

# Signs of triumph, trial and tribulation: reflections on the domestication and implementation of article 9 of the Women's Rights Protocol in Namibia

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**ABSTRACT:** This article reflects on the status of women in political and decision-making processes in Namibia with reference to article 9 of the Women's Rights Protocol. Namibia ratified the Women's Rights Protocol in mid-June 2004, nearly a year after its adoption. Since then, specific measures have been put in place to advance the cause of women in political spaces. Gains have been made, but these are weakened by existing gaps and shortcomings. In a sense then, Namibia remains an illustrious case of both progression and regression. The paper argues that the successes achieved in realising article 9 of the Women's Rights Protocol domestically in Namibia was largely triggered by a paradigm shift in the political thought of the ruling SWAPO government canvassed in its introduction of (voluntary) gender quotas in favour of women. Whilst the incremental increase of women in political and decision-making processes in Namibia can be attributed to the political will of the central government, there is still much to be desired. To this end, the paper further argues there is a need to reassess amongst others the implementation and domestication of article 9 of the Women's Rights Protocol so as to ensure that women's proliferation in political spaces translate into actual empowerment for women at grassroots as contemplated in article 9 of the Women's Rights Protocol.

## TITRE ET RÉSUMÉ EN FRANCAIS:

**Signes de triomphe, de tentative et de mésaventure: réflexions sur  
l'incorporation dans l'ordre juridique interne et la mise en œuvre de  
l'article 9 du Protocole relatif aux droits de la femme en Namibie**

**RÉSUMÉ:** Cet article traite de la situation des femmes dans les processus politiques et de prise de décision en Namibie, en se référant à l'article 9 du Protocole relatif aux droits de la femme en Afrique (Protocole de Maputo). La Namibie a ratifié ledit Protocole mi-juin 2004, près d'un an après son adoption. Depuis lors, des mesures spécifiques ont été mises en place pour promouvoir les femmes en politique. Des avancées ont été enregistrées, mais celles-ci sont amoindries par les lacunes et les faiblesses existantes. Dans une certaine mesure dès lors, le cas de la Namibie illustre bien tant le progrès que la régression. Cet article avance la thèse que les succès obtenus dans la mise en œuvre de l'article 9 du Protocole de Maputo en Namibie sont en partie tributaires du changement de paradigme dans la pensée politique du parti au pouvoir, le SWAPO à travers l'introduction de quotas (volontaires) en faveur des femmes. Alors

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que l'augmentation progressive du nombre de femmes dans les processus politiques et de prise de décisions en Namibie peut être attribuée à la volonté politique du gouvernement central, beaucoup reste à faire. À ce propos, cet article soutient en outre qu'il est nécessaire de réévaluer, entre autres, la mise en œuvre et l'incorporation dans l'ordre juridique interne de l'article 9 du Protocole afin que la ruée des femmes en politique se traduise par une autonomisation effective des femmes à la base, comme le prévoit l'article 9 du Protocole de Maputo.

**KEY WORDS:** AU Women's Rights Protocol, Namibia, gender equality, patriarchy, political participation, women

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## 1 INTRODUCTION

The domestication and implementation of article 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Rights Protocol), dealing with women's participation in political and decision-making processes has been of particular interest to scholars more recently.<sup>1</sup> In fact, the last three decades or so have seen the emergence of a vast body of writing about women's political participation from a variety of perspectives,<sup>2</sup> including their integration in international processes and organs.<sup>3</sup>

- 1 See generally, J Biegon (ed) *Gender equality and political processes in Kenya: challenges and opportunities* (2016) 1-166; R Owiso & S Bright 'Actualising women's participation in politics and governance in Africa: the case of Ghana and Kenya' (2017) 1 *African Human Rights Yearbook* 263-289; E Zvobgo & C Dziva 'Practices and challenges in implementing women's right to political participation' (2017) 1 *African Human Rights Yearbook* 60-81; S Bright & K Kariseb 'Women's political participation in decision-making processes and organs in Ghana: Trends, practices and social realities' in M Addaney & M Nyarko (eds) *Ghana@60: Governance and human rights in twenty-first century Africa* (2017) 101-120.
- 2 See for instance, C Corrin *Feminist perspectives on politics* (1999) 1-275; V Randall *Women and politics: an international perspective* (1994) 1-182; See for instance E Waters 'Restructuring the "women question"' (1989) 33 *Feminist Review* 3-19; M Evans (ed) *The women question* (1994) 1; J Peter & A Wolper *Women's rights, human rights: international feminist perspectives* (1995) 1; M McIntosh 'The state and the oppression of women' in A Kuhn & A Wolper (eds) *Feminism and materialism* (1978) 254 -289.
- 3 C Chinkin 'Feminist intervention into international law' (1997) 19 *Adel Law Review* 13-24; H Charlesworth 'Gender and international law' in J Steans & D Tepe-Belfrage (eds) *Handbook on gender in world politics* (2016) 137-144;

Since reaching independence from the 1950s to the early 1990s many African governments have reformed their constitutions and laws in order to address the historical marginalisation of women in mainstream governance structures and decision-making organs. In Namibia, the first of such reforms came about long before the passage of the Women's Rights Protocol, with the birth of its independence constitution, which amongst others, introduced affirmative action measures in favour of women.<sup>4</sup> Since then, incremental progress has been made, and of late more and more women have been able to penetrate political spaces. Despite the growth in numbers of women in these spaces in Namibia, many women still remain subordinate and are excluded in major decision-making processes in State structures involving both domestic and foreign policies. This is so despite the often uneven impact of these policies on women in general. The silence and invisibility of Namibian women also characterize those bodies and processes that determine their political and legal fate.<sup>5</sup>

While in international circles there has emerged a growing recognition of the important role of women in public political spaces, and despite the cumbersome legal framework aimed at women's integration in these processes, State compliance with domestic and international normative frameworks remains a major challenge. This is also the case in Namibia. Accordingly, an inquiry of the status of women in political and decision-making structures in Namibia is needed. Firstly, such an evaluation would be crucial in determining what factors either affect the growth or regression of women in political spaces in Namibia. This is because, historically, the growth of women in political spaces has not always been a constant. Instead, it has always varied, with gains made in some years, and regression in others. It may thus be indispensable to question why there has been an uneven tide in the growth of women in these spaces, and what accounts for such trends and practices. Secondly, by questioning and analysing the status of women within these spaces, we question the patriarchal nature of the State and take cognisance of the historical fact that women in Namibia, as in many parts of the global South, still remain politically marginalised and suppressed.

This article discusses the status of women in political and decision-making processes in Namibia with reference to article 9 of the Women's Rights Protocol. In a sense thus, the paper is a reflection on the gains made, challenges remaining, and prospects for women's political emancipation in governance structures and processes in Namibia. In my use and understanding of 'political participation' in this context, I am guided by the framework suggested by the CEDAW Committee in

H Charlesworth 'Worlding women in international law' in B D'Costa & K Lee-Koo (eds) *Gender and global politics in the Asia-Pacific* (2009) 19-39. See art 23 of the Namibian Constitution (as amended).

4 See art 23 of the Namibian Constitution (as amended).

5 In Namibia, for example, until the late 2000s women were entirely isolated from the judicial arm of government, and although progress has been made since then, their continued exclusion from the Supreme Court — the country's highest judicial organ — remains a matter of concern. Mavis Gibson, a Zimbabwean national was the only woman to serve in the Namibian judiciary in the early 1990s.

General Recommendation 23: Political and Public Life adopted in 1997. The CEDAW Committee defines political participation as referring 'to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers'.<sup>6</sup> This is the context within which the concept is appreciated and used throughout this article. It is also important to note that 'domestication and implementation', as understood for purposes of this paper, is of a relatively narrow scope, aiming at measuring the general provisions of article 9 of the Women's Rights Protocol against the proliferation of female representation, particularly at parliamentary level. The paper begins with a brief background on the interpretative context of article 9 of the Protocol, followed by a general discussion of the applicable domestic and international legal framework relating to women's political participation. In the third part, the paper addresses the status of women within the political and decision-making processes and organs in Namibia by decoding the practical domestication and implementation of article 9 of the Women's Rights Protocol in the Namibian legal landscape. Fused within this discussion are the overall challenges and opportunities for women within the political landscape. The paper then ends with a brief conclusion.

## **2 CONTEXT AND CONTOURS OF ARTICLE 9 OF THE WOMEN'S RIGHTS PROTOCOL**

While internationally women's rights protection had taken root primitively since 1945, and more robustly since the late 1970s, the same could not be said of a regional specific women's rights framework in Africa. The promulgation of the Women's Rights Protocol in mid-July 2003 gave an end to this regional deficit. The Protocol remains a product of the extensive mobilisation and advocacy efforts of women's rights movements on the continent.<sup>7</sup> Viewed by many as filling the voids and shortcomings left by the pre-existing women's rights instruments, the Women's Rights Protocol seeks to address the geographical peculiarities of African women, taking into account context and elements of cultural relativism that have been the hallmark of African society. With far-reaching provisions, previously not covered under established international human rights instruments, the Women's Rights Protocol details substantive human rights provisions for women, covering civil and political, economic, social and cultural rights, including environmental rights. Sadly, the Protocol falls short of enjoying universal ratification having only gained the support of 40

6 General Recommendation 23: Political and Public Life, CEDAW Committee (31 January 1997) UN Doc A/52/38 para 5.

7 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 12.

states.<sup>8</sup> Namibia became a party to the Protocol on 11 August 2004, nearly a year after its initial adoption.

As alluded to before, article 9 of the Women's Rights Protocol provides for women's right to participate in political and decision-making processes, placing direct positive obligations on state parties to the Protocol in the following terms:

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
  - (a) women participate without any discrimination in all elections;
  - (b) women are represented equally at all levels with men in all electoral processes;
  - (c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

A closer reading of this provision discloses one or more of the following. First, that its basis is premised on the principles of equality and non-discrimination. Second, the scope of protection offered is not limited to political participation but all forms of decision-making processes where the exercise of state authority is at play. Third, both qualitative and quantitative representation is envisaged, and the state is accordingly obligated to ensure their fulfilment; and fourthly, affirmative action is specifically identified, or, at the very least, recommended as central to states' fulfilment of its obligations in terms of this provision.

Clearly, the rights to vote, be elected and to hold public office are to be implied, though not expressly stated in the text of article 9. It is also not clear whether the type of protection offered solely applies to domestic circumstances, excluding States duties to enhance women's roles in international processes, diplomacy and foreign policy formulation. It seems though that these concerns are inherently part of what the provision envisages, but the certainty of such a position will only become clearer through more elaboration from the African Court on Human and Peoples' Rights, the body tasked with the duty to interpret the provisions of the Women's Rights Protocol.<sup>9</sup>

The inclusion of a provision of the nature of article 9 sparks questions around why states would want to emphasise the emancipation of women in political and decision-making spaces. Put somewhat differently, what is the value of insisting on the need for significant representation of women in political and decision-making processes? The immediate response to this question is that the inclusion of women contests patriarchy, and brings women and their capabilities to the fore. Their exclusion preserves the inherited patriarchal architecture of state and society. We run the risk of ensuring that the State, including its structures and processes remain masculine;

8 See generally, Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, <http://www.achpr.org/instruments/women-protocol/ratification/> (accessed 7 March 2018).

9 Art 32 Women's Rights Protocol.

its legitimacy masculine; and the perpetuation of masculine immensity. In principle, as aptly held by Hillary Charlesworth, 'long-term male domination of all bodies wielding political power [sic] means that issues traditionally of concern to men are seen as general human concerns; 'women's concerns,' by contrast, are regarded as a distinct and limited category.'<sup>10</sup> Social concerns, such as sexual violence, of which women are generally victims, become side lined and (un)regulated because they hardly affect, or interest, the male who holds public regulatory power. Women's inclusion is also a matter of human rights and justice.<sup>11</sup> Their inclusion is thus evidence of a 'genuine representative democracy'.

Furthermore, women bring with them a set of values and experiences to the political arena that are relevant for their empowerment and can only be best expressed by them because of their unique, inherent experience. In her overall research on ethics, women's psychology and girl's development, American psychologist and feminist, Carol Gilligan, makes this astute point clearer.<sup>12</sup> In her 1982 classical study *In a different voice: psychological theory and women's development*, Gilligan makes the point that there are gender differences in a person's moral development and reasoning.<sup>13</sup> According to Gilligan's findings, justice and individual rights are perceived by men as essential elements for policy formulation and general reasoning; whereas to women, questions of care and relationships are quite essential to such reasoning. Although Gilligan's theory has not escaped serious questioning,<sup>14</sup> by highlighting the gendered differences in human psychology, her work shows to a considerable extent, that women can 'add value' to the structural processes of society given the 'care-justice distinct' between females and males. What one can deduce from Gilligan's theory is that the inclusion of women automates reasoning and contributions that are

- 10 H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (eds) *Women's rights, human rights: international feminist perspectives* (1995) 105.
- 11 A Phillips 'Democracy and representation: or, why should it matter who our elected representatives are?' in A Philips (ed) *Feminism and politics: Oxford readings in feminism* (1998) 224.
- 12 See generally, C Gilligan & DAJ Richards *The deepening darkness: patriarchy, resistance, and democracy's future* (2009) 1; C Gilligan *The birth of pleasure* (2002) 1; A Alfred, A Knopf, J Taylor, C Gilligan & A Sullivan *Between voice and silence: women and girls, race and relationships* (1995); L Brown & C Gilligan 'Meeting at the crossroads: women's psychology and girls' development' (1993) 3(1) *Feminism and Psychology* 11-35; C Gilligan *In a different voice: psychological theory and women's development* (1982) 1; C Gilligan & JM Murphy 'Moral development in late adolescence and adulthood: a critique and reconstruction of Kohlberg's theory'(1980) 23 *Human Development* 77-104; C Gilligan 'Woman's place in man's life cycle' (1979) 49 *Harvard Educational Review* 431-446; C Gilligan & L Kohlberg 'The adolescent as a philosopher: the discovery of the self in a post-conventional world' (1971) 100 *Daedalus* 1054-1087.
- 13 C Gilligan *In a different voice: psychological theory and women's development* (1982) 1.
- 14 See for instance, D Nails 'Social-scientific sexism: Gilligan's mismeasure of man' (1983) 50 *Social Research* 643-664; JM Broughton 'Women's rationality and men's virtues: a critique of gender dualism in Gilligan's theory of moral development' (1983) 50 *Social Research* 597-642.

social welfare based, economically inclusive and empowering. Clearly, such welfare based contributions to state and society would be of meaningful impact given the socio-economic shortcomings Namibia and many other African governments face.

### **3 LEGAL FRAMEWORK RELATING TO WOMEN'S POLITICAL EMANCIPATION IN NAMIBIA**

The claim for women's political participation is deeply rooted in their legal recognition and provision, both through domestic and international instruments. These legal instruments place this claim within the ambit of states obligations, which obligations if not fulfilled can be enforced against a state. Namibia, like most of its African counterparts, has bound itself to numerous domestic, subregional, regional and global legal frameworks relating to women.<sup>15</sup> In what follows, an analysis will be made of the legal measures relating to women's political rights and their domestication in the Namibian legal setting. The section reflects on the domestication of article 9 of the Women's Rights Protocol in the Namibian constitution and various other legislative instruments.

#### **3.1 Constitutional protection**

The Namibian Constitution is a product of a struggle for sovereignty and human rights.<sup>16</sup> Passed by the Constituent Assembly of 1989, the Constitution is an immediate reflection of the desired aspirations of the Namibian people. The opening statement in the Preamble of the Constitution resonates this point where it declares, 'we the people of Namibia are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle'.<sup>17</sup> As a product of international solidarity, it has received international acclaim and credibility.<sup>18</sup> Its substantive

15 Namibia is a signatory to several international gender conventions, all of which uphold the principle of gender equality. Some of the notable international instruments include the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1992), the Optional Protocol on the International Convention on the Elimination of All Forms of Discrimination Against Women (2000), the Beijing Platform for Action, the SADC Declaration on Gender and Development, the African Regional Platform for Action (1997), the African Charter on Human and Peoples' Rights, and the African Charter on Women's Rights (2004).

16 SK Amoo & I Skeffers 'The rule of law in Namibia' in N Horn & A Bosl (eds) *Human rights and the rule of law in Namibia* (2010) 17.

17 See generally, Preamble of the Constitution.

18 E Schmidt-Jortzig 'The Constitution of Namibia: An impressive example of a state emerging under close supervision and world scrutiny' (1991) 34 *German Yearbook of International Law* 341-251; and OC Ruppel & K Ruppel-Schlichting 'Legal and judicial pluralism in Namibia' (2011) 34 *Journal of Legal Pluralism* 37.

provisions are supreme,<sup>19</sup> making it the ultimate source of law in Namibia. Accordingly, all other laws (and policies) trace their legitimacy and source from the Constitution. Given the historical context of the legal system in Namibia, and as a means to avoid a preconceived legal vacuum, all pre-existing laws at the time of independence are to remain in force until repealed or amended by an Act of Parliament.<sup>20</sup>

In the context of women's rights, more so their political emancipation, the Constitution has been relatively robust in the protection it affords. Beginning from its Preamble, the Constitution recognizes, the 'inherent dignity' and 'equal and inalienable rights of all members of the human family' regardless of 'sex'. Article 10, the equality clause, speaks to the plight of women in Namibia. It is a two-pronged provision, recognising firstly the equality of all persons, male or female, before the law; and secondly, bars any discrimination on the grounds of 'sex, race, colour, ethnic origin, religion, creed or social or economic status'.<sup>21</sup>

Not surprisingly too, article 10 has stirred controversy in many quarters, particularly in its narrow scope that falls short in the protection of the rights of sexual minorities in that it does not explicitly address sexual orientation and the debate has often been whether 'sex' includes 'sexual orientation'.<sup>22</sup> This affects women, who identify as transgender, lesbian or broadly asexual, and may be a burden for any rights claim in the context of political participation given the obscurity of article 10 and its relevance and application to sexual minorities. The provision may therefore need refining. It should however be borne in mind that article 10 of the Constitution, like most of the constitutional provisions under the Bill of Rights, is the product of a political compromise -- perhaps a necessary compromise. Its inclusion was a political necessity, surely for the then newly crowned SWAPO government, under Sam Nujoma, who at least at the time had much to prove to the international community, particularly the Western Contact Group. Inevitably, a broad provision such as article 10 read together with the broader provisions of the bill of rights, was a sacrifice aimed at easing the concerns of the colonisers and the international community.

It is also worth noting that the protection afforded to women in terms of article 10 is a 'right' as opposed to a mere 'freedom'. The Constitution draws a vivid distinction between these two and differentiates between their enforcement. Freedoms are to be 'exercised subject to the laws of Namibia, in so far as such laws imposes reasonable restrictions on the exercise of the rights and freedoms',<sup>23</sup> which are necessary in a democratic society, while rights are directly enforceable claims with minor exceptions. Article 17 of the Constitution further complements article 9 of the Women's Rights Protocol by

19 Art 1(6) Namibian Constitution.

20 Art 140(1) Namibian Constitution. See also art 25(1)(b) Namibian Constitution.

21 Art 10(2) Namibian Constitution.

22 Legal Assistance Centre (LAC) *Namibian law on LGBTI issues* (2015) 28-29.

23 See art 21(2) Namibian Constitution.



providing for the right to political activity without any distinction as to sex, and for the right of citizens to vote and be elected to public office.

The social status of women is closely linked to the broader struggle for liberation and political context of Namibia. Racial discrimination in Namibia is a matter of historical record. Since independence, the practice and ideology of apartheid was relinquished. Rightly so. The resultant vacuum was filled with the ideology of national reconciliation. But national unity alone could not address the plight of the vast black majority who have been directly impacted by the repressive laws and policies of the apartheid government. One of the mechanisms fiercely used by the incumbent SWAPO government, at the regional and local authority level, was the introduction of affirmative action measures aimed at achieving a gender balanced (re-)structuring of its public service, reflective of the diverse racial and sex classes in the country.<sup>24</sup> Articles 23(2) and (3) of the Namibian Constitution empower the government through Parliament 'to enact legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educational[ly] disadvantaged by past discriminatory laws or practices'. In doing so, the government must be mindful, in terms of article 23(3) to the 'fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation'.<sup>25</sup>

The affirmative action provision under article 23 of the Namibian Constitution should be read in conjunction with the principles of State directives in article 95(a) of the Namibian Constitution, which directs the central government to ensure 'equality of opportunity' for women. Although of mere persuasion, article 95(a) of the Namibian Constitution to a considerable extent gives a clear guideline to the states policy of positive discrimination aimed at rendering a comparative advantage to women over men, given the historical realities the world over that left the female species exploited and politically marginalised. However, the non-binding nature of article 95(a) of the Namibian Constitution may account for the overt reality that till date, affirmative action measures have not been legally moored; and that as such the political empowerment of women in decision-making organs, particularly at Parliamentary level, will depend and orient around the whims and dictates of political parties without any security, more specially the ruling party, which in recent years, have strengthen its powers in central government.

In addition to articles 10, 23(2) and (3), and more broadly article 95(a) of the Namibian Constitution, a fragmented assortment of rights can be traced, which in one form or the other are causally linked to women. For example, the Constitution recognizes acquisition of citizenship on the basis of equal parental lineage,<sup>26</sup> equality in marriage, either during or upon its dissolution, regardless of sex

24 See generally, art 23(2) Namibian Constitution.

25 See generally, art 23(3) Namibian Constitution.

26 Art 4(1)(c) Namibian Constitution.

differences,<sup>27</sup> the acquisition and ownership of property in any part of Namibia,<sup>28</sup> and the peaceful participation of women in political activity intended to influence the composition and policies of government.<sup>29</sup>

As is custom under most common law Roman-Dutch traditions, Namibia has not been spared from recognizing African customary laws and practices in its legal system. The explicit inclusion of customary law under article 66 of the Namibian Constitution bears reference to this fact. In the premise, traditional customary laws and practices and the inherited Roman-Dutch common law often have to compete for the allegiance of its subjects. For many in Namibia, customary living is a daily occurrence, a means of human existence. Notwithstanding the fact that customary law is valid law, its application by the various traditional authorities undermines the prospects of women in decision-making processes. Most, if not all traditional authorities in Namibia, deeply entrench the practice of male dominance in decision-making processes. Women's presence is reserved to domestic chores. The superiority of the male figure permeates traditional settings. The promulgation of the Traditional Authorities Act in early 2000 slowly brought changes, and a few traditional authorities, such as the Oukwanyama and !Xoo traditional authorities are headed by women.

Clearly the rights framework within the Namibian Constitution is firm in its purported integration of women within mainstream society. By providing a rights centred basis to women, their formal inclusion in political spaces is guaranteed.

### **3.2 Legislative and policy-oriented protection**

The legislative protection of women's rights in Namibia gained momentum in the late 1990s, with the promulgation of a plethora of legislation addressing issues such as gender-based violence, rape, marriage equality and affirmative action. The wave of these pieces of legislation came at a time when women's issues, unlike in the past, were gaining momentum and interest from international political organs, institutions and organisations. The completion of the Beijing Conference in 1995 gave birth to a new era of women's rights concentration, especially in Southern Africa that was undergoing drastic political transformation at the time<sup>30</sup> that were closely monitored by the international community, particularly the UN. The

27 Art 14(1) Namibian Constitution

28 Art 16(1) Namibian Constitution.

29 Art 17(1) Namibian Constitution.

30 For example, Namibia, Africa's last colony had just recently gained independence from the Christian Nationalist apartheid government in South Africa. In Zambia, for example, multi-party democracy was introduced and Kenneth Kaunda, the long-standing socialist leader who headed the country since its independence from Britain in 1982 ceded defeat to Frederick Chiluba. In South Africa, at the time political changes were taking place. Nelson Mandela had just been released in February 1990, apartheid had been relinquished and the African National Congress (ANC) was about to take over power. Civil Society organisations had by then long started with the drafting of model Constitutions for a new South Africa.

least these countries could do, especially Namibia, who had just recently gained sovereignty through the aid of the international community, was to demonstrate a culture of human rights protection and promotion. The rapid promulgation of legislation blended with human rights connotations was therefore not surprising. In as much as these new States owed a considerable degree of allegiance to the international community, their hard-won political gains from the harsh experiences of the past gave them high political and moral sensitivities towards the plight of minority groups such as women.

Although a considerable number of laws were passed immediately after the first democratic elections in 1989, it was only in the midst of the second electoral process in 1994 that women's legislative protection, directed at political empowerment gained force. The first pieces of legislation primarily focused on traditional areas such as labour and social security. However, the adoption of the National Gender Policy in 1997 and its Addendum National Gender Plan and Action gave leeway to the surfeit of pieces of legislation that was passed thereafter pertinent to women's rights issues.

The Married Persons Equality Act of 1996<sup>31</sup> was the first of the new laws that addressed the evident gender disproportionalities between men and women in the country. It abolishes marital power previously enjoyed by husbands over their wives,<sup>32</sup> as inherent in the common law concept of *paterfamilias*; and amends the matrimonial property law of marriages in community of property in Namibia by providing for equal powers of spouses married in community of property.<sup>33</sup> The Act also addresses issues relating to the domicile of married women;<sup>34</sup> domicile and guardianship of minor children;<sup>35</sup> and further regulates the liability for household necessities of spouses married out of community of property.<sup>36</sup>

The substantive application of the Act first unfolded in 2000 in *Myburgh v Commercial Bank of Namibia & Others*,<sup>37</sup> which dealt with the marital power of a husband over his wife. In this case, although confirming the entrenched position in the Act, it was stated that the marital power husbands enjoyed over their wife's was automatically invalidated by virtue of its unconstitutionality and thus invalid retrospectively with the promulgation of the Namibian Constitution.<sup>38</sup> The court held, per Heathcote AJ, (as he then was) that the differentiations brought about by disproportionalities in marriage were stereotypical and did not take cognisance of the equal worth of women.<sup>39</sup>

31 1 of 1996.

32 Sec 2 of the Act.

33 Sec 4-11 of the Act.

34 Sec 12 of the Act.

35 Sec 13 of the Act.

36 Sec 15 of the Act.

37 (SA2/00, SA2/00) [2000] NASC 3 (8 December 2000) <http://www.saflii.org/na/cases/NASC/2000/3.html> (accessed 12 December 2018).

38 As above.

In the context of women's political empowerment the Affirmative Action (Employment) Act of 1998 was introduced.<sup>40</sup> The Act is highly significant given the high rate of unemployment of previously disadvantaged communities, and skewed income distribution and generation between men and women. The Act firstly identifies women as one of the designated groups of previously disadvantaged persons that need legal protection.<sup>41</sup> Its primary objective is 'to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of relevant employers'.<sup>42</sup> Section 19 of the Act makes provision for preferential treatment to suitably qualified persons of designated groups.<sup>43</sup> The Affirmative Action measures sought through the Affirmative Action Act, primarily through the legal recognition of women as a previously disadvantaged group, may formally hold a substantive basis for the proliferation of women in authoritative organs and platforms, and ultimately in political spaces, predominantly dominated by men.

Another notable means through which legislation have been used to empower women is through legislative affirmative action measures. Legislative affirmative action measures, broadly refers to the legislative reservation of seats and or quotas for women. Legislative affirmative action measures have been mostly manifest in legislation establishing parastatals and other State-owned enterprises, organs and institutions. Thus, for example, the Sports Act,<sup>44</sup> Communal Land Reform Act,<sup>45</sup> Traditional Authorities Act,<sup>46</sup> and the Electoral Act,<sup>47</sup> all require a certain number of women to be appointed to leadership structures and organs administered under these legislations.

The above legislative framework depicts political commitment, however marginal, on the side of government. In its present form, the existing legal outline especially within the legislative ambit reasonably provides for a substantive basis in law for women's political emancipation. It is also worth mentioning that women generally have been legally empowered in other socio-economic areas, at least in so far as the law is concerned. For example, the Combating of Domestic Violence Act,<sup>48</sup> and the Combating of Rape Act,<sup>49</sup> are examples of legislative measures aimed at protecting and empowering women socially.

39 As above.

40 29 of 1998.

41 Sec 18(1)(b) of the Act.

42 See generally, section 17 of the Act.

43 The Act also extends to instances where two or more persons of designated groups may be suitably qualified and provides that in such instances preference should be given to a female candidate. See generally section 19(2) of the Act.

44 13 of 2003.

45 5 of 2002.

46 25 of 2000.

47 5 of 2014.

48 4 of 2003.

49 8 of 2000.

## **4 STATUS OF WOMEN IN POLITICAL AND DECISION-MAKING PROCESSES IN NAMIBIA**

### **4.1 Trends and status of women in governance and decision-making structures in Namibia**

Since independence in 1990, Namibia has made strides in elevating women in public life. Largely, the newly inherited State, after a kilometric struggle for nationalism against colonialism (1886-1915) and apartheid (1948-1989), still mirrored a patriarchal, sexist and racially divided society. To begin with, women's representation in the UN led peace negotiations for an independent Namibia, under the auspices of the Constituent Assembly, involved only two women amongst a total of seventy-two representatives. This process undermined the important role of women in transitional and post-conflict reconstruction processes. The status quo was maintained in subsequent electoral processes. After the first national elections in 1989, women's parliamentary representation stood at 8,3 per cent, with steady progress made in the 1994, 2000, and 2005 elections.<sup>50</sup> During this period, the few women who made it to parliament largely remained invisible and excluded from key positions of State power where their capabilities and skills could be visible to the public. As of 2017 however, the representation of women in parliament stood at 41,7 per cent. This figure indicates a significant increase of women in Parliament. But the question remains whether this significant number of women has been nurtured in key positions of State authority where their strengths and capabilities can be evidential to the public. The combined study by the UN Women and the Inter-Parliamentary Union (IPU) in 2012,<sup>51</sup> evidences the sexist allocation of ministerial positions in governments; with high prevalence of women in the conventional social, family, and development areas, with the more prestigious and politically armed civil services, such as defence, finance and foreign affairs still carrying a 'masculine imagery'. It is worth noting that in Namibia however, the trend is changing with women having of late been called to key positions of central government, such as prime minister, foreign affairs, finance, and labour ministers respectively. But in the past 28 years of independence, no woman has held a ministerial position in defence, which has been seen as the domain of male figures.

Representation of women in the Upper House of Parliament, loosely called the National Council, also shows great advances. Starting from a mere 3,8 per cent (1 out of 26 members) in 1992, when the

50 According to the IPPR Democracy Report of 2014, by 1994 women accounted for 12,5%, 25% in 2000, 23,6% in 2005, and 22,2% in 2010.

51 UN Women and IPU 'Women in politics: 2012' 1 January 2012. According to this study, as of 2012 between 79 and 89% of women around the world hold the position of ministers in social, family and women's issues, whereas only 7% is ministers of defence and veteran affairs.

National Council was instituted, as of the 2014 national elections a slight improvement has been made with 26,9 per cent (7 out of 26 members) female representation in the house of law review.<sup>52</sup> It is also notable that the current speaker of the National Council is a woman and has been vocal on women's parliamentary inclusion. What the parliamentary statistics reveal is that the country is gradually coming to terms with the role of women in political environments. The post 2005 period reveals a transformation in political leadership that to a considerable extent remained gender sensitive and inclusive in nature. But as Namibia's *Sixth Periodic Report to the African Commission on Human and Peoples' Rights* has shown, women still remain underrepresented in key sectors.<sup>53</sup> These include, mining, transport, tourism and hospitality and construction.<sup>54</sup>

Regional governance also depicts a rather bleak picture for women's representation. During the November 2015 Regional Council elections, only 15 per cent of the 284 candidates who participated in these elections were women.<sup>55</sup> From these 284 candidates only 16 per cent, comprising of 19 out of the 121 elected were women.

The absence of women within the judicial arm of government is also a major area of concern. Out of the 14 judges of the High Court of Namibia, only four (28,6 per cent) are women.<sup>56</sup> No female judge serves on the five permanent seats of the Supreme Court, although foreign female South African judges have occasionally been appointed on a temporary basis. The lower magistrates' courts have a relatively fair distribution of female presiding officers, of the current ratio is 47 males to 46 females.<sup>57</sup> The current chief magistrate is also a woman,<sup>58</sup> and has been acting in that capacity in the main High Court on a regular basis.

Moreover, only four (9,5 per cent), out of the 42 recognised traditional authorities are headed by women.<sup>59</sup> The under representation of women in traditional authorities, as is the case with the judiciary, is concerning given the fact these two organs are crucial in the legal and social integration of women. Traditional authorities are the custodians of indigenous culture, customs, and practices and are

52 LAC Namibia 'National gender analysis' July 2017 31 [https://eeas.europa.eu/sites/eeas/files/namibia\\_gender\\_analysis\\_2017.pdf](https://eeas.europa.eu/sites/eeas/files/namibia_gender_analysis_2017.pdf) (accessed 8 April 2018).

53 Sixth Periodic Report of Republic of Namibia, African Commission on Human and Peoples' Rights (2015) 68 [http://www.achpr.org/files/sessions/58th/state-reports/6th-2011-2014/namibia\\_state\\_6th\\_periodic\\_report.pdf](http://www.achpr.org/files/sessions/58th/state-reports/6th-2011-2014/namibia_state_6th_periodic_report.pdf) (accessed 20 February 2018).

54 As above.

55 N Shejvali "A thorn in the flesh for gender equality: How the gender gap in Namibia's Regional Council elections undermines the country's otherwise impressive gender equity gains at other levels of governance" in Institute for Public Policy Research Election Watch Briefing Paper 2 (2015) 1 [http://ipp.org.na/wp-content/uploads/2016/02/Briefing\\_Gender\\_Equality\\_web.pdf](http://ipp.org.na/wp-content/uploads/2016/02/Briefing_Gender_Equality_web.pdf) (accessed 3 March 2018).

56 LAC Namibia (n 52) 31.

57 As above.

58 As above.

59 As above.

typically the first mechanisms of redress for women and girls in rural areas. Although the Traditional Authorities Act of 2000 obligates traditional establishments in discharging their functions to promote affirmative action amongst the members of that traditional community, very little has been done to promote women in the chieftaincy and in senior and local traditional leadership levels.<sup>60</sup> Whilst the inclusion of women within traditional authorities is not a given, based on the fact that these structures are predominantly patriarchal, law reform can be a pivotal apparatus in deconstructing this patriarchy. The argument is not that law should be used to distort the character, existence and operation of traditional authorities. The argument is rather premised in the fact that the inclusion of women within traditional communities would not only be a necessary step in dismantling patriarchy but will also accord women a 'voice' and meaningful space within traditional settings, which for far too long have been viewed as the sphere of men.

The advances made in women's representation too have seeped into some key public sector bodies. Of the twelve-member Board for Legal Education for instance, currently women hold 50 per cent of the Board's seats. This is despite the fact that there are no reservations made in terms of affirmative action measures for women to serve on the Board in its enabling legislation. The Board for Legal Education is constituted in terms of section 8 of the Legal Practitioners Act 15 of 1995 (as amended) and is primarily mandated 'to investigate and advise upon any legal education pertaining to the legal profession and any related matters'.<sup>61</sup> The inclusion of a considerable number of women on the board is remarkable given the historical disparities in race and gender that clouded the legal profession.<sup>62</sup> As rightly noted by practitioners Clive Kavendjii and Nico Horn, 'the apartheid policies of the South African government, the financial disadvantages of the black communities as a result of those policies, and the total absence of training facilities for aspiring black lawyers kept the profession almost exclusively white'.<sup>63</sup>

The filtration of more women in public sector decision-making bodies is also visible in the Public Service Commission, the Law Reform and Development Commission of Namibia (LRDC), and the Electoral Commission of Namibia (ECN). The Electoral Commission of Namibia, whose mandate is derived from both article 94B of the Namibian Constitution (as amended) and the Electoral Act of 2014,<sup>64</sup> currently

60 See for example sec 3(1)(g) of the Traditional Authorities Act of 2000.

61 See generally, sec 11(f) of the Legal Practitioners Act 15 of 1995.

62 For example, historically the Namibian Bar was comprised predominantly of white Namibians, thereby ameliorating the effects of the apartheid system on previously disadvantaged lawyers in the legal profession. By the time the Legal Practitioners Act was passed on 25 September 1995, the Namibian Bar comprised 21 members, with only two black members. This has since changed however, and as of 2014 there are 40 members, 11 of whom are black.

63 C Kavendjii & N Horn 'The independence of the legal profession in Namibia' in N Horn & A Bösl (eds) *The independence of the judiciary in Namibia* (2008) 291-309.

64 See generally, art 94B of the Namibian Constitution and sec 4 of the Electoral Act 5 of 2014 for the mandate of the Electoral Commission.

consists of five Commissioners, of which two are female, including its chairperson. It seems as if the two current seats held by the female candidates on the ECN board is a fulfilment of the provisions of section 6(2) of the Electoral Act, which provides that 'at least two members of the Commission must be women'. In a similar fashion, the composition of the LRDC displays an even representation of women. Of the eight Commissioners holding seats, four, including the current chairperson, are female.

## **4.2 Political determinants for the increased women's political participation in Namibia**

Given the advances made in integrating women within political spaces in Namibia, as discussed above, the question remains as to what are the factors that have given rise to this progressive increase of women in these spaces. Put differently, what are the social, legal and political determinants, if any, that has led to the drastic, yet gradual increase of women in political spaces in Namibia? In response to this question, I argue that there are two main determinants that have contributed to the advancement of women within political and decision-making processes and organs in Namibia. The first proposition is that there has been a shift in the political thought of the ruling party SWAPO (and as a consequence in central government) on the role of women in society generally but more specially in political spaces. To give meaning to this revived gender consciousness temporary special measures through gender quotas aided the proliferation of women in government and other key decision-making processes. The second determinant is premised on political will and commitment from the political establishment, predominantly from the ruling SWAPO party government. In what follows below, a brief elaboration is made of these two factors.

### **4.2.1 Temporary special measures/gender quotas and increased 'gender consciousness' as a determinant for women's political advancement**

The introduction of gender quotas contributed immensely to the incremental increase of women in political spaces in Namibia. Although there are no formal temporary special measures provided in the Namibia Constitution, the ruling SWAPO government voluntarily introduced a 50/50 gender representation quota system at party level as a means to ensure equal gender representation in national government. Since the introduction of these affirmative action measures, female parliamentary representation has increased drastically in both the Lower and Upper Houses of Parliament. In compliance with article 23(3) of the Namibian constitution (read together with article 95(a)), various gender quotas for women have been introduced in public entities, further cementing women's representation in public decision-making organs and processes.



What has stirred sudden interest within SWAPO to undertake gender quotas remains a mystery. In fact, there has not been a robust discussion within the party on this major decision. However, with the increased abuse of and violence against women, the ruling party openly became sympathetic to the subordination of women generally.

#### **4.2.2 Political will and commitment from the political establishment**

As of early 2000 onwards, a good number of brutal killings of women and girls was brought to light by the media. Women began to speak openly about their suppression in their domestic life and society started to react positively to address violence against women and their subordination more generally. As a means to address this, women's political empowerment became an essential part of policy – especially for the political elite in the ruling party - to address the challenges facing women in the country. For example, in 2013, the abuse of women became such a concern to central government that the then State President, Hifikepunye Pohamba called for a 'national day of prayer'.<sup>65</sup> In a sense, society and State became conscious of the state of women in both private and public life. It is therefore not surprising, that after a 'pervasive period' of brutal gender-based violence, the Pohamba led-government took a firm decision to reform its National Gender Policy of 1997 and started mobilizing women in political positions of authority.

The political transition from the Nujoma to Pohamba administration in early 2015 came with major gender reforms. Pohamba, a generally soft-spoken SWAPO cadre carried with him a long track record of gender sensitivity. His commitment to gender equality became more visible when he joined the political leadership of the ruling party in 1997 as its Secretary-General where he had been repetitively calling for more women in party and state leadership. The formal signs of this political commitment occurred in early 2013, when he became party president, and called for an extra-ordinary congress to make provision for equal gender representation in all party organs and structures. The basis for this extra-ordinary Congress was resolution 2 read together with resolution 11, which dealt with gender equality in party structures and women empowerment respectively.<sup>66</sup> This formal affirmative action position of the ruling party, who over the years have amplified its hold of central government, has positively translated on state level as shown in the previous section of this article

The attribution of violence as a determinant that has led to the proliferation of women in political spaces in Namibia is not an unfounded suggestion. In fact, it is in countries where the experiences

65 The president declared 6 March 2014 as the national day of prayer against gender based violence <https://www.newera.com.na/2014/03/06/national-prayer-day/> (accessed 1 February 2018).

66 These two resolutions date back to the third SWAPO Party congress, held from 21 to 26 August 2002. As of 2015, SWAPO has settled on a policy of 50/50 representation in its party structures and organs.

of violence and discrimination have been prominent that women are faring better in political and governance spaces. Rwanda, Africa's exemplar concerning women's political participation, is a comparative case in point.<sup>67</sup> Having experienced discrimination first hand and its effects during the 1994 genocide, Rwanda's post-reconstruction process has placed strong emphasis on gender parity, especially in political and governance processes. Swanee Hunt, in her article on the reconstruction process in Rwanda, documents how the experiences of violence, particularly genocide, and racial discrimination had an impact on the gender advances made in Rwanda to date.<sup>68</sup> She argues that the hardships young widows faced, having to raise many of today's political leaders as single mothers, left impressions that influenced perceptions about the role of women in the Rwandan society in a positive manner.<sup>69</sup> As one commentator and former expatriate, John Mutamba once observed, 'as men who grew up in exile, we know the experience of discrimination. Gender is now part of our political thinking'.<sup>70</sup> As a result, Rwandan society, through strong political will and support has been open to the idea of integrating women in all (political) spheres of society. Like Rwanda, the atrocities of the past, particularly the violence against women contributed immensely to 'political thought' and the ways in which society deemed women. This in turn contributed to a shift in the political thinking and structures of the ruling party which began to emphasis the political integration of women in party and government structures and processes.

## **5 CHALLENGES AND OPPORTUNITIES FOR WOMEN'S EMANCIPATION IN POLITICAL SPACES IN NAMIBIA**

Unsurprisingly, the central challenge women in Namibia face, in penetrating political avenues can be largely attributed to processes of (gendered) socialisation, especially the artificial dichotomy made between private and public life. In many conventional African settings, including Namibia, participation in governance structures and processes is viewed as a public activity, more commonly reserved for men; whilst domestic affairs, such as the maintenance of the household, agrarian activity, and child rearing, are regarded quintessentially within the private domain; the terrain of the female sex. The CEDAW Committee in General Recommendation 23: Political and Public Life aptly captures this point:<sup>71</sup>

Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. Invariably, women have been assigned to the

67 According to the IPU women account for 64% of seats in the legislative arm of government.

68 S Hunt 'The rise of Rwanda's women: rebuilding and reuniting a nation' (2014) 93 *Foreign Affairs* 150-156.

69 Hunt (n 68) 152.

70 As above.

71 CEDAW (n 15 above) para 8 (accessed 7 March 2018).

private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior. By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

Although in principle the public-private dichotomy is meant to draw a distinction between the basic features of private and public spaces and the interaction between the two systems, in practice this distinction displays a gender dimension that disproportionately divides state power. As rightly observed by Sullivan, 'the demarcation of public and private life within society is an inherently political process that both reflects and reinforces power relations, especially the power relations of gender, race, and class.'<sup>72</sup>

Generations of feminists have time and again underscored the gendered nature of this private/public divide.<sup>73</sup> Sullivan, for example argued, that 'economic, social and political power adheres in the public realm, to which women have limited access and over which they have limited control.'<sup>74</sup> Put on a balance of scale, the public (the perceived domain of men) outweighs the private (the perceived domain of women), because of the centralisation of state power relations within the former realm. In turn the state becomes masculine, and that masculinity permeates its structures, organs, and processes, including the letter law. The private/public socialisation and engendering of society not only has left women, isolated from authoritative processes of governance, but has also resulted in the use and abuse of the power that the 'public realm' enjoys to suppress and control the already terse economic, political, and social powers, if any, of the 'private realm.' Charlesworth aptly apprehends this point in her observation, that 'the assignment of women to the domestic sphere entrenches their inequality with men, for women are regarded as dependent on men for subsistence. Moreover the privacy of domestic life makes women's concerns invisible and ensures the preservation of the status quo.'<sup>75</sup>

In view of the stereotypical and disproportionate tendencies of the private/public dichotomy, one study has concluded that what is needed is a 're-conceptualisation of the public/private divide in a manner that incorporates the experiences of women',<sup>76</sup> but even such a re-conceptualisation project may reinforce the inequalities brought about by the private/public divide, and further marginalise women's already

72 D Dullivan 'The public/private distinction in international human rights law' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 128.

73 See for example, H Charlesworth, C Chinkin and S Wright 'Feminist approaches to international law' (1991) 85 *American Journal of International Law* 615; C Romany 'State responsibility goes private: A feminist critique of the public/private distinction in international human rights law' in R Cook (ed) *Human rights of women: national and international perspectives* (1994).

74 Dullivan (n 72) 128.

75 H Charlesworth 'The public/private distinction and the right to development in international law' (1992) 12 *Australian Yearbook of International Law* 2.

76 I Radačić 'Human rights of women and the public/private divide in international human rights law' (2007) 3 *Croatian Yearbook of European Law and Policy* 467.

limited place in public space. What is needed is a total deconstruction of private/public socialization right from the outset.

Secondly, like the public/private socialisation, cultural socialisation too has affected women's perception of and inclusion in political structures in Namibia. As Rao observed:

...[t]he notion of culture favoured by international actors must be unmasked for what it is: a falsely rigid, ahistorical, selectively chosen set of self-justificatory texts and practices whose patent partiality raises the question of exactly whose interests are being served and who comes out on top. We need to problematize all of culture, not just the perceived 'bad' aspects. When we limit our inquiry to egregious violations, we limit our capacity to ameliorate human pain to just that one instance of a 'bad cultural practice.' Without questioning the political uses of culture, without placing the very notion of culture in historical context and investigating the status of the interpreter, we cannot fully understand the ease with which women become instrumentalised in larger battles of political, economic, military, and discursive competition in the international arena.<sup>77</sup>

The suppression of women in political processes, manually often at the whim of elitist men and structurally by established state processes, has much to do with the social development of persons and their integration and reaction towards this moral development. Thus when women, or, even some men view themselves as less credible for political spaces, their socialisation embedded in their moral development is central to that line of reasoning. The study of moral development is certainly nothing new, and has, for some time, been a focus study in human psychology.<sup>78</sup> Different psychological schools tend to explain the social influences of human reasoning. One such theory that has caught the attention of socio-legal academics and anthropologists is the social learning theory. Viewed from the social learning theory, behaviour is acquired by direct learning, modelling and imitation, and is maintained by positive reinforcement.

Another major challenge that has hampered women from penetrating political spaces in Namibia is the fact that historically women have not enjoyed the same level of autonomy that men enjoy. In practice, especially in remote and rural Namibia, including peri-urban areas, a women's worth is measured largely in relation to the man to whom she is associated.<sup>79</sup> This position was deeply entrenched in both customary and common law. For example, until the promulgation of the Married Persons Equality Act in 1996, men legally, on the basis of their sex, acquired marital power and control over the person and property of their wives. Although the positivist common law position

77 A Rao 'The politics of gender and culture in International human rights discourse' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 174.

78 See generally, JR Rest *Moral development: Advances in research and theory* (1986) 1; J Piaget *The moral judgement of the child* (1950) 1; FN Kerlinger *Foundations of behavioral research* (1986) 1; L Kohlberg & R Kramer 'Continuities and discontinuities in childhood and adult moral development' (1969) 12 *Human Development* 93-120; L Kohlberg 'Stages and aging in moral development some speculations' (1973) 13 *The Gerontologist* 497-502.

79 J Mertus 'State discriminatory family law and customary abuses' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 137. See also H Charlesworth 'What are "women's human rights"' in Cook (n 73) 69.

has changed, under customary social rooting, many women still do not enjoy autonomy. This remains a global trend in both the North and South. Women are regarded as dependent on men for subsistence. The recent failures of two and success of one prominent political figures makes out an illustrious example of the semi-autonomous perceptions in which many women are viewed: The repetitive reference to the failures of then American President Bill Clinton by presidential hopeful Donald J. Trump, whilst countering the arguments of his rival, Senator Hillary Clinton, demonstrates how women, even the very elite like Clinton, are labelled and suppressed on the basis of their male counterparts. It is almost as if Hillary Clinton's campaign for presidency was evaluated against the successes and failures of her husband. A similar trend also occurred in the presidential bid of former AU Chairperson, Dr Nkososana Dlamini-Zuma in South Africa's ruling ANC elective congress in December 2017. Dlamini-Zuma's loss to political rival, Cyril Ramaphosa, was largely attributed to her association of the then president, Jacob Zuma who had been in disfavour with his ruling ANC party and general public. Dlamini-Zuma had been previously married to Jacob Zuma. In Namibia, the ascent of Netumbo Nandi-Ndaitwah to the vice presidency of SWAPO, the ruling party in Namibia, was viewed by many as dependent on the support of her male counterpart, the incumbent president Hage Geingob, despite her established political career spanning over three decades. The experiences of these three women, illustrates the stereotypes politically ambitious women encounter, and the subordination they undergo, which their male counterparts barely encounter.

The disproportionate impacts of high prevalence of unemployment and extreme poverty in Namibia, as in various parts of Africa, on women also impedes their potential to fully explore political avenues. This reality is aptly articulated in the recently concluded Strategic Framework of the Commission of the AU:<sup>80</sup>

[T]he existence of widespread gender inequalities between men and women has manifested itself in the disproportionate burden African women bear of the poverty, illiteracy and disease. While they constitute more than half of Africa's population (52 per cent), they face challenges in accessing equal opportunities and rights, and are severely underrepresented in decision-making positions while at the same time their welfare is grossly undermined by cultural and traditional practices.

Running for political office requires economic resources, or at the very least collateral and other forms of financial security, which many women (compared to men) do not have. This is more likely the case because, as recently concluded in the (Revised) National Gender Policy (2010-2020), 'poverty is most pronounced among the 44 per cent of female-headed households in rural areas'.<sup>81</sup> According to the same

80 African Union Commission 'Strategic plan 2014-2017' (2013) para 196 [https://au.int/sites/default/files/pages/32028-file-the\\_au\\_commission\\_strategic\\_plan\\_2014-2017.pdf](https://au.int/sites/default/files/pages/32028-file-the_au_commission_strategic_plan_2014-2017.pdf) (accessed 24 March 2018).

81 Ministry of Gender Equality and Child Welfare *National gender policy of Namibia* (2010) 12 [http://www.africanchildforum.org/clr/policy%20per%20country/namibia/namibia\\_gender\\_2010-2020\\_en.pdf](http://www.africanchildforum.org/clr/policy%20per%20country/namibia/namibia_gender_2010-2020_en.pdf) (accessed 9 March 2018).

policy document about 52 per cent of the population in rural areas are female,<sup>82</sup> away from the mainstream political processes and spaces in urban and peri-urban Namibia. Even the very limited few who have financial resources to penetrate political avenues often find political spaces and positions of influence relatively intimidating and gender-insensitive.

Given the above outlined challenges, there is room for improvement and opportunities. These opportunities will have to begin with electoral reform at political party level because of the centrality of party politics in the electoral cycle. Clearly, as evidenced from the affirmative action measures taken by SWAPO in Namibia, temporary special measures are a feasible consideration for women's emancipation and should thus be integrated by all political parties. In fact, reforms within the Electoral Act should require political parties to include temporary special measures in favour of women at party level. Parties can also provide special funds to ease the financial burden associated with running for political office for women, who in any event are more economically strained than men as discussed above.

Another opportunity that can be explored is through law reform aimed at making political life more family-friendly. Women in Namibia, as in most parts of the world, still bear a greater part of family relations whilst at the same time exploring opportunities in the public realm. Women in Namibia who find themselves in political spaces experience difficulties in finding ground between work and other duties. There may therefore be a need to amend the Electoral Act of 2014 and Labour Act of 2007 or, alternatively, the parliamentary rules and procedures, to reflect the experiences of women in electoral, political and parliamentary process by reducing the hours of labour required of female parliamentarians and for their participation even during their possible physical absence in political structures even during maternity periods, by providing for say alternative voting or participation procedures, as the case may be.

## 6 CONCLUSION

The domestic implementation of article 9 of the Women's Rights Protocol has come a long way in the legal framework of Namibia. As shown in the paper, the domestication of article 9 of the Women's Rights Protocol within the Namibian legal framework is a hybrid exercise; somewhat canvassed indirectly within the constitution and more fragmentally within various legislative instruments relating to public entities. As far as its implementation is concerned the voluntary gender quotas introduced by the ruling party and further political commitment from central government contributed immensely to the incremental increase in women's representation in political processes and decision-making organs such as parliament.

82 As above.

Despite the fact that it had nearly taken over two decades for the Namibian government to meet its obligations in terms of article 9 of the Women's Rights Protocol, the fact that modest gains have been made marks a new dawn for women. It is therefore not inappropriate to suggest that Namibia is gradually moving towards ensuring that women have a meaningful place within its political and decision-making processes and organs. Given this state of affairs, Namibia can be singled as an illustrious example of both progression and regression as far as women's political emancipation is concerned. However, there are some shortcomings, which have left women underrepresented in key organs such as the judiciary and traditional authorities. Until these concerns are addressed we cannot ideally speak of full compliance with the provisions of article 9 of the Protocol by Namibia. This may surely be attainable in the immediate future if the prevailing political will and commitment is maintained and women at the grassroots levels are able to reap from the proliferation of women within political and decision-making processes.