

African Women and Participation in Public Life and Governance: Relevant Laws and Overview of Recent Experience

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1. Introduction

It is time to discard the prejudices against women under the guise of culture. It is high time that humanity in general should realize that gender is no more a valid reason for discrimination than race, creed or religion.

Linah Mohohlo
(Botswana Central Bank Governor, March 2004)¹

The concept of gender equality or non-discrimination is an important one in contemporary discourse just as it has been for about a century ago. Few subjects have such enduring interest. One of the crucial issues involved is the exclusion of women from participation in the public affairs or governance of their countries.² It is perhaps correct to say that nowhere is this problem so serious than in the African continent. In Africa, perhaps as a direct consequence of customary or traditional view of women as perpetual minors and inferior beings to men, women are actively and deliberately excluded from participating in the governance of their various countries.

Importantly, the struggle for gender equality by human/women's rights activists³ the world over has resulted in the signing of several international agreements on the rights of women – including their right to participate in the governance of their country of origin. At the global level, one can mention the UN Convention on the Political Rights of Women 1954,⁴ and the Convention on the Elimination of All Forms of Discrimination Against Women

¹ See "Botswana: Women Urged to fight for Equality", available online at: http://dehai.org/archives/AW_news_archive/0459.html.

² For a world chronology of the recognition of women's right to vote and to stand for elections, see "Women's Suffrage", available online at: <http://www.ipu.org/wmn-e/suffrage.htm>.

³ Some of the activists were (and still are) women themselves.

⁴ See 193 U.N.T.S. 135, *entered into force* 7 July 1954.

(CEDAW) 1979 as good examples of such instruments.⁵ Importantly, apart from specific instruments on women's rights, such as these, there are also provisions in the general human rights instruments for the protection of women's rights. Significantly, most, if not all, African countries are States Parties to all these international instruments. Moreover, it is noteworthy that the struggle for gender equality has also resulted in the making of domestic laws in many countries, including some African countries, on the rights of women. And, more recently, African countries have adopted a Protocol called Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women,⁶ which, although not yet in force, contains far-reaching provisions on the Rights of African women (including right to participate in public life and governance).⁷ Some of these instruments will be briefly outlined below.

Experience teaches that law making is one thing, while implementation of the law is another. Hence, it is important to know what progress or gain has been made over the years towards achieving gender equality or non-discrimination in compliance with the relevant laws. One of the ways to gauge this is to explore the level of participation of women in the governance of their countries or decision-making processes. Accordingly, this article seeks to provide an overview of the present level of participation of African women in the public life and governance of their various countries against the background of relevant laws. It commences with a brief clarification of the meaning of participation. This will be followed by a brief exposition of a few legal instruments relevant to women's right to participation in public affairs and governance. Thereafter, we will explore the recent experience of African women on the subject matter. The last section will contain some concluding remarks.

2. Meaning of Participation: A Nutshell

The concept of "Participation" has become an important one in the international discourse on human rights, although it has not been possible to give a precise definition of it. Essentially, it is increasingly being employed as a measure of equity and fairness. As one commentator has noted, "participation emerges time and again as a key issue in the context [international discourse on] of minority and indigenous peoples' rights". He also notes that

⁵ The Convention was adopted and opened for signature, ratification and accession by UN General Assembly resolution 34/180 of 18 December 1979 (*entry into force* 3 September 1981, in accordance with article 27(1)).

⁶ Adopted 11 July 2003 at Maputo, Mozambique.

⁷ For an overview of this Protocol, see K.S.A. Ebeku, "A New Hope for African Women: Overview of Africa's Protocol on Women's Rights", (2004) 13(3) *Nordic Journal of African Studies* (forthcoming).

“members of majority communities who are concerned about the long-term equity, stability and peace of their societies” equally accept the need for participation of the minority or indigenous peoples [and marginalized or under-privileged peoples – particularly, women] in the political, social and economic decisions that have repercussions on their lives.⁸

Significantly, the “right to participation” has been expressed in several general international instruments as well as in women’s rights-specific international instruments and in a few national legislation and constitutional provisions in the African continent (see below). At the “general” level, for example, Article 7(1) of the ILO Convention 169 provides, in part, that indigenous peoples “shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly”. Similarly, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁹ places emphasis upon the right of minorities¹⁰ to “participate effectively in cultural, religious, social, economic and public life” (Article 2(2)).¹¹

One important question is this: what is the content or meaning of the “right to participation”? It has already been indicated that there is yet no generally acceptable definition of the concept of participation. Moreover, there is there no unanimity on its contents. Hence, we shall here only attempt a brief description of what its contents are. Firstly, it has been suggested that it consists of the right to make decisions about development action.¹² It can

⁸ See Minority Rights Group (MRG), *Public Participation and Minorities* (London: MRG, 2001) p. 3.

⁹ Adopted by the UN General Assembly in Resolution 47/135 of 18 December 1992.

¹⁰ Although *de jure* women are in the majority in African countries, they are *de facto* minorities – particularly in relation to participation in public life and governance.

¹¹ See also Principle 23 of the World Charter for Nature 1982, which says: “All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.” See further IUCN Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources, Art. 10 (U.N. Doc. A/CONF.151/PC/WG.III/4 (1991)). Furthermore, Article 15(1) of the ILO Convention 169 states that the rights of indigenous peoples to the natural resources pertaining to their lands “shall be specially safeguarded” and these include their right to “participate in the use, management and conservation of these resources”. With particular regard to participation in environmental management, Principle 10 of the Rio Declaration partly declares as follows: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level”.

¹² For recent and incisive information on the law of public participation, see *D.N. Zillman / A. Lucas / G. Pring* (eds.), *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, Oxford: Oxford University Press, 2002.

also mean the process whereby local communities and individuals (including women) take part in defining their own needs and coming up with solutions to meet those needs. In addition, participation can refer to situations in which local communities share in the benefits from development projects and are fully involved in generating those benefits. As Hitchcock explains, 'rural development can be redefined to mean the enabling of poor rural women and men to demand and control more of the benefit of development. Participation can thus be said to mean simply putting people first'.¹³ Overall and in general terms, "participation" may be considered as the act or right of taking part or sharing in the activities of a group. This is the general sense the concept is used in this article.

Notably, public participation can be at different levels of public affairs, including socio-economic and political. Presently, we are concerned more with political participation – that is participation in public life and governance, although the dividing line between socio-economic and political issues may well be thin. Political participation refers to, not only the right to vote but also the right to be voted for based on. Moreover, it refers to the right to partake in public decision-making processes. As explained by Mrs Roosevelt of the UN Human Rights Commission during the debate on the Convention on the Political Rights of Women 1954, the objectives of the United Nations are not only to encourage equal political rights for women in all countries, but also to ensure that women fully participate in directing the policy-making of their governments. In her historic, poignant, and important speech, which admirably summarizes the thrust of the Convention, she said:

While it is true that women ... vote on the same terms as men,...too often the great decisions are originated and given form in bodies made up wholly of men, or so completely dominated by them that whatever of special value women have to offer is shunted aside without expression. Even in countries where for many years women have voted and been eligible for public office, there are still too few women serving in positions of real leadership. I am not talking now in terms of paper parliaments and honorary appointments. Neither am I talking about any such artificial balance as would be implied in a 50-50, or a 40-60 division of public offices. What I am talking about is whether women are sharing in the direction of the policymaking in their countries; whether they have opportunities to serve as chairmen of important committees and as cabinet ministers and delegates to the United Nations.¹⁴

As indicated above, this article seeks to provide an overview of the opportunities given to African women in recent years to serve in important political offices (such as ministerial

¹³ See *R. Hitchcock*, "Seeking Sustainable Strategies: The Politics of Resource Rights among the Central Kalahari San"; available online at: <http://kalaharipeoples.org/documents/Fpk-ckg.htm> .

¹⁴ See "What I Hope to Leave Behind: The Essential Essays of Eleanor Roosevelt" in: Department of State Bulletin, 5 January 1953, pp. 29-32; available online at: <http://www.udhr.org/history/124.htm>.

offices); to participate in the public life and governance of their various countries based on equality with men.

3. Legal Framework for Women's Participation in Governance: International Instruments and National Laws

As earlier indicated, one of the outcomes of about a century of struggles (as continuing) for non-discrimination and gender equality is the making and existence of several international agreements and national legal provisions (including national constitutional provisions) on the rights of women. For the present purpose, only a few of the international-regional instruments will be outlined here. Remarkably, Africa leaders/governments have made political commitments at international and regional conferences to involve women in public affairs/governance of their countries. Although the outcome of such conferences cannot be found in treaties, they are certainly part of the international-regional legal framework for women's participation in public life and governance in Africa. However, for the sake of clarity, this will be outlined here separately below. With regard to national legal provisions, the constitutional and statutory provisions of a few African countries will suffice to illustrate the position. Overall, for the sake of convenience and clarity, the important provisions of the relevant international-regional instruments and national instruments will be outlined in turn.

3.1. *International Instruments*

International instruments relating to women's right to participate in the public affairs and governance of their country include the UN Convention on the Political Rights of Women, CEDAW, and the International Covenant on Civil and Political Rights (ICCPR) 1966.¹⁵ At the regional level, we have the Agreement on the Establishment of the Pan-African Parliament (called the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament¹⁶), and the recently adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. These are the only instruments we will consider here. Remarkably, while some instruments deal specifically with the sole issue of political participation, others deal with a number of other issues, apart from providing for the right of women to participate in the public life and governance of

¹⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49.

¹⁶ Adopted at Sirte, Libya, 2 March 2001; entered into force 14 December 2003.

their various countries. However, the following outlines will concentrate on the political participation aspects of the instruments.

The Convention on the Political Rights of Women is a short treaty of eleven articles. Essentially, it provides for the rights of women to be elected to all publicly elected bodies established by national law, based on equality of men and women, without discrimination (article II). Furthermore, this Convention provides for the right of women to ‘hold public office and to exercise all public functions, established by national law, on equal terms with men, without discrimination (article III).¹⁷

On its part, CEDAW provides, with regard to public affairs, that States Parties should take measures to eliminate discrimination against women in the political and public life of the country, and to ensure on equal terms with men, *inter alia*, the right of women “to vote in all elections and public referenda and to be eligible for election to publicly elected bodies”, and “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” (article 7(a) and (b)). Moreover, the Convention enjoins States Parties to give women, based on equality of men and women and without any discrimination, “the opportunity to represent their governments at the international level and to participate in the work of international organizations” (article 8). It should be mentioned that for the purpose of achieving *de facto* equality, article 4 permits positive discrimination in favour of women – the adoption of temporary special measures aimed at accelerating *de facto* equality between men and women.¹⁸ The measures must be discontinued when the objective of discrimination has been achieved.

The ICCPR deals with civil and political rights of all, without distinction on grounds of sex. Of particular interest to us presently, article 25 provides for the right of every citizen, without distinction as to sex, to participate in the public life of his/her country, to vote or be voted for, and, generally, to have access to the public service of his/her country.

At the regional level, article 4(2) of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament 2001¹⁹ provides that “each Member State shall be represented in the Pan-African Parliament by five (5) members, at

¹⁷ See also the Declaration on the Elimination of All Forms of Discrimination Against Women (proclaimed by the United Nations Resolution 2263(XXII) of 7 November 1967).

¹⁸ See further articles 2 and 3.

¹⁹ The full text of the protocol can be found online at: [www.africa-union.org/rule_prot/ protocol-panafrican-parliament.pdf](http://www.africa-union.org/rule_prot/protocol-panafrican-parliament.pdf). The Treaty Establishing the African Economic Community was adopted in Abuja, Nigeria on 3 June 1991.

least one of whom must be a woman".²⁰ On its part, article 9 of the recently adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women provides for women's right to participate in political and decision-making processes of their various countries. To ensure this, States Parties are obliged to take positive action to promote participative governance and equal participation of women in the political life of their countries through affirmative action, enabling legislation and other measures. Specifically, women should be enabled to participate without discrimination in all elections; they should be represented equally at all levels with men in all electoral processes; and they should be treated as equal partners with men at all levels of development and implementation of State policies and development programmes (article 9(1)). Moreover, States Parties are required to ensure increased and effective representation and participation of women at all levels of decision-making (article 9(2)).

3.2. *International Instruments: Political-Legal Commitments for the Involvement of Women in Governance*

As already mentioned, in addition to treaty provisions, we can also find political commitments at different international-regional forum by African countries to involve women in governance. There have been several such commitments over the years.²¹ Importantly, these commitments are not merely moral codes; they partake of legal commitments in character, being the outcome of conferences or international-regional meetings and may be regarded as evidence of state practice – a major requirement in the formation of customary international law.²² For the present purposes, only three of such commitments will be outlined here.

Firstly, the Nairobi Forward-Looking Strategies for the Advancement of Women (adopted at the Third World Conference on Women held at Nairobi, Kenya, 15-26 July 1985)²³

²⁰ Women's representation in parliaments is one aspect of women's opportunities in political and public life, and it is therefore linked to women's empowerment: UN Millennium Development Goals 2000, para. 12.

²¹ For information, see the website of the African Union (AU): <http://www.africa-union.org/>.

²² According to Malanczuk, "the main evidence of customary [international] law is to be found in the actual practice of States, and a rough idea of a State's practice can be gathered from ... statements made by government spokesmen...at international conferences and at meetings of international organisations..." See *P. Malanczuk*, *Akehurst's Modern Introduction to International Law*, 7th ed. (London: Routledge 1997), p. 39.

²³ The Conference was held to review and appraise the achievements of the United Nations Decade for Women: Equality, Development and Peace. For full text of the instrument, See: <http://www.earthsummit2002.org/toolkits/women/un-doku/un-conf/nairobi.htm>. By resolution 3520

contains extensive commitments by the participating nations to promote women's participation in public affairs and governance of their countries as well as in international and regional communities. Among others, this instrument provides that governments should take all appropriate measures to ensure to women, on equal terms with men and without discrimination, the opportunity to represent their government at all levels on delegations to sub-regional, regional and international meetings. Moreover, it calls for more women to be appointed as diplomats and to decision-making posts within the United Nations system, including posts in fields relating to peace and development activities (paragraph 79).

Furthermore, paragraph 86 states that governments and political parties should intensify efforts to stimulate and ensure equality of participation by women in all national and local legislative bodies and to achieve equity in the appointment, election and promotion of women to high posts in executive, legislative and judicial branches of government. At the local level, strategies to ensure equality of women in political participation should be pragmatic, should bear a close relationship to issues of concern to women in the locality and should take into account the suitability of the proposed measures to local needs and values.

Regarding participation in decision-making processes, paragraph 88 provides that governments should effectively secure participation of women in the decision-making processes at a national, state and local level through legislative and administrative measures. Importantly, it is required that special activities should be undertaken to increase the recruitment, nomination and promotion of women, especially to decision-making and policy-making positions, by publicizing posts more widely, increasing upward mobility and so on, until equitable representation of women is achieved.

Lastly, paragraph 91 provides that Political parties and other organizations such as trade unions should make a deliberate effort to increase and improve women's participation within their ranks. They should institute measures to activate women's constitutional and legal guarantees of the right to be elected and appointed by selecting women candidates.

Secondly, at the Fifth African Regional Conference on Women held in Dakar, Senegal, from 16 to 23 November 1994,²⁴ the Ministers and the representatives of African Govern-

(XXX) of 15 December 1975, the United Nations declared the period from 1976 to 1985 the United Nations Decade for Women: Equality, Development and Peace.

²⁴ The conference was held in preparation for the Fourth World Conference on Women to be held in Beijing, China, from 4 to 15 September 1995. See also the Declaration of the Organization of African Unity (OAU) Heads of State and Government on Population and Development in Africa (AHG/DECL.4 (XXX), Tunis 1994, para. 20): 'We commit ourselves particularly to do all within our power to empower women to play their full role in society through the elimination of

ments who participated adopted an African Platform for Action. They recognized that there can be no equality and development without peace and that peace can only be achieved with the full involvement of women as equal partners with men at all levels of decision-making, among others.²⁵ They also expressed a determination to support women fully so that they can contribute to and participate more effectively in all the political and economic changes now taking place in Africa.²⁶ More importantly, they declared their commitment to forge a new ethic for sustainable development based on the equal and active participation of women as agents of change at family, community, national and international levels.²⁷

Lastly, the Beijing Declaration and Platform for Action of the Fourth World Conference on Women (adopted at Beijing, China on 15 September 1995)²⁸ is another important women's rights-related instrument and one of the most recent global-level instruments touching on women's right to public participation. Among others, this document notes that the empowerment and autonomy of women and the improvement of women's political status is essential for the achievement of both transparent and accountable government and administration. It points out that achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning. It adds that "women's equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account".²⁹ Importantly, this document further notes that "despite widespread movement towards democratization in most countries, women are largely underrepresented at most levels of government, especially in ministerial and other executive bodies, and have made little progress in attaining political power in legislative bodies or achieving the target endorsed by the Economic and Social Council of having 30 per cent women in positions of decision-making levels by 1995".³⁰

inequality between men and women...' Other regional milestones that have impacted upon the political, socio-economic and cultural status of women in Africa include: the Lagos Plan of Action and Final Act of Lagos (1980); the Kilimanjaro Programme of Action on Population and Self-Reliant Development (1984); the African Charter on Popular Participation and Transformation (1990); the Ouagadougou Declaration on the Education of Girls (1990); and the Dakar/Ngor Declaration on Population, Family and Sustainable Development (1992).

²⁵ See African Platform for Action (preamble).

²⁶ See African Platform for Action (preamble).

²⁷ See African Platform for Action (para. 1).

²⁸ For full text of this document, see: A/CONF. 177/20 (1995) and A/CONF.177/20/Add.1 (1995). The Conference was held 4-15 September 1995.

²⁹ See paragraph 183.

³⁰ See paragraph 184. See further paragraphs 185-190.

In order to promote women's participation in public life, the Beijing Platform for Action enjoins governments to, *inter alia*:³¹

- (i) Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, *inter alia*, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions;
- (ii) Take measures, including where appropriate, in electoral systems that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and levels as men.;
- (iii) Protect and promote the equal rights of women and men to engage in political activities and to freedom of association, including membership in political parties and trade unions; and
- (iv) Aim at gender balance in the lists of national candidates nominated for election or appointment to United Nations bodies, specialized agencies and other autonomous organizations of the United Nations system, particularly for posts at the senior level.

Furthermore the Platform for Action enjoins political parties to take the following actions to achieve gender equality and non-discrimination: (a) Consider examining party structures and procedures to remove all barriers that directly or indirectly discriminate against the participation of women; (b) Consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes; and (c) Consider incorporating gender issues in their political agenda: taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men.³²

3.3. *National Legal Provisions on Participation of Women in Governance*

Some African countries have made varying legal (constitutional and/or statutory) provisions to ensure and guarantee the participation of women in the public life and governance of their countries. The difference lies in the fact that while some have specific or direct

³¹ See paragraph 192(a), (b) (c), and (j).

³² See paragraph 193.

provisions, others are content with a general provision for equality and non-discrimination. A few examples will illustrate this point.³³

In Nigeria, section 42(1) of the 1999 Constitution provides for equality and non-discrimination thus:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Although this provision speaks of non-discrimination in many respects, it is important to note that sex-based discrimination is among the forbidden ones.³⁴ Even so, it is notable that this provision has been criticized as preserving equal status for men and women 'only in relation to law but does not extend the protection to practice neither does the provision protect women from private actors'. This is interesting, because this criticism is contained in Nigeria's combined fourth and fifth periodic report (1994-2002) to the CEDAW Committee on the Elimination of Discrimination Against Women.³⁵

However, it is difficult to appreciate the entirety of this criticism. In fairness, while the provision may be properly criticized for not expressly covering discrimination from private actors, it is incorrect to say that the provision does not extend the protection to practice. Does it may that its effect is only theoretical? It cannot be. A better criticism is that the provision does not appear to prohibit the making of discriminatory laws.

Another example of non-discriminatory constitutional provision in Africa can be found in section 15(1) and (2) of the Constitution of Botswana. Subject to some stated exceptions, section 15(1) provides that no law shall make any provision that is discriminatory either of itself or in its effect, while section 15(2) stipulates that 'no person shall be treated in a

³³ Note that the national legal provisions are apparently influenced by the international obligations of the States.

³⁴ A National Policy on Women was launched in July 2000.

³⁵ See Combined Fourth and Fifth Periodic Reports of States Parties: Nigeria (CEDAW/C/NGA/4-5), Para. 2.2. This document is available online at: <http://www.un.org/womenwatch/daw/cedaw/30sess.htm>. The report was considered at the CEDAW 30th Session 12-30 January 2004.

discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority’.³⁶

In contrast to the above general provisions, the Constitutions of Uganda and Rwanda contain additional and specific provisions for the participation of women in the decision-making processes or governance of their countries. In the case of Uganda, section 21 of the 1995 Constitution of the country provides for equality before the law as follows:

1. All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.
2. Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.
3. For the purposes of this article, ‘discriminate’ means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.

Moreover, section 32(1) specifically provides for affirmative action to be taken in favour of women, including affirmative action designed to address historical inequality. In more specific terms, section 33 provides, among others, that: Women shall be accorded full and equal dignity of the person with men; the State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement; and that women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

It is equally important to note the National Objectives and Directive Principles of State Policy contained in the Ugandan Constitution. Importantly, the principles are designed to guide all organs of the State in the implementation of the Constitution. Some of its gender-related provisions include principle VI, which provides that ‘the State shall ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies’, and Principle XV which enjoins the State to ‘recognize the significant role that women play in society’.

³⁶ For an interesting critique of these provisions, see *C.M. Fombad*, “The Constitutional Protection against Discrimination in Botswana”, (2004) 53(1) ICLQ, pp. 147-150.

Similarly, in Rwanda, its new Constitution (adopted in May 2003) reserves 24 out of 80 seats in the lower house of Parliament for women, and 6 out of 20 members of the upper house.³⁷ Similar provision can also be found in the Constitution of Burkina Faso, and in Sudan, the reservation of some parliamentary seats for women is contained in its electoral law.³⁸

Apart from the foregoing, it is well to note that a few African political parties have provisions in their constitution or have adopted a working policy, which ensures that a certain percentage of women are included as candidates for electoral offices. A good example of this can be found in the constitution of the African National Congress (ANC) of South Africa and in the practice of the major political parties in Uganda and in Mozambique.³⁹

4. African Women and Participation in Governance: The Recent Experience

The worldwide struggle for participation of women in the public life of their countries has not been in vain. Although it may be too ambitious to claim that equality has been achieved in this regard, there is evidence to indicate that women in the African continent are increasingly being involved in the public life and governance of their various countries. A few examples will bear out this fact.⁴⁰

In Uganda, as of 2001, out of seven members on the Electoral Commission, three are women, and one of them is the Vice-Chairperson. The seven-person Human Rights Commission has three women and its Chairperson is a woman. The Vice-Chairperson to the Judicial Service Commission is also a woman. Moreover, a woman occupies the office of Deputy Speaker of the Parliament and Deputy Chief Justice of the Federation,⁴¹ and until May 2003 a woman, Dr Speciosa Wandira Kazibwe, was the Vice-President of the country.⁴² There is no evidence to indicate a downward trend in more recent years.

³⁷ Noted in *G. Mutume*, "Women Break into African Politics: Quota Systems allow more Women to gain Elected Office" (2004) 18(1) *Africa Recovery*, p. 4; available online at: <http://www.un.org/ecosocdev/geninfo/afrec/vol18no1/181women.htm>.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Note that the examples given here are merely representative of the general continent-wide trend. More information can be found at: <http://allafrica.com>.

⁴¹ See *Hon. M.R.K. Matembe*, "Women and Constitution Making in Uganda"; available online at: <http://www.kenyaconstitution.org/docs/09cd009.htm>.

⁴² Dr Kazibwe was Africa's first woman to attain such high political office, and served from November 1994 - May 2003. She resigned in order to pursue a PhD degree in medicine at Harvard

In South Africa, the present speaker of the country's Parliament (National Assembly) is a woman, Frene Ginwala, and there is a strong presence of women in the country's legislative houses. More recently, President Mbeki has appointed several women into important ministerial offices in his (second term) government. Importantly, women now make up 43 per cent of the national cabinet. Specifically, there are 12 women ministers, and half of 20 deputy ministers are women. According to informed commentators, "the representation of women in cabinet [executive Council] is now the highest it has ever been in this country [South Africa] and in Africa".⁴³ More importantly, 'read together with the representation of women in the national and provincial legislatures, as well as the diplomatic corps, the presence of [South African] women in top positions is historic....'⁴⁴ In a speech relating to the appointments, President Mbeki pointedly remarked that "we ... sought to further increase the number of women to increase the gender balance".⁴⁵

Still in southern Africa, the percentage of women elected to Parliament in Botswana rose from 10 per cent to 18 per cent after the 1999 elections, and their representation in the Cabinet rose from 16 to 25 per cent at the same time.⁴⁶ Women also constitute 13 per cent of the Mayors and 19 per cent of the members of the Local Government Councils.⁴⁷ There are women in other areas of governance in Botswana, including the judiciary, and the present Central Bank Governor of Botswana is a woman (Linah Mohohlo).⁴⁸ In fact, southern African countries appear to have shown more determination in promoting the participation of women in public affairs and governance. The overall position has been well summed up thus:

Heads of state of the Southern African Development Community (SADC) have gone beyond global and continental commitments to sign a Declaration on Gender and Development, in which they have undertaken to have 30 per cent of decision-making

University, USA. She was a committed campaigner for women's rights. While accepting her resignation, President Museveni thanked her for her 'extra-ordinary mobilization skills especially among the women and youths'. See reports in My Uganda, *Former Vice President*; available online at: <http://www.myuganda.co.ug/categories/government/kazibwe.htm>).

⁴³ M. Sefara / M. Monare, "Women rule in new Cabinet", Pretoria News, 29 April 2004; available online at: <http://www.pretorianews.co.za/index.php?fArticleId=419150>.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ See "Botswana: Women Urged to fight for Equality", UN Integrated Regional Information Networks (IRIN), 11 March 2004; available online at: <http://allafrica.com/stories/printable/200403110317.html>. There is another (conflicting) claim: that women's present representation in the Cabinet is 33 per cent. See Fombad, "The Constitutional Protection", op. cit., p. 158.

⁴⁷ See Fombad, "The Constitutional Protection", op. cit., p. 158.

⁴⁸ See "Botswana: Women Urged to fight for Equality", op. cit.

positions occupied by women by the end of 2000. Three countries, South Africa, Mozambique and Seychelles, already are close to reaching this target. They rank among the top 10 globally in the proportion of women in parliament (only the Scandinavian countries have reached 30 per cent). On average, 18 per cent of parliamentarians in Southern Africa are women, compared with 15 per cent in Europe and the Americas.⁴⁹

This observation was as of the year 2000. As indicated above, there have been further and much more progress in southern African countries in more recent years.⁵⁰

Relating to Nigeria, since 1999 an increasing number of women have been appointed into federal political offices much more than ever before in Nigerian history. Among other important political offices, a woman is presently the Minister of Finance and another woman is the Minister of State for Finance.⁵¹ There are also an increasing number of women at other levels of governance in the country – state and local. Presently, for instance, a woman is the deputy governor of Osun state.⁵² In fact, unlike hitherto, women can now be found in many areas of governance and public office, including the judiciary. For example, the present Chief Judge of the Federal High Court, Abuja (the Federal Capital Territory) is a woman, Rosaline Ukeje. Furthermore, the present Chief Judge of Lagos state is a woman and 34 out of a total of 52 judges in the state are women. A few women have also been recently appointed into the Court of Appeal of the federation.⁵³ Lastly, a woman, Dorothy Akunyili, is the present head of country's National Agency for Food and Drug Law Administration and Control – an important political institution in the country.⁵⁴

In post-genocide Rwanda,⁵⁵ unlike before, women now have 49 per cent representation in the country's Parliament, thus topping a world average of 15.1 per cent. As stated earlier,

⁴⁹ See *C.L. Morna*, "Mixed Progress for African Women: Review of Beijing Conference finds both Gains and Reverses", (2000) 14(2) *Africa Recovery*, p. 3; available online at: <http://www.un.org/ecosocdev/geninfo/afrec/subjindx/142wm.htm>.

⁵⁰ An important recent contribution to the literature on women's participation in public life and governance in South Africa is: *G. Fick / S. Meintjes / M. Simons* (eds.), *One Woman, One Vote: The Gender Politics of South African Elections* (Johannesburg: Electoral Institute of Southern Africa, 2002).

⁵¹ These appointments were made in 2003, after Nigeria's general elections in April-May 2003.

⁵² Sadly, a woman who became the deputy governor of Lagos state after the 1999 general elections in Nigeria had to resign before the expiry of her tenure because of disagreements with the governor of the state (a male). Also, a woman speaker in a northern state of Nigeria was forced to resign because of threats from her male colleagues.

⁵³ No woman has yet made it into the highest court of the country – the Supreme Court of Nigeria.

⁵⁴ For more information, see the Combined Fourth and Fifth Periodic Reports of States Parties: Nigeria (CEDAW/C/NGA/4-5), Para. 2.1.

⁵⁵ The country suffered genocide in 1994.

under the country's new (2003) Constitution, 24 out of 80 seats in the lower house of parliament are reserved for women, and 6 out of 20 seats in the upper house are reserved for women. Significantly, during the country's September 2003 general election, an additional 15 women were voted into non-reserved seats – thus bringing 39 into the lower house.⁵⁶ Remarkably, this development has been attributed to the role of women during and after the country's civil war, and not necessarily as a direct response to the country's international obligations.⁵⁷ Even so, it represents a political gain by the country's women.

At the continent-wide level, a woman, Tanzanian Member of Parliament Gertrude Mongella, was elected the first President of the Pan-African Parliament at its inaugural session at Addis Ababa, Ethiopia, on 18 March 2004. Moreover, evidence indicates that some countries appointed more than one woman into the Pan-African Parliament, and also half of the present 10 members of the African Union Commission are women.⁵⁸

As could be observed, some of the gains mentioned above could be attributed directly to a genuine desire by men-dominated governments to comply with international norms/instruments binding on their countries while others could be attributed to the adoption of quota systems (whether as a constitutional, statutory or policy measure) to towards achieving gender equality. As one commentator puts it, most of the sub-Saharan African countries that have achieved significant increases in women's participation "have done so through the use of quotas – a form of affirmative action in favour of women".⁵⁹

As already indicated above, three main types of quota systems are in use in Africa. Firstly, *Constitutional* quotas – where constitutional provisions reserve seats for women in the legislature (as can be found in some countries such as Burkina and Rwanda). Secondly, *Election law* quotas – where provisions are written into national legislation, as in Sudan. And, thirdly, *Political party* quotas – where Political Parties adopt internal rules to include a certain percentage of women as candidates for office (as is the case with the present governing parties in South Africa, Mozambique and Uganda).⁶⁰

⁵⁶ Rwandan women have also successfully pushed for the establishment of a ministry dedicated to women's affairs. Similar ministries have also been recently established at the federal and state levels of government in Nigeria.

⁵⁷ See *G. Mutume*, "Women Break into African Politics", op. cit., p. 4.

⁵⁸ See "Africa Union Puts Women First Once Again", News by allAfrica.com, 18 March 2004; available online at: <http://allafrica.com/stories/200403180381.html>.

⁵⁹ See *G. Mutume*, "Women break into Africa politics", op. cit., p. 4.

⁶⁰ Loc. cit.

Notably, the quota systems can be said to be in line with the relevant instruments on women's rights. For instance, Paragraph 91 of the Nairobi Forward-Looking Strategies for the Advancement of Women recommends that "Political Parties and other organizations such as trade unions should make a deliberate effort to increase and improve women's participation within their ranks", and "institute measures to activate women's constitutional and legal guarantees of the right to be elected and appointed by selecting women candidates". Similarly, the Beijing Declaration and Platform for Action of the Fourth World Conference on Women enjoins Political Parties, *inter alia*, to "consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes" (see above).

However, the use of quota systems has been severely criticized by some observers, including women's groups. On the one hand, it is argued that quota system discriminates against men. On the other hand, it has been argued that "quotas may constitute a 'glass ceiling' beyond which women cannot go unless they engage in additional struggle".⁶¹ Moreover, it has been contended that women who come into power under such a system may be undervalued or viewed as not politically deserving.⁶² In other words, quota systems may be considered as not useful or even harmful to women in the long run.

In my view, while quota systems may be said to be "technically" discriminatory against men, it is justifiable as a measure to achieve *de facto* equality (at least in the short run). On the contrary, it is difficult to fault the argument that it may be harmful to women in the long run. Yet it can be said that it is still useful as a first step. As Beatrice Kiraso, who was elected to Ugandan Parliament in 1996, points out, quotas kick-started the process of improving women's participation in national politics in Uganda.⁶³

In the end, notwithstanding the gains identified above, which are merely representative of the continent-wide trend, it is contended here that women's participation in the governance of their countries still leaves more to be desired in most African countries. Commenting about the situation in Botswana, for instance, Fombad notes that although the situation "shows quite some progress in gender equity, it still falls quite short of the recommended mark" under the Southern African Development Community (SADC) Declaration on

⁶¹ Loc. cit.

⁶² Loc. cit.

⁶³ Noted in loc. cit.

Gender Development.⁶⁴ He specifically points out that “the situation is worse when it comes to their participation in policy-making structures”.⁶⁵

To be sure, this observation holds true in much of Africa today.⁶⁶ To cite but one representative example, notwithstanding the relative improvement on political appointment of women recorded under the present (Obasanjo) civilian administration in Nigeria (the most populous African country, with women accounting for more than half the population), available statistics show that between 1999 and 2003 out of a total of 11,881 electable positions nation-wide women had only 181 places or 1.62 per cent. More specifically, of the 360 members of the House of Representatives, there were only 12 women. Similarly, out of the 109 members of Senate, there were only three women.⁶⁷

The figures were poorer after the 2003 general elections.⁶⁸ As Imoukhuede put it, “the [2003] Nigerian elections were held and women did not perform well”.⁶⁹ She attributed the poor performance to the non-availability of funds, chauvinistic cultural practices, religion and cultural bias. In a similar vein, speaking recently at a workshop on Women Empowerment in Nation Building, Ojeba – the only female member of Kogi state House of Assembly – lamented: “I am the only female member of the House of Assembly, yet I know how vibrant, how powerful and how influential the women’s wing of our party is. I also believe

⁶⁴ See *Fombad*, “The Constitutional Protection”, op. cit., p. 158. For the full text of the SADC Declaration, see http://www.sardc.net/widsaa/sgm/1999/sgm_genderdec.html.

⁶⁵ See *Fombad*, ‘The Constitutional Protection’ p. 158. For information on the inhibiting factors in the country, see the Concluding Observations of the Committee on the Elimination of Racial Discrimination on Botswana (CERD/61/CO/2 of 23 August 2002). See also, Human Rights Watch/Africa Human Rights Project, Botswana: Second Class Citizens (New York: Human Rights Watch 1994).

⁶⁶ For information, see reports at: <http://allafrica.com>.

⁶⁷ See Women’s Rights Watch – Nigeria, “Statement and Declaration at the National Summit for all Women Politicians held on June 28th 2002 at the National University Commission Auditorium, Maitama, Abuja”.

⁶⁸ For information, see Nigerian Newspapers online (2003) at: <http://www.nigeriaworld.com/>.

⁶⁹ See *N. Imoukhuede*, 2003 Report on the State of Women’s Rights in Nigeria (Abuja: Women’s Rights Watch-Nigeria 2003). This report can be found online at: <http://www.rufarm.kabissa.org/pressrelease/report03.htm>.

that the political field as it exists today is skewed in favour of men...⁷⁰ Significantly, Nigeria has recently acknowledged that “the level of women’s representation is still low”.⁷¹

Furthermore, in a statement published to make the 2004 International Women’s Day (8 March),⁷² the Constitutional Rights Project (CRP), a Nigeria-based non-governmental Organisation (NGO) similarly lamented that Nigerian women “still do not enjoy equal rights with their male counterpart”. The statement pointed out that “this inequality is evident in the home, in education, employment, healthcare and in governance”.⁷³ Moreover, the NGO observed that notwithstanding their high proportion of the Nigerian population, women “still form only about 36 per cent of the total labour force”.⁷⁴

Perhaps the situation in Nigeria is as a result of the absence of specific legal provisions for affirmative action (positive discrimination) in favour of women as is the case in Uganda, for instance. However, it has been held in several American cases that even in the absence of specific provisions endorsing affirmative action, programmes implementing such action are compatible with the equal protection clause of the Fourteenth Amendment or anti-discrimination provisions.⁷⁵

While American judicial decisions are not binding on Nigeria, it is difficult to fault the reasoning in those cases. Hence, it is arguable that the lack of a specific legal provision for affirmative action is no excuse for not taking steps in favour of women designed to achieve equality in fact (*de facto* equality), more so as the National Policy on Women (adopted in 2000) contains a provision for affirmative action to increase to 30 per cent the total women

⁷⁰ See “Women: Continued Search for a Voice in Nation Building”, *The Guardian*, 30 April 2004; available online at: <http://odili.net/news/source/2004/apr/30/24.html>. It is sad to note that this vibrant voice for women died recently, 22 September 2004, in an auto crash during an official assignment. See “Ojeba, lone female Kogi lawmaker, dies in auto crash”, *The Guardian* 22 September 2004; available online at: <http://odili.net/news/source/2004/sep/23/19.html>.

⁷¹ See Combined Fourth and Fifth Periodic Reports of States Parties: Nigeria, op. cit., Para. 3.6. See also, loc. cit., Para. 2.1.

⁷² This date (8 March) was established by the United Nations in 1977. Essentially, it is designed as a day to reflect on the progress made to advance women’s equality, to assess the challenges facing women in contemporary society, to consider future steps to enhance the status of women and to celebrate the gains made in these areas.

⁷³ See “Constitutional Rights Project Seeks Gender Equality”, *The Guardian*, 8 March 2004; available online at: <http://odili.net/news/source/2004/mar/8/24.html>.

⁷⁴ Ibid.

⁷⁵ See, for instance, *Regents of the University of California V. Bakke*, 438 US 265 (1978). See also, in support of the position taken by American courts, Article 1(4) of the International Convention for the Elimination of All Forms of Racial Discrimination 1966.

representation in the legislative and executive arms of government in the federation as well as in the political party hierarchies.⁷⁶

Even so, perhaps *ex abundanti cautela*, there is a need for Nigeria (and other African countries) to have a Constitution, which is clearly gender sensitive, as is the case in Uganda and Rwanda, for instance. Remarkably, in both countries, women actively took part in the drafting of the new Constitutions, which was not the case with Nigeria's recently made Constitution. As the CRP pointed out, the 1999 Constitution of Nigeria was drafted by "29 men to the exclusion of women".⁷⁷ Hence, as the NGO rightly concluded: "little wonder that the said Constitution is not gender sensitive".⁷⁸

Perhaps more importantly is the issue whether, on the whole, the "women in government" in Africa can be said to be really in a position of "real leadership" – i.e., whether they are in a position to influence issues that are of particular interest to women. There is evidence to indicate, perhaps as a direct consequence of their numerical inferiority to men, that women parliamentarians have been unable so far to make any impact on issues relating to women's rights. To mention one example, in Zambia a woman member of Parliament, who is the Community Development Deputy Minister, Catherine Namugala, recently called for the harmonization of statutory laws and customary laws in the country while contributing to a private member's motion for the amendment or repeal of discriminatory statutes in the country. She pointed out that the Land Act allowed customary law to apply and this confers ownership of land in most part of the country on men. She further pointed out that customary practices like lobola (bride price) and sexual cleansing lead to the marginalization of women, and argued that they should be banned.

In response, a male member of Parliament, Cameron Pwele, said, "gender equality would depend on how women behaved because females who married foreigners should not expect them to get Zambian citizenship on top of their other nationality". In the same vein, another male member of Parliament, Request Muntanga, said, "the so-called discrimination was God-made and would be very difficult to get rid of".⁷⁹ It is important to note that these exchanges were happening less than a year after Zambia had participated in the adoption of the African Protocol on Women's Rights. In the end, her views failed.

⁷⁶ See the Combined Fourth and Fifth Periodic Reports of States Parties: Nigeria, op. cit., Para. 4.3.

⁷⁷ See "Constitutional Rights Project Seeks Gender Equality", op. cit.

⁷⁸ Ibid.

⁷⁹ See Customary, Statutory Law in Conflict, The Times of Zambia (NDOLO), 18 February 2004; available online at: <http://allafrica.com/stories/200402190132.html>.

Similarly, Ugandan Minister of Lands and Environment, responding to argument that a proposed Land Act should include a clause that would entitle spouses to share in the property that had been acquired during the marriage regardless of whose name it was registered, derisively said:

It is better to take longer debating matters in interpersonal relationships; it would be useless to enact a law that would remain sterile on the statute books. *The real issue here is not land, but the way a man relates to his wife. This is the view of Cabinet*; that overnight the relationship could change because of changes in the system of holding property. The problem with the woman is with her place of birth...She should get equal treatment in the home (her natal home) (emphasis added).⁸⁰

Importantly, this further indicates that women in the Cabinet (executive arm of government) are still unable to influence decisions in favour of gender equality. In the end, it is clear that not only has the participation of African women in public life and governance not gone far enough in terms of their number in relation to men, it is also the case that are arguably not yet in real leadership position as envisaged by Mrs. Roosevelt.

5. Concluding Remarks

It has become axiomatic that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.⁸¹ Obviously, part of the rights is the right of women to participate in the public life and governance of their countries. This article has shown that there are numerous international legal instruments designed to promote the right of women to public participation and governance, which are legally and/or politically binding on most, if not all, African countries. Moreover, some African countries such as Uganda and Rwanda, have taken further steps to include constitutional provisions designed to achieve due participation of women in the public life and governance of their countries.

More importantly, it has been seen that in recent years women in some African countries have recorded gains or made progress in the field of participation in governance and public life. To be sure, an increasingly number of women has been elected into electable bodies, and some have been appointed into high political and other public offices. Remarkably,

⁸⁰ Quoted in *Mulyagonja*, Family Law Reform in Uganda: A Tale of Petty Issues, Bitterness and Crocodile Tears – Paper presented at a Workshop on the Role of Civil and Customary Law in relation to Women Property Rights, held in Windhoek, Namibia 5 – 8 March 2001; available online at: http://www.cba.org/CBA/IDP/InterDev_PDF/Mulyagonja_Crocodile1.pdf.

⁸¹ See the Vienna Declaration and Programme of Action of the World Conference on Human Rights 1993, paragraph 18.

apart from been in conformity with the national Constitutions, laws and/or policies of the countries concerned, this development is in accord with the provisions of international instruments, some of which have been set out in this article.

Even so, there is still much room for progress. Presently, it will be incorrect to conclude that African women have achieved equality with men in the field of participation in public life and governance. The truth is that while women in a few African countries have made significant progress, the fact remains that the vast majority of African women still suffer exclusion from the public life and governance of their countries (as witness the present position in the most populous African country – Nigeria – as seen above). As a recent report rightly surmised, “overall, women make up 9 per cent of parliamentarians in Africa, compared with the global average of 13.4 per cent”.⁸² More importantly, there is evidence to indicate that the present women in government are really not in a position of “real leadership”. Hence, more needs to be done to increase women’s representation and *effective participation* in the legislature, judiciary, executive, administration, private sector and even civil society organizations.⁸³

In summary, it can be concluded that although African women have made some progress in recent years in the field of participation in public life and governance of their countries, it is not yet *uhuru*. As already indicated, there is certainly still much miles to go before gender equality in public life and governance can be achieved. As has been seen, there is an enormous body of laws, which seem good on paper, but remain largely a paper tiger.

To achieve the target of gender equality in public life and governance, it is recommended that the relevant legal instruments should be implemented with greater determination and vigour, and not merely by token concessions in the form of appointments into a few political offices. This will require a sustained political will at both national and regional levels, which rises above prejudices against women. As Mohohlo has rightly exhorted, “it is time to discard the prejudices against women under the guise of culture. It is high time that humanity in general should realize that gender is no more a valid reason for discrimination than race, creed or religion.”

⁸² See *Morna*, “Mixed Progress for African Women”, op. cit., p.3.

⁸³ Loc. cit. For useful suggestions on how to promote and improve women’s participation in public life and governance, see the Concluding Observations/Comment of the CEDAW Committee on the Elimination of Discrimination Against Women on Nigeria’s combined fourth and fifth periodic report, made on 20 January 2004 (see CEDAW/C/2004/1/CRP.3/Add.2/Rev.1). Although the recommendations contained here were specifically targeted on Nigeria, they can be equally useful in most other African countries.