

## CITIZEN PARTICIPATION FOR DEVELOPMENT IN KENYA: WOMEN AS AGENTS OF CHANGE

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### ABSTRACT

*“The human person is the central subject of development and should be the active participant and beneficiary of the right to development”* (Article 2(1) of the Declaration of the right to development, resolution 41/128, 4 December 1986).

The aim of this essay is to illustrate the potential benefits and limitations of citizenship as a tool for participation in development. Citizenship affects all the spheres of life. Applying the rights-based approach to development highlights participation is a fundamental right to development linking with contemporary approaches to citizenship. This paper will depict the strength gained from citizenship by participation. The extension of citizenship legitimises the right to participation as part of the bundle of rights due to the citizen. Participation is a fundamental citizenship right that protects and supports all other rights. This paper will illustrate the importance of linking citizenship and participation for the purposes of deepening development which is the central concern of all stakeholders. The harmonised draft and the promulgated Kenyan constitution are used to illustrate the power that portends from linkages between citizenship and participation. Additionally, the paper will explore key themes that affect claims to full citizenship by women. In conclusion, the various limitations to citizenship, as a tool for participation will be exposed.

**Keywords:** Citizen Participation, Women, Agency, Development, Kenya.

### INTRODUCTION

Globally, the Western conception of citizenship is applied by nation-states with regard to their citizens. Marshall (1992:18) defines it thus: “Citizenship is a status bestowed on those who are full members of a community.” Therefore, the citizen is an individual who has obligations as well as rights bestowed by the identity affirmed by the state. With the passage of time, there has been a need to rethink this conceptualisation of citizenship. The main reasons for the required shifts have been due to globalisation, the changing role of the nation-state and the growing apathy, discontentment amongst the inhabitants of most countries with the conduct of their elected leaders, and migration. Experiences of this nature have led to the call for the reorientation of citizenship in such a way that it is equipped to handle change and provide new impetus for a dispensation of citizenship.

Lister (2003:42) postulates that citizenship has to shift to combine the two traditional approaches that gave rise to its application. The two traditions of liberalism and civic republicanism must combine to give rise of citizenship as both a status and a practice. As a status, it carries a wide range of rights and as a practice; it involves both obligations and political participation. Therefore, “to be a citizen, in the legal and sociological sense, means to enjoy the rights of citizenship necessary for agency and social and political participation. To act as a citizen involves fulfilling the full potential of the status” (Lister,

2003:42). Gaventa (2002) further states that contemporary citizenship theory can be arrived at by combining the liberal, communitarian and civic republican foci of citizenship. While liberalism focuses on individual rights, the communitarian focus is on belonging, the civic republican emphasises the processes of deliberation, collective action, and responsibility. Reconceptualising citizenship allows for a shift from the view of the citizen as one who exercised his right mostly through the process of election by universal suffrage. By voting for the candidate of their choice, they gave them mandate for policy formulation and implementation. However, over time it has emerged a need for citizens to engage actively in the processes that govern their lives. This has led to the stretching of the rights available to the citizen beyond social and economic rights to encompass the 'right to have rights' (Isin and Wood, 1999:4) in (Gaventa, 2002).

Participation is defined as "the ways in which poor people exercise their voice through new forms of deliberation, consultation and mobilisation designed to inform and to influence larger institutions and policies"(Gaventa 2002). With the extension of the scope of the rights to which a citizen can lay claim to, participation is the most basic right. It is 'citizenship in practice' and can benefit from citizenship as it is given the 'teeth' it requires carrying out its role in the process of development (Meer et al, 2004:12).

Participation is an avenue through which members of society can exercise their agency especially the poorest and most disadvantaged members of society. Through the creation of spaces that arise from the contemporary approaches to citizenship, marginalised groups especially women, can find voice through the spaces that arise. Participation must be rooted in the concept of rights that in the context of development sets out to strengthen the status of citizens from that of beneficiaries of development to its rightful and legitimate makers and shapers (Cornwall and Gaventa, 2001).

The rights-based approach to development finds its basis in the context of human rights and other international documents. The right to development as articulated in the 1986, Declaration of the right to development states that development is:

"... a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".

However, Gaventa (2002) states that rights-based approaches are not automatically in favour of the poor. They will only become so when they set out to understand how the poor perceive their rights and by generating spaces where the poor can feel included and that their needs are legitimated. This argument is further strengthened by the DFID strategy paper 'Realising human rights for poor people'(2000). It posits that rights will only become real when citizens are engaged in the decisions and processes that affect their lives. Underpinning their approach are three principles: the inclusive rights of all people, the right to participation and the obligations to protect and promote the realisation of rights by states and non-state actors.

### **The Harmonised Draft of the Kenyan Constitution: A Short History**

Following the disputed elections in December 2007, violence of unimaginable magnitude broke out in Kenya. This led to the deaths of over one thousand people and the creation of over three hundred thousand internal refugees together with others who escaped into neighbouring Uganda. As the violence escalated, the international community stepped in to

stem the complete collapse of the country. Through the efforts of the African Union Panel of Eminent Persons and the chief mediator former United Nations Secretary General, Kofi Annan, sanity was restored. The two main antagonists signed the National Accord formally known as the National Accord and Reconciliation Act on February 28, 2008.

The National Accord has four main agendas: resolving the humanitarian crisis, promoting reconciliation, healing and restoration, resolving the political crisis and addressing the implementation of long-term land, constitutional, institutional, judicial and economic reforms (APFO, 2008). For meaningful reform to take place, the full participation of the citizen is a prerequisite. Therefore, in achieving one of the articles of Agenda Four, the input of the people was required. The process of providing Kenya with a contemporary constitution in line with current realities has been an arduous one. Over the years, various initiatives have been formulated in efforts to try and achieve this long-cherished dream. Many have envisioned that through the dispensation of a new constitution that explicitly addresses the issues that affect Kenyans such as social and economic inequality and poverty, would provide the framework required to address these entrenched problems.

The harmonised draft of the constitution of Kenya is a product of the amalgamation of previous drafts prepared by other initiatives designed to arrive at a new constitution. Its synthesis arises from drafts such as those of the Constitution of Kenya Review Commission prepared by Professor Yash Pal Ghai, the Bomas draft and the Wako draft of 2005. The latest impetus for the provision of a new constitution is provided for by the enactment of two Acts of parliament. These are the Constitution of Kenya Review Act of 2008 and the Constitution of Kenya (Amendment) Act of 2008 respectively. With their enactment, the committee of experts was formed to review and combine the earlier drafts to arrive at a harmonised document that would reflect the current and dynamic needs of contemporary Kenyan society. The committee of experts comprises of nine experts and two ex-officio members nominated the National Assembly and the African Union Panel of Eminent Persons who were then appointed by the President.

The committee published the harmonised draft on the 17 November, 2009. This document is one of the most comprehensive ever prepared, in the sense that it strived to avoid the ambiguities of earlier efforts. Furthermore, it explicitly articulated and recognised the marginalised groups in society. These included women, the elderly and persons with disabilities. In recognising and articulating the rights of these marginalised the draft constitution hands them a lifeline and guarantees the creation of increased formal spaces for them to participate in development and to exercise their agency. Therefore, the draft constitution recognises and celebrates identity, community and diversity as the bedrock of any nation.

One of the guiding principles of the draft constitution, pursuant to sections 4, 6, 23, and 29, of its Act is to ensure that the process affords the people an opportunity to actively, freely and meaningfully participate in generating and debating proposals to review and replace the constitution (Committee of Experts, 2009). Participation is envisioned as the key to success in the future of the nation with the enactment of this draft constitution. This will benefit the citizens only if they are able to appropriate their rights that give them the ability to be key players in shaping and making policies that affect them (Cornwall and Gaventa, 2001). With increasing poverty and inequality in Kenya, the enactment of this draft constitution, may provide the poor and marginalised members of the society the tools and spaces to challenge and break down entrenched stereotypes.

## **Promulgation: From Draft Constitution to Supreme Law: Devolution and Participation**

Following a referendum held in 2010, the draft constitution was then promulgated into the supreme law of the land on August 27, 2010. This document now serves both as an economic and a social contract driving the aspirations of the Kenyan people. Through the adoption of this document, the country has introduced devolution as the system of governance. Through devolution and the introduction of the county governments, there exists the office of women representatives who sit in the national parliament. Also there has been the introduction of quotas for women representatives both in the national parliament and the county assemblies. These changes envisioned by the new constitutional dispensation open up exciting spaces for women as well as challenges. Kenya is very much a patriarchal society and women will face opposition in the utilisation of these newly created spaces. They can be viewed as an opportunity to challenge the status, address the practical and strategic gender needs of women. The new spaces and right have proved critical in spurring the process of development. Through the implementation of devolution, affirmative action and other components of the constitution the presence and citizenship of women has come into the fore.

### **Citizenship Gains and how they Facilitate Participation**

Citizenship as a right is extended to women further than before in the provisions of the new constitution. This is essential for women who have been constrained for decades by provisions that did not provide them with the space of recognition of their separate identity. Article 38 explicitly recognises and articulates the fact that both men and women have the right to equal opportunity in political, social activities which is a shift from the old constitution which refers to both genders under the blanket term of 'persons'. Furthermore, women will be able to pass citizenship to their children. This reflects a change from past where a Kenyan female could not confer citizenship to her children, as has been the case in many developing countries (Meer, 2004:32). Such a constraint curtails the movement of the women with their children across the borders as they may require written permission to travel with their children. In providing this space for women, opportunities are opened up for them to work and travel anywhere they wish. In addition, women will be able to confer on their foreign spouses' citizenship if the relationship has lasted for more than seven years. In the past, such limitations limited the ability of foreign spouses to find employment if they settled in Kenya. Articulating such provisions allows their spouses and partners' greater ability and freedom to participate in income generating activities and thus contribute to familial as well as communal well being.

All forms of marriage are recognised by the constitution. There is a provision for equality of rights as pertaining to those that come with particular type of marriage whether civil, religious or traditional (Muiruri, 2009). Such a provision is useful in cementing spaces for women especially those married under customary law in so far as inheritance is concerned. According to Judy Thongori, a lawyer, women own less than ten percent of all the land in Kenya and yet they are the majority and make up the majority of the workforce. This is based on the discrimination of bylaws, customs and practises related to property, especially land (Muiruri, 2009). Widowed spouses especially women are protected by provisions in Article 85(1) (k) which protect them from the risk of discrimination through disinheritance.

Provisions on land and property will go a long way in recognising women's contribution on the creation of matrimonial wealth. This is because further provisions are made for the recognition of the importance of unpaid work that women do in the private sphere and

maintaining the family. Women are recognised as having contributed to and being entitled to share in the wealth created by their spouses during marriage. Additionally, the right of both sons and daughters to inherit familial property is presented as a right that can increase the participation of women in their ability to provide for their families. This is especially important with the increase in female-headed households among the poor and affords women meaningful space to exercise their agency and independence to fulfill their familial obligations.

Article 62 of the document encapsulates various activities that fall under reproductive health rights. This includes the detection and management of breast, ovarian, and cervical cancers. Therefore, it recognises that the reproductive structure and function of women goes beyond the act of childbearing (Muiruri,2009).Articulation of the right to reproductive health and services strengthens the agitation for women of the need to access services that are woman – friendly and effectively address their concerns. This however does not exclude the rights of men to reproductive health rather it states the need to attend to men’s issues such as fertility, conditions such as prostate cancer and access to contraception.

Devolved government has been a serious political issue in Kenya for decades. Before and during years of independence of the nation, many have sought to use this model as a conduit for decentralising development. Indeed, the first government during the period of internal self-rule was based on the system of regionalism or majimboism. The devolution of government is in line with the principles that guided the committee of experts which is now part of the constitution and seeks to make participation more meaningful and direct (Article 213). Through the processes of deliberation and decentralisation at the regional and county level, the limitations faced by many people in gaining assistance from the central government are expected to reduce. Such a framework allows for the increased ability of the local people especially marginalised groups to gain representation that has direct understanding of issues that affect them. Therefore, the local rural populations will have space to contest and seek engagement with their elected officials at closer levels giving them the ability to gain voice and identity.

### **Citizen Participation**

“Citizenship as participation can be seen as representing an expression of human agency in the political arena, broadly defined; citizenship as rights enables people to act as agents” (Lister, 1998:228).

The synthesis of citizenship as both a status and a practice informs its ability to furnish participation with certain benefits .Contemporary theorising on citizenship opens the gateway to the reshaping of the perception of the citizen who by understanding the changing global, national and local circumstances can position themselves to gain from these circumstances. As many developing countries struggle with the provision of services and the challenges of good governance, civil society organisations have arisen to fill the gap that exists. This gap is felt especially among the poorest and marginalised members of society such as women. From time immemorial, much of what women in the confines of the home have been considered as unpaid work unacknowledged by the normative forces of culture and society. Indeed, even women themselves have considered their roles as definitive and have not challenged the belief. Kabeer (1994:257) refers to this kind of power as the ‘power within’ that entrenches the subordination of women by the men who are the dominant group. It



allows women to consider their positions as normative and not subject to change. The needs of women are subsumed at the behest of men and in an effort to avoid conflict.

The rights based approach offers women affirmative action that is an acknowledgement of difference and identity. It legitimises the claims of poor people to strengthen their voice in the political process (Cornwall, 2002). Women's Organisations as part of the civil society have agitated for the right of female representation and have been successful as in the case of the constitution. In the process of devolving government, the shift of control of local resources to the localities also enables greater participation for women. Many of the grassroots organisations have clamoured for the use of devolved government as a tool for increased participation, consultation, decision-making and control at the local level.

Citizenship participation offers an opportunity for breaking the barriers of the public-private divide. This serves as an indicator of the increased acknowledgement of the importance of the issues that affect women. By publicising issues that affect women, especially the poorest of them, such as domestic violence and the need for reproductive health, puts them squarely in the public domain and calls for policies to address them and militate against their effects. Additionally, the explicit articulation and addressing of issues that affect marginalised groups such as disinheritance of widows is critical in challenging long held beliefs that entrench these actions. It forges new ground especially amongst such people who may decide to form organisations in an effort to protect their gains as well as seek to spread their influence.

Civil society organisations must seek ways in which they can engage with institutions that have the ability to lead to the transformation of peoples lives. Through the process of law reform, avenues are created for engagement that leads to meaningful participation. Engaging with reviewers by making suggestions and recommendations ensures that woman's perspectives are incorporated into all areas of activity by the state, civil society and the family. This can be achieved by gender mainstreaming into all areas of policy even those that are thought of as being gender neutral (Meer, 2004)

### **Limitations of Citizenship**

As we focus on the potential of citizenship to transform the process of participation, there are various limitations. First; participation requires that one have the access to power and resources. Meer et al (2004:19) states "...the status of citizenship is not enough without the conditions to enable such citizenship to be experienced or practised". Poor people are unable to fully participate because of their inability to access these commodities that also affects their self-esteem leading to apathy even in decision-making on matters that directly affect them.

Women are unable to act as complete agents due to the fact main role as home makers. Many of the activities that they would participate in are held in distant places or may not be in tune with their daily activities. Participating in events even for other marginalised members of society especially the disabled is affected by accessing and opportunity to participate. Lack of provision of such facilities such as ramps, sign language interpretation and Braille affects their ability to voice their needs. Meer (2004) states that defacto inequalities such as lack of childcare and economic inequalities are impediments to full citizenship such that, often, inclusion is exclusion.

## CONCLUSION

This paper has attempted to illustrate the enormous benefits citizenship has to offer the process of participation. In essence, for participation to be effective it must be politicised which occurs through the linkages with citizenship. The rights-based approach offers an avenue through which participation is viewed as an integral right that enables communities to lay claim to other rights. For instance, it has been said that for communities and individuals to be able to lay claim to health rights, they must be involved in the processes that lead to the delivery of those services. The constitution, by legitimising participation in all spheres of life, offers significant opportunities for marginalised groups to access rights.

However, without the transformation of organisational structures and institutions, the agency of participation is powerless. Therefore, participation must seek room for greater voice and government responsiveness (Gaventa, 2004). In many developing countries where the systems of government weak, programmes such as awareness building on rights and citizenship, building civil associations and social movements can be used as entry points to engage in governance issues and strengthening of governance at local and central levels (Gaventa, 2004).

Although many of the approaches to participation appear to be weak, Smith (1998) explains that even those forms of participation that are the weakest still offer some benefits. Therefore, the context of the use of the form of participation will determine its effectiveness. Even provided spaces such as those provided by the system of devolution may be constrained by notions of power, but still provide an opportunity for meaningful participation. In that case, citizenship is viewed as located within a social contract between the citizens and the authorities in the devolved state. Gaventa (2004:34) quoting Hayward (1998:2) stresses: "...participation is not only a right to participate effectively in a given space but the right to define and to shape that space".

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