some sense unfair or undemocratic, then the procedure may fail in alleviating public concerns. On the other hand, if a procedure and its recommendations are accepted by the public but the ultimate decision is attained in an ineffective manner, then its implementation could prove objectively damaging for sponsors and public’’ (Ibid 2000:11). It is therefore imperative that policies, procedures and outcomes are harmonized. The citations herein do not represent a general truth but the perspective of interviewees.

**Acceptance Criteria**

These relate to the effective construction and implementation of a procedure.

**Criterion of representativeness;** public participants should comprise a broadly representative sample of the population of the affected public. As Bingham et al (2005) point out, successful governance calls for processes that include all stakeholders. This way, ownership, implementation and enforcement will follow through. It also legitimizes stakeholder knowledge and redefines expertise in ways that provide spaces for the experiences of those affected by social policies. Respondents however reported that the call

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for attendance to public meetings excludes inhabitants of areas further from administration offices. As one respondent narrates;

They make announcements for development meetings to be held in the administrative central. Further, they do not provide transport for the people coming from remote areas. In the end, it is only those from around town centres that attend these meetings, and they communicate their development needs which might not be representative of the entire population. This process leaves out the common *mwananchi* (citizen) because they need to go to the people at the grassroots and ask them what their needs are, and the people give their proposals. (Female Respondent, Loitokitok).

This poor outreach fails to incorporate the opinions and development needs of a majority of the citizens, contributing to policy formulation that is not relevant for all stakeholders. It also breeds a conducive environment for elite capture due to the dominance of particular voices during meetings. These voices end up being interpreted as the public’s voice, and being a patriarchal set up, they tend to be mostly men.

When a chief calls for a meeting, he already knows who will speak. Even men who might have any contribution, stand no chance especially if one wants to oppose them, they give you no chance. It is the leaders who are dictators. Even in meetings called by the MP, he knows all the speakers. He plans a meeting for Rombo from Nairobi, knowing exactly who will speak. Those who had pressing issues stand no chance; the chief is told who not to give a chance to, as they would ruin the meeting’s plans. So if they can suppress men, what about the women? (Male Respondent, Loitokitok).

Respondents also reported that it is the elite who select women representatives to committees and such other nominated positions, limiting their numbers and controlling their powers. This process leaves little room for them to genuinely address women’s and the general public’s concerns.

In my opinion, women are not being recognised politically; even with the nominations, the women are still powerless in the county assembly. They are sidelined all the time. If the county had 10 men and 10 women, there would be equality. But if there are 15 men and 5 women, it remains unfair (Male Respondent, Narok East).

This dominance rules out any chance for fairness in citizen representation and arguably, the prioritisation of development agendas. Citing the case of India, Kabeer (2005) points to
deliberations where women are merely proxies for husbands or powerful men within their family or caste. In the end, they cannot be genuine representatives of fellow women, or the rest of the public, as the legitimacy of their positions is riddled with tokenism.

**Criterion of independence:** the participation process should be conducted in an independent, unbiased way. One of the biggest issues with participation, Hanna (2000)\(^{44}\) points out, is who controls information and whether the same is trustworthy. Participants in public fora need to be assured of the freedom to air their opinions and that the same will be given due consideration. Doubts in the legitimacy of participants’ efforts discourages commitment, faulting the process and consequently, its outcomes. From the case study, it was reported that pre-set agendas rule out fair input by citizens as they not only lock out genuine concerns, but also threaten the legitimacy of the whole process.

Sometimes you are called for a meeting whose benefits for participation are not evident because when you get there, you don't have a chance to give your opinion as it is dominated by the strong ones...I therefore second what the man has said; it gets to a point where the women, or even us men, opt to stay at home and do our things as going to such meetings bears no fruit because there are those who already have an agenda and a strategy to push it through. So when some of us go, we are nothing more than pictures because everything has been discussed and decided (Male Respondent, Narok East).

This confirms the argument by Cooke and Kothari (2001)\(^{45}\) that tyranny is a real and potential consequence of participatory development, contrary to the empowerment rhetoric. It also ties to the accusative debate on African states’ lack of genuine commitment to the actualisation of public participation and equality.

**Criterion of early involvement:** the public should be involved as early as possible in the process as soon as value judgments become salient. From the study, the channels and timing of communication to the public result in citizens remaining unaware of public meeting agendas. As a result, they show up ill prepared, and/or end up giving opinions that would not be considered due to their mismatch with the government’s agenda or plans.

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The Narok County Budget Officer narrated that ideally, citizens should be notified of upcoming public meetings 21 to 7 days prior, but realistically, this is done three or four days before the main date. Such efforts could be attributable to poor planning and/or execution, but it could also be arguably pre-determined. As Hanna argues, participation can serve as window dressing, lending credibility to the decisions rather than actually helping to construct them (Hanna 2000:399). This reinforces the observation by the Narok County Budget Officer who pointed out that for outcomes from public hearings to be incorporated to the County Integrated Development Plan, they have to match pre-determined functions of the county government. This brings to the fore arguments for a bottom-up approach to participation, to ensure there is a fit between public needs and government interventions. Seeking alternative means of engagement by both the local government and citizens goes a long way in legitimising the participation exercises.

**Criterion of influence:** the output of the procedure should have a genuine impact on policy. As a key argument by proponents of public participation, involvement of all stakeholders – citizens and local governments in this case - is seen to be the most effective way to ensure that policies reflect actual needs of the affected public. By its very nature, Cornwall and Jewkes, (1995) point out; participation emphasizes a bottom-up approach that is focused on locally defined priorities and perspectives for the generation of knowledge for action. Public involvement provides room for the emergence of alternative interpretations of needs and therefore alternative policy solutions (Cornwall and Gaventa, 2000).

This is however not a guaranteed outcome. A female respondent from Rombo Ward in Loitokitok Sub County reported that despite endlessly requesting for better roads, her village continue to get more boreholes. She is therefore surrounded by five water projects, but a poor road that makes transport, trade and medical emergencies a nightmare.

They don’t care about coming to the people, they get information on development needs from a few men with whom they eat and drink. Sometimes they carry out simple projects like drilling boreholes, and find ways to misappropriate funds. We are asking the government to come to the grassroots, we sit together and discuss, and for them to explain the Constitution to the community because we do not know. They only come during the campaign period. Presently, because 2017 is nearing, we are important stakeholders, we have started being invited to meetings (Female Respondent, Loitokitok).
In Ewuaso-Kedong Ward in Ngong Sub County, a male respondent stated that men are in a better position to understand community needs since women are mostly holed up at home taking care of household chores. This reinforces observations by Hodgson (1999) that the Maasai woman’s sphere of influence remains the homestead, while the man deals with public affairs and political matters. In the end, it would seem that formal laws have to contend with informal and cultural dictates of gendered roles.

**Criterion of transparency;** the public should see what is going on and how decisions are being made. This presupposes knowledge on due process and mechanisms to redress any deviations. Respondents however reported on the widespread ignorance on the provisions of the new Constitution. They pointed to the need to bring the Constitution to the people, mainly through translated texts in the local language.

If civic education was to be done through this channel (Maa Radio), many would become aware because now they say there are no women in political positions because this area is dominated by men. Civic education then needs to target women because now many might not even vote as they do not understand the power and relevance of their vote for they are unaware of what is going on. Women listen to the radio a lot these days especially in the evenings. Awareness can be created through Maasai radio (Male Respondent, Narok East).

This, they insisted, would work really well when combined with both government and civil society initiatives on the same.

We would say that we in Nairekia need to have offices such as NGOs so that there is transparency and information sharing on things such as the Constitution, so that we can know who to go to for information. Now we have to go all the way to Narok which is far away and they only visit us when there is a celebration or such other such event. I never heard of any civic education as she says and we say the booklets passing around unofficially. So we need such opportunities here (Female Respondent, N. Enkare).

Most respondents admitted to having voted based on hearsay and the little communicated in churches. Not surprisingly therefore, the women respondents of Nairagie Enkare Ward in Narok East reported that in addition to there not being any female Assistant Chiefs as nominated in Loitokitok and Ngong, there were no female Member of County Assembly
(MCA) nominees either. The men contradicted this by reporting that there are 14 nominated women MCAs, and that the women may be unaware as Narok East was formally part of Narok North, which has a nominated female MCA. It is information gaps such as this that make it difficult for citizens and especially women to understand how devolution works for them, limiting their knowledge on the hows and wheres of demanding for their rights or their application.

Respondents also reported that the flow of information from the county government to the public is unclear, with many becoming knowledgeable on rights, processes and procedures whenever matters that require government intervention arise.

We would say that we in Nairekia need to have offices...so that there is transparency and information sharing on things such as the Constitution, so that we can know who to go to for information. Now we have to go all the way to Narok, which is far away…

I never heard of any civic education as she says…so we need such opportunities here (Female respondent, Narok East).

Respondents pointed out that there is not only a problem with delayed communication, but also that very little or no information is given on the topic(s) of discussion, limiting their active agency. The men are in a somewhat favourabe position because they may get to hear about set agendas from their peers and be better prepared. This is however not possible for most women who have to focus more on household affairs.

One of the main arguments against participation is that open and fair as it might be envisioned, in reality, it is only the voices of the powerful and organised that succeed in private deal-making processes (Innes and Booher, 2004). Within this poor outreach network, the community elders play a big role in transmitting information to the public. The women representatives therein are particularly important in the information chain as they get to reach out to more women through the women groups. They are however reported be present only to fulfil the gender quota and are effectively powerless. Their involvement stops at negotiations, with the men ultimately making the decisions, leaving out women’s input and knowledge on deliberative efforts in arriving at decisions that have an effect on the entire public.

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Process Criteria

These relate to the potential public acceptance of a procedure.

**Criterion of resource accessibility**: access to the appropriate resources to enable participants successfully fulfill their brief. The Kenyan Public Finance Management (PFM) Act of 2012 gives the public the right to participate throughout the entire budget process, which runs from the formulation of the budget, through its implementation, to evaluation of the process. The issue of inadequate resources was prevalent in the discussions with both citizens and economists from Kajiado and Narok Counties. The Narok County Budget Officer reported that his office did not have enough resources to facilitate participatory budgeting as provided for in the PFM Act. Consequently, the County has resorted to carrying out the exercises in 12 locations within the County that are accessible to the officers. This process leaves out many residents who cannot reach these locations, while at the same time making the 12 locations the entire County’s mouthpiece. Additional resources are therefore necessary to rectify this situation and ensure deeper and wider outreach as assured by improved infrastructure.

This situation is also reflected in the position of Women Representative who, unlike the Member of Parliament, has no development fund allocation. The representatives are therefore incapacitated in a political set up that relies heavily on patron-client relationships.

We believe that the Women Rep is the voice of women in parliament…they have no fund allocations to come help women. If I call her, she comes in her capacity as a friend, not as an MP who has the CDF (Constituency Development Fund) kitty. Our MP has a lot of projects, and no one can oppose him, but the Women Rep only has the name and the salary (Female Respondent, Loitokitok).

The Women Representatives are however allowed to administer the Uwezo Fund\(^ {47} \) for women and youth, the distribution of which has been a thorn in the flesh among the citizens. It has been overtaken by an elite who have become guaranteed beneficiaries in every allocation cycle, leaving out many other deserving citizens. This is in addition to its demanding and tedious application process that leaves no room for the uneducated to participate. In responding to women’s complaints on the same, a male respondent asked,

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\(^ {47} \) A programme aimed at enabling women, youth and persons with disability access finances to promote businesses and enterprises at the constituency level ([http://www.uwezo.go.ke/](http://www.uwezo.go.ke/)).
If I fulfil all the requirements, I must then ask why I have not benefitted. If my neighbour has benefitted, then I would say I am happy and comfortable because someone has benefitted. But if we all miss out, then there is a gap that could either be on our side or the administration's so when they give feedback, it can be used to bridge this gap. I have heard a lot of women saying they have really tried but they never benefit from the public fund. So where is the problem? Is it I who did not fulfil all the obligations, or is it that the whole thing is a hoax? (Male Respondent, N. Enkare).

Financial resources do provide a constraint to the successful realisation of public participation. Jütting et al (2005)\(^{48}\) point to the reality that local governments may sometimes lack the human and financial resources to effectively implement decentralisation. From his stocktaking survey on decentralisation in Africa, Ndegwa (2002)\(^{49}\) reports that a lack of capacity at local levels limits decentralisation efforts. This, he posits, is in itself a risk as central governments could use this to justify why decentralisation should not, or cannot take place or should proceed slowly.

**Criterion of task definition:** the nature and scope of the participation task should be clearly defined. This criterion closely relates with that on early involvement whereby the transmission of information in a timely manner greatly influences the role played by participants in a public forum. In the context of this analysis, it also relates to the role public representatives play in their capacity as the voices of the people. The women in committees and therefore in a position to be better informed and well equipped to pass all the necessary information to fellow women however appear incapacitated. Of a nominated female Member of County Assembly and member of the Entonet Ward bursary council, one respondent claimed:

> She just occupies her seat, a Councillor in this area…We don’t even know what she does, the Councillor, we don’t know what development she’s championing; she never reports that a child has received a bursary or we are working on a certain development project (Male Respondent, Loitokitok).

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This provides insight into the application of gender equality within the community, where women are ‘in power without power’. Cooke and Kothari (2001) point to this kind of failure of participation, not from operation or technique, but as a systemic consequence. In supporting this, Connell (2005)\(^{50}\) theorises that principle and practice differ in the acceptance of change by men. The scenario above describes the kind of lip service paid to giving more and responsibility to women in their role as citizens in general and representatives in particular.

**Criterion of structured decision making:** participation exercises should use/provide appropriate mechanisms for structuring and displaying the decision-making process. Establishment and maintenance of horizontal relationships of authority with fellow citizens, Bingham et al (2005) argue, seek ‘power with’ rather than ‘power over’ the citizenry, providing an opportunity for the citizen’s voices to be factored in policy making.

As Figure 1 above illustrates, descriptive representation is to begin at the very bottom level, ensuring that the views of citizens at the grassroots are taken up the command chain. Like all public service positions, there is need for gender balance in the Village Council (VC). Representatives of the VC are commonly referred to as Community Elders with the position of Village Administrator occupied by a Chief, assisted by an Assistant Chief. These two positions were carried forward from the pre 2010 Constitution administration structure. The position of Ward Administrator is held by the Member of County Assembly (MCA). These three positions are tasked with voicing citizens’ needs and concerns to the County Government, mainly through the County Assembly.

Respondents agreed that there was very little civic education on the new Constitution, with most of them learning more as the structure continues to be operationalised, and mostly through the failures that play out in the public domain. In what can arguably be seen as capitalising on this loophole, decision making continues to be dominated by the elite and mostly men. Respondents reported that public meetings are largely dominated by a few citizens close to the people in power. They control the meetings, thereby controlling outcomes and action points. As one respondent narrates,

When a chief calls for a meeting, he already knows who will speak. Even men who might have any contribution, stand no chance especially if one wants to oppose them, they give you no chance. It is the leaders who are dictators. Even in meetings called by the MP, he knows all the speakers. He plans a meeting for Rombo from Nairobi, knowing exactly who will speak. Those who had pressing issues stand no chance; the chief is told who not to give a chance to, as they would ruin the meeting’s plans. So if they can suppress men, what about the women? (Male Respondent, Loitokitok).

This points to the fabrication of decisions by a small group, completely disregarding the set out decision making structure and engagement processes.

**Criterion of cost-effectiveness;** the procedure should in some sense be cost-effective. The Constitution of Kenya 2010 necessitates the creation of new offices and implementation of new procedures. Consequently, salaries and operation costs have greatly increased. In their study on the cost of implementing the new Constitution, Franceschi et al (2015) report that county governments are already operating at a deficit of KSh 27,915,051, with recurrent expenditure outweighing development expenditure. Effective public participation as envisioned in the constitution is also an expensive exercise. The quoted deficit signifies a strain in the operating costs for the public participation exercises, thereby limiting their outreach, and the affecting the legitimacy of opinions used to form policy.

The County Budget Offices in both Kajiado and Narok Counties reported that their biggest challenge was coordination of meetings to ensure depth and breadth of outreach. While the Kajiado County government does its best to rotate the public meetings and reach out to as many locations as possible, the Narok County Budget Officer reported that his office only focuses on 12 meeting points for all the public engagement fora, as widening outreach is simply unaffordable. The cost factor therefore plays a big role in curtailing the envisioned success of decentralisation.

As evidence from this research shows, policy decisions remain in the hands of an elite few, a predominantly male circle. This is especially perpetuated by informal laws that govern gender roles within the Maasai community, and the apparent lack of funds to actualise citizen participation as envisioned by the Constitution. Majority of the citizens therefore remain unaware of their rights and the will by county governments to reach out and engage is curtailed by the financial.
WHICH WAY FORWARD?

The findings above illustrate a lack of commitment to public participation in general, signifying possible failure in addressing gender equality through the representation forum. There is arguably little in the way of benefits within the Maasai community, and specifically women, from the provision of gender equality and public participation legislation. As Hanna (2000) explains, control and empowerment are not equivalent, and sometimes co-option might be the unforeseen outcome. In reiterating the observation by Bruce Stiftel, he highlights that “[e]ven the most well developed participation program cannot ensure that it will significantly influence a decision. The provision or non provision of participation events, or dialogue, is a sparse measure of participation and the reasons for its influence (Hanna 2000:400).

The highlights are however not representative of the views held or practiced by the entire community. Most of the men in the study agreed that there is a need to change attitudes towards women in the community. One of them even went ahead to declare that norms and tradition are just used as scapegoats for male dominance and dictatorship. In his own words, “Women should be given chances because the days of dismissing their capabilities are now past. (Male) Dictatorship needs to be done away with” (Male Respondent, Loitokitok Sub-County).

Most men recognise the majority status of women and are witness to the progress made by women through money lending and training through the women groups. This has thus created an unfounded fear among many, of a pending takeover by women, destabilising the long standing male dominance. One suggested that instead of a two thirds gender rule, a 50-50 approach should be adopted, to minimise the risk that one day, women will be the ruling majority.

On political matters, just like in development, women should be involved and in equal measure as men. Women could take up the Women Rep and Councillor positions. But not that women should take up all positions and leave out men. It should be 50/50. Just as we agree at home, so should it be in government - we should be equals. That is all I would add (Male Respondent, Ngong).

Among men aware of this unsubstantiated threat, there is agreement that men as husbands and community members need to support and encourage women to get actively involved in public affairs and be politically active. The men in Nairagie Enkare in Narok East went ahead to
suggest that men should become community ambassadors, spreading knowledge on the importance of men-women partnership and most importantly, be volunteers on civic education.

The women also have a role to play in demonstrating that they can balance public authority and home management. Most of the men reported that they do not support women’s leadership as most women who get into power end up being proud, looking down on their husbands and abandoning their responsibilities towards their families. In Narok County for example, four of the 14 nominated women MCAs have reportedly divorced their husbands since 2013, with the public believing that pride and a bad attitude are responsible for this. This position is supported by women who agree that the community lacks enough role models who have managed to balance between self-respect, authority and responsibility towards their families.

The men also highlighted the need for women to be tactful and use their numbers to ensure that the political structure respects their presence and power. One man particularly insisted that women cannot expect that male politicians will hand out positions to them, they have to aggressively but tactfully demand for their rights.

I would like to say that women should do away with the thoughts of always asking for something. These thoughts strengthen the giver such that should he refuse to give you whatever you ask for, you will not get it. If it is a political seat, go and search for it and say it is what you want, don’t ask for it…look for it. If you wait for a man to think of you, I will give you a primary school committee position, I will give you a position in the water committee, but if you wait for the positions with a lot of money, you won’t get it, as I will give it to a man. So look for the positions yourselves! (Male Respondent, Loitokitok).

The need for alternative engagement process therefore promises to be a more promising pathway towards gender equality among the Maasai. Especially important is the role men play and will have to play, to open up the space for the engagement of women in the public sphere.

CONCLUSION

In patriarchal set-ups, informal norms, rules, and procedures are very powerful – particularly in terms of gender – and may undermine formal changes. It cannot therefore be assumed that changes to formal rules will translate to their automatic translation and application. As
Lowndes (2005) rightly points out, governance is a matrix of rule sets that reflect power relationships that exists in historical and spatial contexts. This, she notes, influences the interpretation, adaptation and implementation of rules as influenced by power relations and positions of authority.

The empirical analysis herewith demonstrates that transformative as the new Constitution may be, local realities have a strong influence on its implementation, and can very well be barriers. It is crucial therefore, that such realities are taken into consideration to enable constructive confrontation of socio-political and economic inequities. Cultural norms and gendered separation of the domestic and the public among the Maasai continue to strongly dictate engagement in public affairs and politics. Unfortunately, they do very little, if anything at all, to promote gender equality due to their heavily patriarchal inclination.

There is recorded evidence by a number of scholars that “the informal can work to undermine, replace, support, or work in parallel with the formal institutions of the state” (Chapelle & Waylen 2013:606) 51. In conclusion therefore, the article reiterates that transformative laws must be accompanied by policies and grassroots processes that examine how communities can operationalize the same in a manner that is both objective and respectful to local and cultural realities. This is crucial if such laws are to be truly transformative and especially in the quest for matters such as gender equality as a pathway to wellbeing and overall socio-political and economic development. This is practically unattainable in situations where traditional rules of engagement, ageism and paternity considerations are just as powerful, if not more powerful, than the rule of law, as is the case in the Maasai community.

This discussion demonstrates gender equality outcomes as derived from the interdependence of gender norms, formal and informal institutions. At the same time, it calls for understanding of political institutions in both their formal and informal guise if envisioned gender equality outcomes are to be realised. It is therefore imperative that the law considers new methods and engagement techniques for interaction, informed by proper understanding of the challenges brought about by this intersectionality.

As Naila Kabeer illuminates, “Institutional transformation requires movement along a number of fronts: from individual to collective agency, from private negotiations to public action, and from the informal sphere to the formal arenas of struggle where power is legitimately exercised” (Kabeer, 2005:16).

REFERENCES


Chappell, L. and Waylen, G., Gender and the Hidden Life of Institutions, 91 Public Administration, No. 3 (2013).


Cornwall, A. and Jewkes, R., What is participatory research?, 41 Social Science and Medicine, No.12 (1995).


Lowndes, V., *Something old, something new, something borrowed…How institutions change (and stay the same) in local governance*, 26 Policy Studies, No.3-4 (2005).


