

Democratic Innovation and Participation as Part of the New Public Management: A Critical Review of Gender Mainstreaming in the Kenyan Legislature

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ABSTRACT

There has been a proliferation of democratic innovations aimed at improving democratic systems within a particular social, political and economic environment. This study aimed to evaluate the extent to which an innovative democratic approach, namely gender equity and equality, has been mainstreamed as part of democratic participation in the new public management in the Kenyan legislature. The study applied three complementary theories, that is, (1) the democratic innovation theory (Asenbaum, 2021; Cunningham, 2002; Elstub et al., 2016; Elstub & Escobar, 2019; Fung, 2015; Smith, 2005; 2009; 2019); and (2) changing organisational culture (Cameron & Quinn, 2006); both leading to (3) competing values in public administration (Hood, 1991). Findings revealed that there were certain achievements, just as there were challenges, in order to achieve the stipulations of the gender rule in a social-cultural and political context. This is because despite its legal basis, a democratic innovation may lack a basis in social-cultural settings and thus by itself, in law or out of law, it does not, and may not, automatically lead to democratic participation. Instead, it is imperative that the social context and both the more informal and formal principal laws operate side by side to promote participatory democracy, rather than a fixation on democratic innovation.

Keywords: Democratic innovation, democratic participation, gender mainstreaming, policy, legislative.

INTRODUCTION

Many people and countries aspire to the ideal democracy (Elstub & Escobar, 2019; Escobar, 2017). Some scholars argue that the democratisation process should involve a comprehensive overview of democracy, although the deficit of actual democratic practices has also been broadly criticised (Diamond, 2015; Levitsky & Way, 2015). Subsequently, there has been a proliferation of democratic innovations aimed at improving democratic systems within a particular social, political and economic environment (Elstub & Escobar, 2019; Wike & Fetterolf, 2018). Democratic innovation refers to processes or institutions aimed at improving democratic practices, including participation and governance (Elstub & Escobar, 2019; Torfing et al., 2012). Thus, democratic innovation, in principle, aims to counter democratic recession by incorporating principles of representative and participatory democracy (Bernstein, 2010; Escobar, 2017).

Democratic innovation as a way of promoting participatory democracy has been proposed as a way of both promoting democratic ideas and resolving political issues in the New Public

Management (NPM) framework, especially in developing countries that have hitherto been greatly impaired in achieving improved public administration (Fung, 2015). Innovative democracy places a lot of emphasis on citizen participation, including in politics, policy and public administration (Smith, 2005; 2009). A major question that arises thereof is the extent to which democratic innovation can offer greater participation and, hence, address the challenges of democracy in social, cultural, political and economic contexts. Participation per se refers to several activities in which the needs and concerns, interests and values, decisions and actions of various persons, organisations and groups are incorporated into public matters and issues in the governance and democratic participation processes (Bartels, 2015; Nabatchi & Leighninger, 2015). The implication is that participation is empowering, and in the Kenyan Constitution, "the people may exercise their sovereign power either directly or through their democratically elected representatives" (Republic of Kenya, 2010:1), thus creating enhanced democratic spaces (Cornwall, 2002; 2004). In the first instance, citizens as participants are expected to elect their leaders at national and local levels, though the previous constitution (Republic of Kenya, 1963) had historically and culturally been assigned normative underpinnings. It is against this background that the 'new' and present constitution (Republic of Kenya, 2010) aimed at an overall improved democracy against democratic recession, as argued by Levitsky and Way (2015) and Diamond (2015) and in turn improved spaces as argued by Lefebvre (1991) through a democratic innovation to increase female participation including the legislature and actualise gender equality ideals.

Democratic innovations have now been extended to a range of activities, including a ladder of participation (Arnstein, 1969) intended to deepen, broaden and diversify democratic participation (Asenbaum, 2021; Smith, 2019). It has been noted that although there has been an increase in democratic principles in various parts of the world, including Kenya, there are critical issues in current practices and several political deficiencies (Diamond, 2015; Levitsky & Way, 2015). Kenya, for instance, has a robust 'new' constitution, promulgated on 27th August 2010 to replace the 'old' constitution instituted at independence in 1964 since various groups such as females, the youth and persons with disabilities were radically marginalised, hence the need for equity and equality. As a result, various institutions tend to lean towards democratic innovation aimed at countering the democratic recession (Elstub & Escobar, 2019), and this is the case in attempts at gender equity, including in the legislature. Indeed, the gender rule has been singled out as a constitutional crisis in that although the constitution is supreme, the gender equity rule has not been implemented even in the legislature, 15 years after the promulgation of the constitution. The question is, why is this not possible, and why does the New Public Management (NPM) aim at equity, equality, and enhanced democratisation?

THEORETICAL FRAMEWORK

In this study, democratic innovation as part of the transformation processes to the New Public Management is examined using three different, though related, models. These are (1) democratic innovation theory by Asenbaum (2021), Cunningham (2002), Elstub (2010; 2018), Elstub et al. (2016), Elstub and Escobar (2019), Fung (2015) and Smith (2005; 2009; 2019); (2) changing organisational culture by Cameron and Quinn (2006) with reference to the public administration; both leading to (3) competing values in public administration by Hood (1991). The three models are both similar and albeit different in that (a) change is a process; (b) change is content and takes place in context; and, (c) the New Public Management (NPM)

transformation must have underlying values that include democracy, governance and participation, as argued by Dadze-Arthur (2022) and as incorporated in the Constitution of Kenya, the people or citizens are supreme. The participatory mechanisms are designed to engage individuals as citizens, institutions, and communities, as well as societal groups, in the democratisation process (Elstub, 2010; 2018). These institutions include stakeholder involvement aimed at enhanced democratic institutionalisation, as demonstrated in Figure 1.



Figure 1: Strategic Democratic Innovation and Democratic Participation

In the more traditional institutional procedures, democratisation is assumed in elections and representation. However, the process of democratic innovation argues that there is a need for advanced democratic practices, including citizen engagement and participation.

PHILOSOPHICAL ASSUMPTIONS AND DESIGN

The study adopted a qualitative survey research design to enable the collection of data concerning the two-thirds gender rule in the Kenyan legislature, the subject of study (Creswell & Creswell, 2018; Dawson, 2009; Walliman, 2010). Throughout the study, the researcher assumed that members of the legislature are concerned about upholding the constitution that was passed by and is upheld by the legislature, hence the case study of the legislature (Stake, 1995; Yin, 1984). The research questions were stimulated to seek inquiry using a multi-directional approach towards democratic participation and democratic innovation (Flick, 2011). The study adhered to ethical research standards (American Psychological Association, 2024; British Psychological Society, 2021). The research was conducted between January and May 2025. A total of 10 participants took part in the study and comprised of the following: 3 elected members of the National Assembly; 1 Women Elected Representative; 2 nominated members of the National Assembly; 2 elected members of the Senate; and, 2 nominated members of the Senate. Participants were sought through parliamentary networks based on their age and gender and whether they were elected or nominated members. Data was collected using interviews to provide an in-depth perspective on the inquiry. This was because the exploratory nature of the research items, with a focus on evaluating the two-thirds gender initiatives, required detailed qualitative data (Mathews & Ross, 2010).

DEMOCRATIC INNOVATION AND POLITICAL PARTICIPATION

Democratic innovation presents to include the remaking of the governing structures to create spaces for systemic transformations (Asenbaum, 2021; Elstub & Escobar, 2019; Fung, 2015; Smith, 2005; 2009; 2019). This study takes cognisance of Asenbaum's (2021), Fung's (2015) and Smith's (2019) arguments on the need to focus deliberately on the more positive characteristics rather than a myopic view of democratic innovation as undermining democracy.

For instance, the new constitution aimed to accommodate the diversity of various marginalised groups, including gender equity and greater democracy. The purpose was to recognise and protect human rights and fundamental freedoms and, in turn, preserve the dignity of individuals and communities, thus promoting social justice and the realisation of the potential of all human beings. The democratic innovation on gender equity identifies three key democratic values identified by Fung (2015), that is, legitimacy, effectiveness and justice, in line with the Constitution of Kenya as illustrated in Table 1.

Table 1: Gender Equity and Democratic Values

Democratic Values	Constitutional Constituents
Legitimacy	• Sovereignty of the people • Establishment of parliament (National Assembly and Senate) • Principles of devolved government • County assembly and gender balance and diversity
Effectiveness	• Rights and fundamental freedoms • Promotion of the representation of marginalised groups
Justice	• Equality and freedom from discrimination • Minorities and marginalised groups

Adopted from: Cornwall (2002) and Dean et al. (2019).

This is reiterated in democratic principles as bringing together a multiplicity of viewpoints (Cornwall, 2002; Dean et al., 2019). In Kenya, for instance, gender parity has traditionally been entrenched in a more patriarchal society in which women were marginalised in traditional societies during the colonial period and in the post-independence era (Kameri-Mbote, 2018; Odhiambo & Oduor, 2012), summarised by Kameri-Mbote (2018:21). *In Kenya, law historically reinforced gender inequality through legal rules that validated social injustices leading to the marginalisation of women. Further, the legal system was an obstacle to changes required to remove the inequality in legal rules, procedures and institutions.*

The change from the 'old' constitution (Republic of Kenya, 1963) to the 'new' constitution (Republic of Kenya, 2010) was a golden opportunity that enabled a democratic innovation that provided a remedy for "a group of people who because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds (Republic of Kenya, 2010, Article 27 (4)). Thus, in Odhiambo and Oduor's (2012: 2) words, "gender equality became an integral aspect to a new and acceptable constitutional framework" in Kenya as a community. This can be demonstrated as follows in Figure 2.

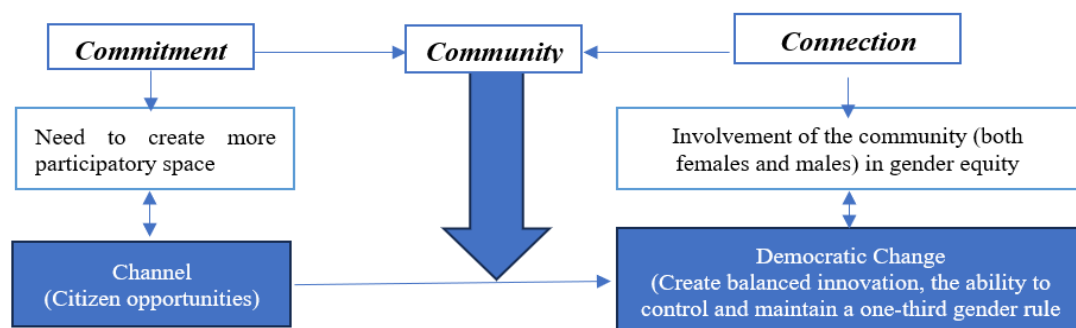


Figure 2: Creating Participatory Spaces for Female Participation in the Legislature

The 'new' constitution aimed to create the proliferation of democracy by ensuring that not more than two-thirds of members of any gender are included in the legislation. However, the three components of legitimacy, effectiveness and justice must also be comprehensive and participatory (Bartels, 2015, 2016; Nabatchi & Leighninger, 2015), which translates into the involvement of both citizens and political parties, as demonstrated in Figure 3.

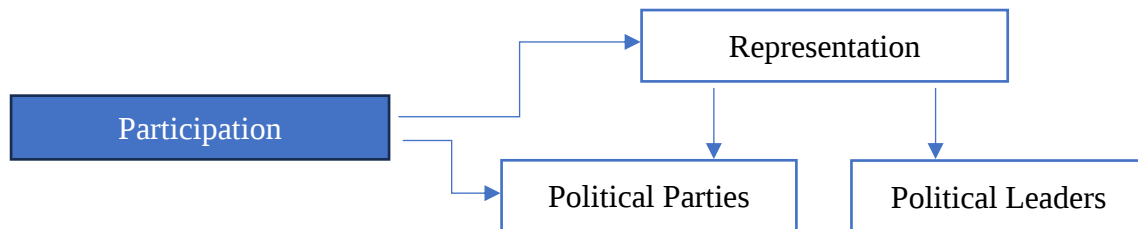
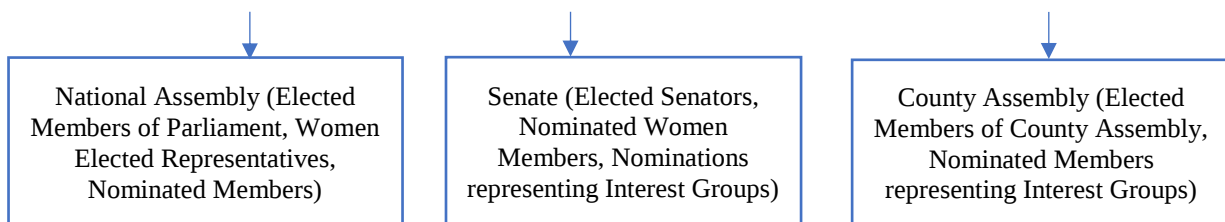


Figure 3: Participation as Representation

Thus, democratic innovation in Kenya translates into democratic participation through enhanced democratic practices that take in cultural practices (Parekh, 1992), inclusion (Young, 2000) and interactive governance (Torfling et al., 2012) in electing representatives at the two levels of government, that is, Parliament (National Assembly and the Senate) and County Assembly illustrated in Figure 4.



**Figure 4: Participation in the Kenya Constitution and Female Representation
National Government (Parliament) County Government**

The democratic innovation attempts to address traditional exclusion in all the spheres, traditionally (pre-colonial), colonial and post-independent Kenya, in which females have conspicuously been left out and excluded. The constitution, in an avowed attempt at democratic participation and social justice, aimed to achieve social, economic, and political development (Wike & Fetterolf, 2018). Participation includes political representation, and the people's representatives are elected freely and fairly or representation granted upon them by the people of Kenya to whom the constitution is bestowed as "We, the people of Kenya" or what Cornwall (2002; 2004) and Lefebvre (1991) refer to as making way for and democratic spaces and hence participation. The results of this democratic innovation are, however, different in that there were only 31 duly elected female representatives in the constituencies (28 in the National Assembly and 3 Senators). It is only that the constitution had established female representation in each of the 47 counties and an added advantage of female nomination to both the National Assembly and the Senate that the female representation in both houses increased to reasonable numbers.

RESULTS: DEMOCRATIC INNOVATION AND THE TWO-THIRDS GENDER RULE IMPLEMENTATION IN THE LEGISLATURE

The survey data provides a broad spectrum of views from the participants on the two-thirds gender rule. Data from the survey revealed that both males and females were in general agreement that the two-thirds gender rule was a good and timely democratic innovation, taking into consideration the history of Kenya and, in this case, the underrepresentation of females in the legislative agenda. The similarity in the diversity of opinion on a rule that was inscribed in the constitution ended with very highly revealing and interesting insights, as evident in the research findings.

This study explored the proposition of the application of the two-thirds gender rule and its implementation in the legislature. The results address the following research questions:

1. What aspects of the Kenyan Constitution relate to the two-thirds gender implementation in the legislature (National Assembly and Senate) as part of democratic innovation?
2. To what extent has the 2010 Constitution's two-thirds gender rule been implemented in the National Assembly and the Senate, as part of democratic innovation?
3. What intervention strategies can be worked out to achieve the two-thirds gender rule in the legislature as part of democratic innovation aimed at increased democratic participation?

Apparently, all the legislators were aware of the two-thirds gender rule, both in the constitution and the implications in the legislature and the implications on greater political participation of women. However, not all of the research participants were satisfied with the stipulation, as demonstrated in Table 2.

Table 2: Acclamation of the Gender Rule as highly Innovative in terms of Women's Political Participation in Kenya

Acclamation	Male	Female	Total
Yes	3	4	7
No	1	-	1
Not sure	1	1	2
Total	5	5	10

It was apparent that while the female legislators were somewhat satisfied with the acclamation, their male counterparts expressed their relative dissatisfaction. It was also apparent that the legislators had diverse opinions on whether or not the gender rule could lead to a constitutional crisis. A possible explanation for the similarity and the disparity in responses could have arisen out of the strong sentiment that the two-thirds gender rule evoked among the participants as either facilitating or hindering democratic practice and participation. An example of some of the comments expressed these opinions:

- *L_F: The gender rule simply made it possible for women to be included in the legislative agenda.*

While the female legislators applauded the gender rule, a male member, who was a perennial Member of Parliament (former Member of the National Assembly and at present a Senator), had a different opinion:

- *LM: Women simply made sure that they secured several seats for themselves. This (gender rule) explains why they (females) were not elected as Senators or Governors in the previous parliament since they had their seats. Nowhere in the whole world do we have such an undemocratic practice.*

The final question of the survey provided an opportunity for the participants to assess and express their opinion on the two-thirds gender rule. While a majority of the male legislators expressed a general response that the gender equation that had failed to attain the two-thirds gender rule was not a constitutional crisis (4/5), their female counterparts appeared persuaded that it had as yet not achieved gender parity in the legislature, after all. This is summed up by one of the female legislators:

- *LF: This is a constitutional crisis; the constitution is not being implemented at all, and if so, then it is in part, and this particular rule is being broken with outright impunity.*

However, the male legislators were much milder in their responses, as articulated by one of them who had been in the 12th and 13th parliament (previous and present):

- *LM: We may have missed it (to attain the two-thirds gender rule) in the National Assembly, but obviously, we are almost there in the Senate.*

Indeed, it appears there is inconsistency among legislators who would be expected to uphold the constitution vis-à-vis appearing unsure if the very failure to implement it (notwithstanding the issue/section/clause) was not a 'crisis'. This is summed up by one of the female participants as follows:

- *LF: The males appear indifferent to the gender rule simply because of the traditional patriarchal systems. Even those appearing to support are simply giving lip service. I, therefore, feel it is a let-down on the constitution itself and not necessarily a gender issue.*

The males appeared to acknowledge the inconsistency in upholding the constitution but argued that females had accomplished a lot and hence, the rule could not 'dictate' the constitution, but the gender rule could be gradually implemented:

- *LM: Women are already well-represented, and there is no crisis. The gender rule is not the constitution and cannot in any way dictate the constitution. They (women) even now have their own seats reserved for them where 'we do not harass them' as it were.*

Another male participant said:

- *LM: They (women) should be happy and contented. We have carried out a lot of reforms. There is no constitutional crisis at the moment. Not now, not ever.*

But, while the male legislators felt that the situation was under control and that their females counterparts were taking advantage of the political scene, the females argued that the males were just being difficult:

- *LM: Women simply put a rule that is to their advantage and disadvantages all the males. It is simply their rule. They don't want fair competition with males on the political scene, so they looked for a quick way out. This is politics. It is not fair.*

But the females appear to have a different opinion, as illustrated by one of them:

- *L_F: The males are simply being difficult by blaming civil society and feminist organisations for their mess: it is the males and their patriarchal misconceptions that have discriminated against women. So, the two-third gender rule is about correcting their problem. That they (males) keep on insisting that we are unfair is simply ridiculous.*

It was becoming apparently evident that females physically being in parliament was a mark of female empowerment and emancipation against a background of a highly traditionally patriarchal society and hence the effect of the two-thirds gender rule. Furthermore, this new trend is viewed within the New Public Management (NPM) framework, gladly appeared to be the perception not only among the female legislators but also among their male counterparts as members of a team. Overall, the gender rule was a major milestone in Kenya's democratic process.

Implementation of the Two-thirds Gender Rule in the Legislature, Citizen Engagement and Participation

The constitution (Republic of Kenya, 2010) has been implemented since 2010, and hence, the extent to which the gender rule had been implemented in the legislature as part of democratic innovation was investigated. Three major themes that emerged show a flow and are related as follows:

1. Whether the two-thirds gender rule was being implemented in the legislature;
2. To what extent is the two-thirds gender rule being implemented in the legislature, what, how, why and when; and,
3. Arising from (1) and (2) above, did the two-thirds gender rule constitute a constitutional crisis?

In order to find out if the two-thirds gender rule was being implemented in the constitution and in parliament (National Assembly and Senate), the legislators were asked several questions. As a start, the study made inquiries as to whether they had discussed the implementation of the two-thirds gender rule in parliament. All the participants were in agreement and confirmed that they had discussed the implementation of the gender rule in both the National Assembly and the Senate. However, when asked about the extent to which it had been implemented, they responded as illustrated in Tables 3, 4, 5. and 6.

Table 3: The Extent of Implementation of the Gender Rule in the National Assembly

National Assembly	Male	Female	Total
Well implemented	4	1	5
Not implemented	1	3	4
Not sure	-	1	1
Total	5	5	10

There were mixed reactions about the implementation of the gender rule in the National Assembly in that despite the election of Women Representatives in each of the 47 counties, fewer women were still elected in the National Assembly in the period following the enactment of the 2010 Constitution as illustrated in the development of the former and present parliament illustrated in Tables 4 and 5.

Table 4: Female Members in the National Assembly, 2013 – 2027

Parliament (Period)	Constituencies	Elected Women Members	Nominated Members			Elected Women Representatives (47 Counties)	Total Women Members
			M	F	T		
11 th 2013-2017	290	16	7	5	12	47	68
12 th 2017-2022	290	23	6	6	12	47	76
13 th 2022-2027	290	16	6	6	12	47	69

It was evident that few females (15/ 290 in 2012, 23/290 in 2017 and 16/290 in 2022) had been elected to the National Assembly, hence clearly, the gender rule had significantly increased the number of female members of Parliament through the elected women representatives. The female representation in the Senate was, however, slightly different as more seats had been assigned to female-nominated members, as illustrated in Table 5.

Table 5: Composition of Females in the Senate, 2013 - 2027

Parliament (Period)	Counties	Elected Members		Nominated Members		Speaker		Nominated Youth and Persons with Disabilities		Total Members		
		M	F	M	F	M	F	M	F	M	F	T
11 th 2013-2017	47	47	-	2	18	1	-	(2)	(2)	50	18	68
12 th 2017-2022	47	44	3	2	18	1	-	(2)	(2)	47	21	68
13 th 2022-2027	47	44	3	2	18	1	-	(2)	(2)	47	21	68

Clearly, it was evident, as argued in the literature review, that the two-thirds gender rule had impacted women's participation in the legislature, particularly in the Senate. Still, though, the actual two-thirds rule has not been completely achieved. This phenomenon can perhaps help explain why both the males and females were less pessimistic about the National Assembly and more optimistic about the Senate when asked about the extent of implementation of the gender rule, as illustrated in Table 6.

Table 6: The Extent of Implementation of the Gender Rule in the Senate

Senate	Male	Female	Total
Well implemented	4	3	7
Not implemented	1	2	3
Total	5	5	10

It was evident that most of the members of the legislature; both males and females, felt that the Senate was implementing the gender rule, unlike the National Assembly, where, even if the male legislators felt that the gender rule was being implemented, the females were very sceptical with its implementation. This was clearly expressed by the research participants, who also attempted to explain both the extent of implementation and reasons why the gender rule may not have been effectively implemented.

Intervention Strategies towards Greater Democratic Participation, Including the Two-thirds Gender Rule in the Legislature

The study investigated various intervention strategies to achieve the two-thirds gender rule in the legislature as part of democratic innovation aimed at increased democratic participation in line with the New Public Management. The two major themes in the suggested intervention to

implement and/or improve the two-thirds gender rule were: (1) the present status of the two-thirds gender rule leading to (2) increased/enhanced democratic participation of women and citizen engagement in the overall democratic process.

All the legislators were aware of the need for increased participation of women, including in the legislature. However, when the participants were asked about the extent to which the particular two-thirds gender had been effectively achieved or not achieved, there were mixed reactions, mostly along gender lines. The males, for instance, argued that this was a success, while the females were more sceptical. Along the same line of argument, the legislators were asked to outline some of the major reasons that could have led to the present state of implementation of the two-thirds gender rule in the legislature. One of the female participants categorically said that she had sought to be elected as a Senator but was rejected on the basis that 'women had their own special seats':

- *L_F: I tried my chances as a Senator in the previous elections, and I was told that women had their own special seats set aside for them.*

Indeed, no female was elected as a Senator following the enactment of the constitution in the 2012 elections though some were elected in the subsequent by-elections. When asked whether the constitution was being effectively implemented in the National Assembly and the Senate, the legislators were in consensus that it was being implemented. Yet, it was evident in Tables 4 and 5 that the rule had not been accomplished. However, the male and female legislators differed in that while the males felt that females had accomplished a lot in Parliament, the females insisted that the National Assembly, in particular, had failed to ensure gender parity, while the Senate had almost achieved it. The researcher went through the research participants' responses in order to find out why they felt the gender rule was appropriate or inappropriate and various intervention strategies or suggestions, as summarised in Table 7.

Table 7: The Two-Thirds Rule Implementation in Parliament

<i>Why the Rule is Appropriate</i>	<i>Why the Rule is Inappropriate</i>	<i>What can be done (Interventions/suggestions)</i>
▪ More women in the Legislature (National Assembly and Senate) ▪ More women in Cabinet, Judiciary and Public Service	▪ The rule was 'pushed' by civil society organisations ▪ Not contextualised ▪ Hurried through the constitution ▪ Did not take in the dynamics of society, such as the highly patriarchal societies and others more modernised	➤ Institute (a) Elected Women Representatives in the 47 Counties; and, (b) 18 nominated female Senators ➤ Civil society and parliamentarians to empower citizens on gender

Subsequently, the participants were asked what could be done to improve the present status in the National Assembly and the Senate. Once again, the legislators reacted albeit differently:

A male legislator said:

- *L_M: The gender rule would require the National Assembly to nominate more females, which is practically impossible in terms of budget and space.*

Another male legislator said:

- *LM: The females are simply infringing on democratic principles; they are simply getting seats through the backdoor.*

The females were extremely unhappy about the failure to achieve the gender rule:

- *LF: Imagine, after all this fight for gender equity, we got the gender rule into the constitution only for males to deny us what is ours!*

Clearly, the females were unhappy, and this was expressed in even stronger sentiments by another female legislator:

- *LF: This is the ultimate betrayal - when we thought we had it, the men took it. Yet the constitution is as clear as broad daylight.*

Once again, the overall implementation of the constitution was revisited, and participants were asked if the gender rule could lead to a constitutional crisis, as expressed by some opinion leaders. This is illustrated in Table 8.

Table 8: Gender Rule Implementation in the Senate as a Constitutional Crisis

Senate	Male	Female	Total
Yes	-	4	4
No	4	-	4
Not Sure	1	1	2
Total	5	5	10

Whereas almost all the males felt the gender rule was not a matter of great concern in the Senate (since, as they argued, it had almost been implemented), a similar overwhelming number of females felt it was a crisis since it had still not been achieved. Interestingly, two legislators; one male and one female, were unsure, and it emerged that both felt that, as it were, a lot had been achieved in the Senate. The research participants expressed different sentiments, with the National Assembly terming the gender rule a crisis, but along different lines:

Table 9: Gender Rule Implementation in the National Assembly as a Constitutional Crisis

National Assembly	Male	Female	Total
Yes	2	5	7
No	2	-	2
Not sure	1	-	1
Total	5	5	10

The gender rule raises certain pertinent questions - it is like a double-edged sword. To begin with, there is a need to promote women in leadership and offer them positions, as it is 47 Women Representatives in each of the counties and 18 nominated female Senators, and this is largely within the New Public Management. However, there are the Members of the National Assembly in the 290 constituencies and Senators in 47 counties where citizens have a democratic right to elect their leaders, and hence, they control the voting through a legally democratic process guaranteed by the same constitution. Thus, the constitutional right by itself

cannot 'set aside' or dictate who is elected as it were for male or female representatives in particular, for that raises the fundamental right of that very democratic representation and participation process.

DISCUSSION: DEMOCRATIC INNOVATION OR REVOCATION: THE MORE THINGS CHANGE, THE MORE THEY REMAIN THE SAME

A major underlying theme included under the New Public Management is how to achieve greater democratic participation, and among the ways this could be greatly achieved is through innovative practices (Asenbaum, 2021; Smith, 2009). Subsequently, this begs the question: how come the two-thirds gender rule has not yet been fully implemented in the legislature despite the increased number of nominated and elected women provided opportunities? Nonetheless, women are still systematically marginalised from elective posts. If so, what are the complexities in achieving the threshold? The status of the present Kenyan Parliament is illustrated in Table 10.

Table 10: Female Participation in Kenya's Legislature: 2022 to 2027

Legislative (Parliament)	National Assembly		Senate		Total	
	Male	Female	Male	Female	Male	Female
Speaker (Elected by the members)	1	-	1	-	2	-
Elected members (Elected by registered voters, citizen participation)	274	16	44	3	318	19
Female representation (Elected by registered voters, citizen participation in 47 counties)	-	47				47
Nominated members in Parliament (Members nominated by political parties)	6	6	2	18	8	24
Male and Female (Youth)	(1)	(1)	(1)	(1)	(2)	(2)
Male and Female (Persons with disabilities)	(1)	(1)	(1)	(1)	(2)	(2)
Total	281	69	47	21	328	90

Source: Parliament of Kenya

Clearly, both leading positions of Speaker in both houses are male and a total of only 19 elected females in both houses, with 318 elected males. Nonetheless, the application of the gender rule in the female representatives (47) and nominated female members provides the needed endeavour towards gender parity. All this fits in the metaphor by Cornwall (2004:1) of 'effectively designed participation' summed up in the words, "thinking about participation as a spatial practice highlights the relations of power and constructions of citizenship."

The question as to why the gender rule has not yet been fully implemented in the very legislature that enacted the constitution was posed to the research participants. There were two diverse, almost parallel views as follows:

- *LF: The constitution is very clear on the two-thirds gender rule, and it should be fully implemented. The failure to implement the gender rule is actually tantamount to a failure or inability to fully implement the constitution per se.*

The participant, a male and a lawyer by profession, strongly felt that the constitution clearly provided direction, but it is particularly the legislators who had purposely failed to put in place

the necessary mechanisms to implement the same. These sentiments were also expressed by one of the female legislators, who traced the problem to the traditional patriarchal system:

- *L_F: The constitution is very clear; it is the traditional male dominance that is very biased and does not want to promote girls and females as leaders.*

According to the participant, it is the general parliamentary system dominated by males that had led to the constitutional crisis, whereas the constitution was, in her words, 'forthright' on the need for equality and equity evident in the two-thirds gender rule. When the matter of the gender rule was raised in the National Assembly in the 12th Parliament, the then Speaker stated (Muturi, 21st September 2020):

- *Ten years after the promulgation of the Constitution of Kenya 2010, there is yet to be enacted a specific legislation to operationalise this constitutional provision on gender equality. Consequently, the Kenyan Parliament has been wrongly castigated for failure to enact the relevant legislation following the promulgation of the Constitution.*

It was apparent that the constitution, although highly acclaimed as comprehensive and the gender rule as highly innovative, could have failed to substantiate how the policy could be effectively implemented. It was argued that (1) the rule was placed by civil society leaders; (2) it was meant to appease the female population without anything tangible attached to it, that is, tokenism; (3) the rule simply awarded females free seats that they did not need to compete with their male counterparts; and, (4) that the gender rule required to be reviewed to allow greater and more open political participation of both males and females in national politics.

A female participant argued as follows:

- *L_F: We must accept that there are certain aspects that are difficult to implement and I admit we should in turn review relevant sections of the constitution. But still, a lot has been achieved through this rule.*

This was in agreement with a female lawyer and social activists:

- *L_F: The unveiling of the constitution was the beginning of a process aimed at equity and equality and not an end by itself.*

A constitutional lawyer had a slightly different viewpoint:

- *L_M: The policy is not a guarantee that it can be implemented in full and as fast as possible.*

These sentiments on the inability to implement certain sections of the constitution were also expressed by a prominent politician and lawyer who offered a more reconciliatory approach:

- *L_M: The American Constitution was instituted in 1876. There are sections of that constitution that are still in progress today. Similarly, in Kenya, we must accept the truth that the two-thirds gender rule is one of the most prominent innovations and perspectives that promote gender equity and equality in a highly patriarchal society. Thus, it requires review and time to comprehend and implement as per the new constitution. In fact, other facets, such as the Judiciary and Public Service, are implementing the policy.*

It is apparent that there is a need for intervention strategies to both interpret the two-thirds

gender rule and as well as work out the democratic participation and implementation.

CONCLUSION

It was evident from the findings of the study that the two-thirds gender rule was more strictly geometrical in that it was meant to ensure women had more space in parliament and thus mathematical (Lefebvre, 1991). However, the philosophical part in the gradual emancipation of women, especially from the shared roots of tradition, patriarchy and politics, would appear to be sidelined, for as argued by Cornwall (2002; 2004), it should also make way for democratic spaces. Thus, democratic innovation and political participation must be fused so that political participation is an attribute in its totality and democratic innovation coexists with the socioeconomic and political settings. However, legal and policy legislation, such as the constitution (Republic of Kenya, 2010), can be pathways to democratic innovation and gender equality (Kameri-Mbote, 2018). Thus, there is a firm conviction in Kenya on the implementation of the 'new' constitution to drive social, political, and economic change, including, as a matter of course, gender equity through the inclusion of a gender rule in the constitution. This should, as a matter of course, include the need for enhanced gender equity and equality among other marginalised groups, including increased participation of women, persons with living disability and the youth in the legislature. The two-thirds gender rule is a democratic innovation instituted in the constitution and is aimed at increasing the democratic participation of females.

In conclusion, democratic innovation, such as the two-thirds gender rule in Kenya, is a clear demonstration that there is a need for a more balanced approach between the formal constitution and social customary settings. Accordingly, the gender rule aimed at democratic participation would be and could be harnessed to foster democratic ideas, including greater political participation for marginalised groups such as women. However, despite its basis in law, democratic innovation may lack a basis in social-cultural settings. Thus, democratic innovation in law or out of law does not, and may not, automatically lead to democratic participation. Instead, it is imperative that the social context and both the more informal and formal principal laws should operate side by side to promote participatory democracy, and hence, the emphasis must be on democratic participation rather than a fixation on democratic innovation.

Acknowledgments

The researcher acknowledges the University of Birmingham for the glad opportunity to be part of the greater academic fraternity in pursuing a Master's in Public Administration. I also acknowledge with utmost gratitude all the participants who took part in the study.

Declaration of Conflicting Interests

The author declares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author did not receive any funding support for the research, authorship, and/or publication of this article.

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