**Gender Parity in Africa: The Journey and Challenges So Far**

By

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Protocols

I approach my task at this meeting this evening with both humility and considerable trepidation: humility at the privilege of being in the company of so many distinguished powerful women professionals and trepidation at being cast in the role of yet another man intruding into a woman’s hard-won space. This is a privilege to be treasured. My ambitions must be modest. I come with a message of solidarity to a community of fellow advocates. My message will, I hope, be brief.

With so many outstanding women in positions of both visibility and leadership to draw from, any man would ordinarily be both daunted and unqualified to be your keynote speaker. The subject matter of gender parity, however, is one that affects both men and women and in which both sexes must be partners. It is in that spirit of partnership that I come here, daunted surely but hoping that the burden-sharing obligation inherent in the enterprise of partnership will smoothen the path towards a mutually beneficial evening.

It is in that spirit that I commend FIDA Nigeria for hosting this event and welcome all the participants from other African countries to this important conference. I trust that in addition to your deliberations, you will find time to explore the incredible wealth and diversity of our beautiful country.

My keynote remarks to the FIDA International Convention in Lagos over five years ago began:

FIDA is not a social club nor a collection of wannabe middle class professionals reliving bad history. It has a mission defined by the search for a world of fuller equity, equality, dignity and more effective remedies for all irrespective of race, ethnicity, opinion, sex, gender or status. Such a world needs more visible female citizens and professionals as leaders in our profession and of our respective countries. Achieving such a world requires us to confront together common problems of violence, economic inequality, access to livelihood and age-long discrimination against women. Let me be clear: Far from being a threat to either sex, a more equal world is a great benefit for both because it improves productivity, quality of life and life expectancy for all.[[2]](#footnote-2)

The theme of today’s regional conference pursues an aspect of FIDA’s mission of equity, equality and non-discrimination in the realm of leadership, political participation, representation and the implications of equal citizenship for women everywhere, especially in Africa. In a world increasingly dominated by androgynous populism, this is arguably an unpopular subject but that is precisely what makes it timely. FIDA’s courage and foresight in settling on this theme deserves commendation.

It is significant that this conference takes place shortly in the week of the 35th anniversary of the International Day for the Elimination of Violence against Women (November 25) begun in 1981 and supported by the United Nations through UN General Assembly Resolution 54/134 of 17 December 1999. This week also marks the beginning of the globally recognized, 16 Days of Activism on Violence against Women. Political violence is clearly one of the “stumbling blocks women have to surpass to effectively participate in electoral processes.”[[3]](#footnote-3). In the remarks that follow, I propose to explore indicate the legal regime towards gender parity in Africa and highlight some of the progress and challenges so far.

**Over Half a Century in the Making**

The story of the progress towards political participation of women in Kenya is illustrative of the narrative of progress and challenges towards women’s political participation in Africa. On the eve of Kenya’s Independence, on 27 April 1963, the Daily Nation carried the following report:

The government is to be pressed strongly to nominate a minimum of four women to fill seats in the new legislature. This was one of the resolutions passed during the closing stages of the second Kenya African Women’s Seminar, which ended at Limuru yesterday. Other resolutions approved were:

* To request that there should be a woman representative in internal organisations such as the East African Common Services Commission and in external bodies such as the United Nations.
* To ask the government for a minimum of 10% female representation on the planning committee for Kenya’s Independence celebrations.

In the event, Kenya’s women got nothing for these efforts. In Kenya’s Independence Parliament which sat for six years from 1963 until 1969 and comprised 170 legislators, all but 12 of them elected, there was no woman despite the best efforts of the women of Kenya to plead for token acknowledgement of their existence as citizens with a need to be represented. Towards the end of Kenya’s 7th Parliament, in April 1997, with only about seven female Parliamentarians out of two hundred, Kiraitu Murungi, MP, in support of a motion for Affirmative Action for enhance the representation of women in Parliament argued:

This motion intends to correct the present imbalance and injustice between men and women in holding senior political positions in this country. I support this motion within the general framework of constitutional and administrative reforms that we are seeking for better governance in this country….Women form 52% of the population of Kenya but they have been relegated to political invisibility and tokenism.[[4]](#footnote-4)

The journey from the unrequited plea for tokenism in 1963 to the point where today we are able to discuss gender parity is one that deserves close attention. As Kenya’s Supreme Court points out in its 2012 *Advisory Opinion In the Matter of the Principle of Gender Representation in the National Assembly and the Senate*:

in elective or other public bodies, the participation of women has, for decades, been held at bare nominal levels, on account of discriminatory practices, or gender-indifferent laws, policies and regulations. This presents itself as a manifestation of historically unequal power relations between men and women.[[5]](#footnote-5)

Today, indeed, Rwanda, an African country, leads with world with a Parliament comprising 63.8% females and 13 African countries in all have over 30% female representation in their national parliaments.[[6]](#footnote-6) Another three countries have at least 25%.[[7]](#footnote-7) With a few minor exceptions, such as Cameroon, Tanzania and Lesotho, the single biggest factor in the reordering of female participation in the continent, it appears, is arguably conflict. In nearly all the African countries that have seen a marked shift in their attitudes towards women representation in politics, that change followed a war of liberation (as in Algeria, Angola, Mozambique, Namibia, and South Africa) or a war (as in Burundi, Rwanda, South Sudan, Sudan, Uganda or Kenya’s post-election violence of 2008). A second factor, is public health and, in particular, the impact of the HIV/AIDS pandemic on male mortality.

Today indeed, different African countries have patented various legal mechanisms to improve female representation and participation in public life. In Indeed, Article 81(b) of Kenya’s 2010 Constitution requires the state to “take legislative and other measures to implement the principle that not more than two-thirds of members of elective or appointive bodies shall be of the same gender.” Kenya’s women now occupy 87 out of 349 members of Parliament, representing 19.7% in the National Assembly and 25% in the Senate, still short, however of the 33% mandated by the constitution. Similar constitutional quotas exist in Uganda and Rwanda.[[8]](#footnote-8) Senegal’s Electoral Parity Law of 2010 successfully increased the proportion of women in Parliament from 22.7% to 42.7% in one election cycle.[[9]](#footnote-9) In many countries that have been through wars of liberation, such as South Africa and Mozambique, party quotas/lists in proportional representation systems have been used to achieve the same result.[[10]](#footnote-10)

Affirmative action has been another mechanism in other countries. In Lesotho, for instance, the Court of Appeal upheld the constitutionality of the Local Government Election Law of 1998, which designated one-third of the seats in local councils for women. [[11]](#footnote-11) In upholding the effect of affirmative action under Kenya’s 2010 Constitution, the Supreme Court observed, however, that “[a]ffirmative action programmes require careful thought, multiple consultations, methodical design, co-ordinated discharge. Such measures cannot, by their very nature, be enforced *immediately.”[[12]](#footnote-12)*

All over the world today, we have women of distinction at all levels of the legal profession and some women now in senior positions of political, economic and administrative power and visibility. But this has not always been so. Indeed, it is a relatively recent development. As noted by the 2001 report of the American Bar Association’s Commission on Women in the (Legal) Profession, *The Unfinished Agenda* (p.5):

Despite substantial progress toward equal opportunity, the agenda [established by this group in 1987] remains unfinished. Women in the legal profession remain underrepresented in positions of greatest status, influence and economic reward. . . . The problems are compounded by the lack of consensus that there are in fact serious problems.

What appears to be the increasingly visibility of women in the public space can be taken for granted. It is, however, a relatively recent development, with a history merely “half a century” old.[[13]](#footnote-13) It is often forgotten that universal adult suffrage as the basis for government did not exist in any country a mere 100 years ago. In most countries of the world, women did not have the right to vote.

**Women and the Law**

Indeed, the presence of women in the legal profession is of relatively recent origins. Notwithstanding the admission of Arabella Mansfield to the Bar of the State of Iowa in 1869, the United States Supreme Court voted in 1872 to uphold the decision of the Illinois Supreme Court denying access to the profession to Myra Bradwell, claiming that it did not violate the Equal Protection Clause of the 14th Amendment to the US Constitution. Associate Justice Bradley’s reasoning in support of this decision is well worth recalling in the full majesty of its painful sexism:

The claim … assumes that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation, or employment in civil life. It certainly cannot be affirmed, as an historical fact, that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The Constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband….A married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor. It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.[[14]](#footnote-14)

In 1875, denying the application of Lavinia Goodell to be admitted to practice in the State of Wisconsin, Chief Justice Ryan wrote on behalf of the Court that:

Nature has tempered women as little for the judicial conflicts of the courtroom as for the physical conflicts of the battlefield. . . . Our. . . profession has essentially . . . to do with all that is selfish and extortionate, knavish and criminal, coarse and brutal, repulsive and obscene in human life. It would be revolting to all female sense of innocence and the sanctity of their sex.[[15]](#footnote-15)

This meeting takes place in a country in which women won full voting rights following the completion of the local government reforms a mere 40 years ago in 1976 and in a country that has suffered recent regression in the sphere of women’s representation in public life. Nigeria’s National Gender Policy sets a target of 35% representation for women in public positions. Cabinet level representation of women fell from 14 out of 42 (33%) in 2011-15 to six out of thirty-six or 16.67%.In terms of Parliamentary representation, the number of women in Nigeria’s National Assembly has similarly fallen from a high of nearly 10% in 2007 to a mere 5.6% in the House of Representatives and 6.5% in the Senate in 2015.[[16]](#footnote-16) In Nigeria in 2016, the Gender and Equal Opportunities Bill is one of the longest bills pending in the National Assembly, having previously been voted down twice and is currently back in the same legislature for another attempt to get it passed. The notion of gender equity seems to be a source of needless aggravation and insecurity for entrenched interests. It need not be.[[17]](#footnote-17) The Bill needs all the support it can get from professional groups like FIDA and the Nigerian Bar at its senior-most levels. The existence of female Presidents and Prime Ministers and legislators can’t, therefore, be taken for granted. The global situation could also mask a reality of the under-representation of women in decision making in Africa.

**In Times of Trouble: Africa’s Unremarked Anniversaries**

The family provides the organizing framework of community building in most African cultures. In this system, the woman is seen as the stabilizer and peace-maker. Traditional gender stereotypes assign the role of peace maker and nurturer to the woman. In times of conflict, this role is tasked. The role of African women in liberation movements has been poorly documented but it is also notable that the countries of Africa that have made the most progress towards gender parity in political representation and public life have been those countries that have suffered conflict or been involved in wars of liberation. Many communities used to male leadership and to accepting the unquestioned authority of the male leader, easily turn to women during times of trouble. This was the context that produced Africa’s first modern female President twenty years ago.

In 1989, Liberia, Africa’s first modern Independent country, descended into civil war. Regional mediation for peace began in 1990. In five years between 1990-95, 11 international mediation and peace efforts would fail. Liberia’s warring parties factionalised at a rate that made it impossible to impose or negotiate an effective truce. Seven years into the war, on 17 August 1996, the Economic Community of West Africa States (ECOWAS) succeeded in getting the parties to Liberia’s civil war to agree a ceasefire. The four major factional leaders in the war, including Charles Taylor, Alhaji Koromah and George Boley decided to entrust Ruth Sando Fahnbulleh Perry, a trained teacher and former Senator, with the role of leading their country out war. Among both the mediators and Liberia’s war-lords, the consensus seemed to be that the moment was right for a woman be given the reins of leadership in Liberia. Indeed, the war-lords reportedly went to Senator Perry to "as a mother” and asked her: “take us as your children and we will cooperate"[[18]](#footnote-18)

On 3 September 1996, Ruth Perry was sworn in as the Chairperson of the Interim Council of State of Liberia, as the Head of State was known. She served in that position for nearly one year until 2 August 1997. Ruth Perry thus became Africa’s first female Head of State. Before her, Dr. Specioza Kazibwe was Africa’s first female Vice-President when she became Vice-President to Uganda’s President Museveni in 1994. 10 years ago, in January 2006, Liberia installed Ellen Sirleaf-Johnson as Africa’s first democratically elected female President. In April 2012, Malawi’s Joyce Banda made it two. In January 2014, Catherine Samba-Panza was elected President of the Transitional Government of Central African Republic (CAR). In June 2015, Mauritius elected its first female President in Ameenah Gurib-Fakim.

This conference coincides with the 20th anniversary of Africa’s first female Head of State and the tenth anniversary of Africa’s first elected female President.

**Gender Parity: Legal Bases**

Many take for granted the language of gender equity, equality and parity today. Yet, the appearance of an international normative consensus on gender equity, reflected today in the language of gender parity has taken time to build. In 1975, The first World Conference on Women, in Mexico City was organized on the theme of development, equity and empowerment. The Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, which resulted from the conference, addressed the issues of gender equality, gender discrimination and development. It would prove controversial somewhat. It began:

Equality between men and women means equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. All obstacles that stand in the way of the enjoyment by women of equal status with men must be eliminated in order to ensure their full integration into national development and their participation in securing and maintaining international peace.[[19]](#footnote-19)

Many African delegations to the Conference took issue with this. One of the leading African women delegates to the conference pointedly argued that “our priorities were different. While for women from developed countries, the issue that resonated most was equality, in most provinces of Kenya, our priority was bringing water closer to homes.”[[20]](#footnote-20) It would take three more conferences over the next 20 years, culminating in the Beijing World Conference in 1995, before the consensus would emerge at some level that inequality lay at the root of the absence of water for most rural women, even in Africa.

The language of evolution of attitudes and policy on gender parity has been aided by international law. Kenya’s Supreme Court acknowledges this fact in its *Advisory Opinion In the Matter of the Principle of Gender Representation*, saying that: “the Constitution of Kenya, 2010 which generously adopts such language of the international human rights instruments, draws inspiration from them.”[[21]](#footnote-21)

 Adopted in 1979 and in force since 1981, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), provides requires that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country

The African Charter on Human and Peoples’ Rights, which was similarly adopted in 1981 provides in Article 13 as follows:

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Building on these two instruments, Article 9 of the Maputo Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa requires:

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

a) women participate without any discrimination in all elections;

b) women are represented equally at all levels with men in all electoral processes;

c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

Several other instruments supplement these. For instance, Article 29 of the African Charter on Democracy, Elections and Governance requires:

1. State Parties shall recognize the crucial role of women in development and strengthening of democracy.
2. State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.
3. State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

These norms, however, remain work in progress. While nearly all African countries have ratified the CEDAW, only 37 have ratified the Maputo Protocol and Botswana and Egypt have not even signed it. At the African Union, the Gender Policy requires a 50/50 Gender Parity principle which has now been achieved at the level of the AU Commission but not in the other organs of the AU. While women remain under-represented in the African Court (3 judges out of 11), they are a majority in the African Commission on Human and Peoples’ Rights (7 out of 11). In terms of monitoring, the Women, Gender and Development Directorate of the AU (WGDD) undertakes monitoring and evaluates state compliance with this principle. There is also a Special Rapporteur on the Human Rights of Women at the level of the African Commission on Human and Peoples’ Rights. One of the AU’s Specialized Technical Committee (STCs) focuses on gender and women empowerment.

**Working in Partnership**

Attaining the ambitious goal of gender parity requires partnership between men and women, private and public sectors and people of goodwill everywhere. Gender parity is a goal whose realization is both an imperative of the moment and an indicator of progress towards the goals of equity and equality. It requires time, thoughtfulness, effort and monitoring.

In 2009, the African Union declared 2010-2020 the African Women’s Decade, proclaimed to promote the goals of Gender Equality and Women’s Empowerment (GEWE). Specifically in 2015, it proclaimed a Year of Women Empowerment and Development towards Africa’s Agenda 2063,[[22]](#footnote-22) when the goal of full gender parity is supposed to be achieved. 2016, meanwhile, is the AU’s year of Human Rights, especially, of Women’s Human Rights.[[23]](#footnote-23) As we mark these advancements, we must be prepared to work harder to realise their promise.

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2. Chidi Anselm Odinkalu, “For a More Equal World: An Agenda for FIDA”, Keynote Remarks to the FIDA International Convention, Lagos, 21 November 2011, p.2 [↑](#footnote-ref-2)
3. J. Osogo Ambani, “The Roots and Effects of Electoral Sexual and Gender-Based Violence on Women’s Participation in Kenya”, in Japhet Biegnon (ed), *Gender Equality and Political Processes in Kenya*, 115 at p. 138 (2016) [↑](#footnote-ref-3)
4. Republic of Kenya, *Hansard*, 23 Apr., 1997, p. 343. [↑](#footnote-ref-4)
5. *Advisory Opinion No. 2*, Judgment of 11 December 2012, available at <http://kenyalaw.org/caselaw/cases/view/85286> [↑](#footnote-ref-5)
6. These include Rwanda (63.8%); South Africa (41.9%); Namibia (41.3%); Mozambique (39.6%); Angola (36.8%); United Republic of Tanzania (36.0%); Uganda (35.0%); Algeria (31.6%); Zimbabwe (31.5%); Tunisia (31.3%); Cameroon (31.1%); Burundi (30.5%); and Sudan (30.5%). [↑](#footnote-ref-6)
7. These are Ethiopia (28%); South Sudan (26.5%); and Lesotho (25.0%) [↑](#footnote-ref-7)
8. See Osai Ojigho, Beyond Kenya: The Impact of Article 9 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa on Women’s Political Participation in Africa”, in Japhet Biegnon, (ed), 141 at pp, 150 et seq. [↑](#footnote-ref-8)
9. *Ibid.* p. 154. [↑](#footnote-ref-9)
10. *Ibid.* p. 153 [↑](#footnote-ref-10)
11. *Molefi Ts’epe v. Independent Electoral Commission*, 2005, AHRLR, 136 [↑](#footnote-ref-11)
12. *Advisory Opinion No. 2*, Judgment of 11 December 2012, para. 66. Italics Original [↑](#footnote-ref-12)
13. Torild Skard, *Women of Power – Half a century of female presidents and prime ministers worldwide*, 280 (2014) [↑](#footnote-ref-13)
14. *Bradwell v. Illinois*, 83 US, 130, pp. 140-142 (1872), [↑](#footnote-ref-14)
15. *Motion to Admit Lavinia Goodell*, 39 Wis. 232 (1875) [↑](#footnote-ref-15)
16. For comparative information, visit [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm) [↑](#footnote-ref-16)
17. For more information on the Gender and Equal Opportunties Bill, visit <http://www.womenaffairs.gov.ng/index.php/cedaw/publications/178-facts-about-the-gender-and-equal-opportunities-bill> [↑](#footnote-ref-17)
18. Torild Skard, *Women of Power – Half a century of female presidents and prime ministers worldwide*, 280 (2014) [↑](#footnote-ref-18)
19. United Nations, Report of the World Conference of the International Women’s Year, Mexico City, 19 June-2 July 1975, E/Conf.66/34 [↑](#footnote-ref-19)
20. Eddah Gachukia, cited in D. Jain, *Women, Development and the United Nations: A Sixty Year Quest for Equality and Justice*, p. 70 (2005) [↑](#footnote-ref-20)
21. *Supra*, para 52. [↑](#footnote-ref-21)
22. Adopted on June 27, 2013 [↑](#footnote-ref-22)
23. See AU’s Concept Paper on Declaration of 2016 as the African year of Human Rights (2016) [↑](#footnote-ref-23)