

TRANSFORMING WOMEN'S ROLE IN LOCAL GOVERNMENT IN LESOTHO THROUGH A WOMEN'S QUOTA

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ABSTRACT

Lesotho introduced a quota for women in local government in 2005 amid different interpretations of the concept and the general preparations for elections. The phase II era of decentralisation, after the quota for women was introduced, was marked by the October 2011 local government elections. In both instances a deliberate effort was made to reserve one-third representation for women, though each time in a different way. This article analyses the way in which the government's efforts to use a legal framework to challenge traditional and patriarchal tendencies have evolved. It argues that while the introduction of a quota is a good development it was not properly institutionalised in 2005, nor have the changes introduced in 2011 improved the situation. The article argues that insufficient dialogue has led the government and civil society to miss a valuable opportunity to use a women's quota in local government to change women's political, social and economic status.

INTRODUCTION

The post-colonial state in Africa, itself a product of authoritarianism, exploitation and oppression, has been struggling to find a power-sharing formula in polarised and fragmented societies. Although democracy was expected to replace the colonial state as well as oppressive customary and patriarchal rule with a Bill of Rights guaranteeing rights to every citizen, the new dispensation seems to have built upon existing disparities.

After half a century of decolonisation African countries are still battling over electoral democracy. The battle is normally defined in terms of electoral

management and procedural issues, yet, according to Ndlovu-Gatsheni (2003, p 22) the post-colonial state is incapable of mediating among contending forces in society and has been unable to find acceptable power-sharing formulae, thus failing to translate fairly votes into representation. When decentralisation of power was introduced in many countries the driving objective was service delivery and the success of the system was determined by the extent to which the central government was willing to let go of power. The inclusion of traditionally excluded sectors of society in decision making is becoming significant, hence it is a fairly new concept to have a women's quota not only in local government but in other spheres of government as well.

The re-introduction of local government in Lesotho, 2005 after 40 years of highly centralised political administration had a mixed reception from government, civil society organisations, development partners, traditional leaders (chiefs), political parties and the people, mainly because of its *affirmative action* orientation towards women. Amid resistance from opposition parties and alternative proposals from civil society organisations the government of Lesotho went ahead with reserving at least one-third of the seats for women in a way that barred men from contesting seats in some electoral divisions. After elections in which 56% of those chosen as councillors were women, there was little cooperation among stakeholders.

Insufficient management of the diversity of views created considerable suspicion and negative conflict about an otherwise significant initiative. The much needed solidarity of leadership, which was missing at the beginning of the process, has left a significant mark on the performance of local government in general, and women councillors, in particular. Women councillors had very little, if any, impact on changing the situation of women. The appraisal of their performance is similar to that of the other councillors. Even in the electoral divisions earmarked for women voters judged them primarily on their overall performance as councillors and only secondly on how they performed on women's issues. This suggests that *affirmative action* which provides quotas for disadvantaged groups may not, without necessary institutional transformation, deliver the desired change. Participation of women in the 2011 local government elections, which led to the election of 47% women councillors, a 9% decline from the previous position, raises the question of whether the quota should be time bound? Originally it was intended that it be used only for three phases of local government elections

This article examines the extent to which the structural as well as the institutional arrangement within local government in Lesotho facilitates or curtails women's empowerment. Does the structure, for example, create a situation in which 56% or 47% of women can bring about significant change for rural women?

DEMOCRACY, REPRESENTATION AND ELECTORAL SYSTEMS

Lesotho is a democratic kingdom (Constitution 1993, p 1) with a hybrid political system that espouses civil liberties while at the same time sympathising with customary practices, making progressive affirmative policy choices, such as a women's quota, contentious. Though there has been a considerable change in its legal framework Lesotho remains a highly patriarchal society in which male dominance and women's subordination are entrenched in norms and practices that make such imbalance a way of life. Because patriarchal societies invest in the people's mindset, their continuity also tends to define their culture and identity.

Molomo (2006, p 8) defines democracy as a process of electing leaders in an open and transparent manner and holding them accountable. The notion that it cannot, however, be limited to elections is corroborated by Mutisi (2007, p 5), who argues that 'democracy is a system of governance that seeks to represent people by inculcating the values of equality and justice'. Representative democracy demands that people have control over decision makers who act on their behalf as well as over the decision-making processes.

Of the two types of democracy, direct and indirect (representative), the latter is preferred mainly because of the impracticality of the former in growing populations: because it may not be practical for millions of people to participate directly in the running of their affairs some represent others and carry out certain duties on their behalf. Elections have been found to be the most accepted form of identifying those who can hold office on behalf of others.

African countries, Lesotho in particular, have, however, not found stability in the electoral system and, hence, in representative democracy. Matashane-Marite, Mapetla & Monyake (2007, p 2) argue, for example, that the aftermath of general elections in Lesotho has been characterised by turmoil and conflict. This view is shared by Kabemba (2003, p 5), who points out that in its four decades of independence Lesotho has experienced violence directly linked to elections. The main actors, namely the political parties, have not accepted the outcome of the elections. Mohau (1998, p 98) contends that losers in Lesotho's elections have proved to be unable to accept defeat maturely or to see their own weaknesses, maintaining instead that the chicanery of others is the cause of their defeat.

Similarly, Gill (1998, p 480) indicates that none of the main opposition parties – the Basutoland Congress Party (BCP) and Marematlou Freedom Party (MFP) in 1965, the Basotho National Party (BNP) in 1970 and 1993 and the BCP and BNP in 1998 – accepted defeat with grace. In searching for a solution to the protracted post-election disputes in the kingdom the electoral model rather than the management of the process was identified as the probable cause. Shale (2007, p 1) contends that

it took decades for the Basotho to recognise that disputes over elections related not as much to management as to the system. Earlier Mahao (1998, p 78) had argued that although the first-past-the-post (FPTP) electoral model used in Lesotho produced a strong government it did so at the expense of the whole political system.

According to Heywood's definition (Heywood 2002, pp 206-210), there are four categories of representation, namely, the trustee, delegate, mandate and resemblance models. The *trustee* model entitles a representative to use mature judgement and conscience; in terms of the *delegate* model a representative serves as a conduit for transmitting the ideas and views of those represented; in terms of the *mandate* model it is the organisation that is elected on the basis of its programme or popularity and the *resemblance* model relates to the extent to which representatives resemble the people they claim to represent.

These models have both good and bad qualities, hence they may not be equally suitable for all electorates. For example, the qualities of a representative and the moral duty inherent in the trustee model and loyalty in the delegate model are necessary ingredients in a modern representation. Although the mandate model is, to all intents and purposes, modern, it lacks the qualities necessary in the individual in the trustee model and the moral obligation of the delegate model. The resemblance model contains the progressive element of recognition of various sectors of society, but this is not what politics is about; people unite not only in relation to sectarian tendencies but also in relation to political ideologies.

It therefore follows, logically, that the electoral model in Lesotho is the result of debate and trade-offs in search of the proper form of representation, which, like other socially constructed concepts, is not insulated from paternalistic monopoly over public discourse. The electoral system, according to Heywood (1997, p 232), is a set of rules governing the conduct of elections. Beyond managerial issues an electoral model is a mechanism through which votes are translated into parliamentary seats.

The crux of the matter and, indeed, an entry point into the contention of this article is the argument Molomo (2006, p 27) advances that 'a system is said to be representative if it accurately translates votes cast into a corresponding number of seats'. If party A receives 20% of the support in an election, the ability of the system to convert that into 20% of seats in the house of representatives is what qualifies the system as truly representative. A proportional representation system is, therefore, fairer than a FPTP system.

Representation is, therefore, a relationship through which an individual or group stands for or acts on behalf of a larger body of people (Heywood 2002, p 224). Comparatively speaking, FPTP is more hostile to women than

proportional representation (PR) because in a FPTP system women have to compete directly against men. Mahao (1998, p 72) argues that FPTP exaggerates the lead of the largest party over others and promotes a two-party if not a one-party system instead of a multiparty system. Lowe-Morna & Tolmay (2009, p 11) argue that although PR is more conducive to the election of women than FPTP it subjects women to further domination by political parties. Lowe-Morna (2006, p 41) argues that because in a PR system party leaders put together the final lists and the order of the names on the lists, women who achieve their positions through a party list system are primarily accountable to the political parties they represent and only secondarily to women.

If democracy is defined as government for the people by the people, Lowe-Morna (2006, p 35) argues, given the levels of women's representation in their parliaments no country in the world can claim to be a democracy. Since the conventional approaches to democracy and elections have not delivered solutions to the cultural stereotypes that bar women from participation, affirmative action, particularly quotas, is key to changing the situation. This is significant because, as Mutasah (2006, p 51) argues, through elections people choose representatives who will represent their interests. In this way, representation also refers to the extent to which representatives deliver on the expectations of those they represent.

The progressive debate over representative models that increase the number of women in political leadership is, therefore, challenging the established norms. Affirmative action is a deliberate way of increasing women's representation in significant positions. Akiyode-Afolabi & Arogundade (2003, p 23) define affirmative action as a broad term encompassing a host of policies that seek to support excluded groups in society.

Guided by a number of international agreements the government of Lesotho has developed a Gender and Development Policy in which clearly identifiable affirmative action can be discerned. The establishment of a quota for at least one-third of the seats for women in local government is an example of that. Local government, being the closest sphere of governance to the people, plays a critical role in reversing the injustices of the past. As Molomo (2006, p 26) argues, elections are not about putting people in power for their enrichment, but are a process to improve people's lives. The question is whether the quota that puts women in power, can, alone, achieve such a desired improvement for women. The use of affirmative action to reverse the under representation of women should therefore not only be aimed at changing the numbers but also their material well-being. Put differently, affirmative action and quotas may serve to transform male oriented representation systems into equality platforms that can be used to change the cultural stereotypes that limit women's developmental capacity.

THE POLICY AND LEGAL FRAMEWORK FOR WOMEN'S EMPOWERMENT IN LESOTHO

Lesotho aspires to equal opportunities for and participation by women and men in development, education, economic resources, politics and decision making (Gender and Development Policy, 2003, p 7). Several legislative measures have resulted from this policy pronouncement. By introducing progressive measures, such as relaxing evidence procedures, the Sexual Offences Act (2003) empowers vulnerable groups to resist sexual abuse. The Act, for instance, does not contain a condition about the length of time that elapses between the incident and its being reported, which, particularly in the case of rape, has, in the past, been a reason for dismissing a claim. The marital power that placed women in the custody of men has been reversed by the Legal Capacity of Married Persons Act (2008), which gives women access to credit and to other key decision-making powers. The Land Act (2010) gives women the right to own land and the Companies Act (2011) allows them to be directors of companies, making women's legal position more progressive and conducive to a meaningful contribution to the economy.

Lesotho thus aspires to fulfil its international commitments, as set out in The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Conference on Population and Development (ICPD), The Fourth World Conference on Women 1995, the Beijing Platform of Action, the African Union (AU) Solemn Declaration on Gender Equality in Africa 2004, the AU Gender Policy 2009 and the Southern African Development Community's (SADC) Protocol on Gender and Development 2008, to name a few conventions to which Lesotho is party.

Despite this commendable progress and the fact that discrimination is unconstitutional in Lesotho, s 18(4) (b) and (c) of the Constitution makes the non-discrimination principle ineffective when customary law is applied with respect to adoption, marriage, divorce, burial, devolution of property, death, or other matters which fall within provisions of personal law (Constitution 1993). The position of the government of Lesotho on this issue was made clear in 1995 by its reservations about Article 2 of CEDAW:

The Government of the Kingdom of Lesotho does not consider itself bound by Article 2 to the extent that it conflicts with Lesotho's constitutional stipulation relative to succession to the Throne of the kingdom of Lesotho and the law relating to chieftainship. The Lesotho government's ratification is subject to the understanding that none of its obligations under the convention especially in Article 2(c) shall be treated as extending to the affairs of religious denominations.

Furthermore, the Lesotho government declares that it shall not take any legislative measures under the Convention where those measures would be incompatible with the Constitution of Lesotho.

Lesotho CEDAW Report 2011, pp 10-11

The reservation was, however, altered in 2004, and now exists only to the extent that it affects the succession to the throne and chieftainship. Some women's groups are calling for the repeal of s 18(4). Although the same report justifies this situation as a manifestation of a democratic government introducing changes at a pace that does not harm the electorate, the then ruling party launched a debate on this issue.

Addressing the Lesotho Congress for Democracy (LCD) Women's League National Conference, the party's then leader and Lesotho's prime minister, Pakalitha Mosisili, urged women to take up the debate on barriers to women becoming heirs to the chieftainship (Mosisili 2011). These debates demonstrate that Lesotho is taking a more consistent route towards women's empowerment. A word of caution should, however, be added – more could be achieved by opening avenues of public participation in the debate. This would require a departure from the conventional practice where civil servants not only channel discussions but also control the participation mechanisms. Greater participation should be fostered through civil society organisations.

WOMEN'S POLITICAL REPRESENTATION AT GLANCE

Men make up 48.6% of Lesotho's population while women constitute 51.4% (census 2006). In terms of the situation at the time of the 2011 local government elections and shortly before the 2012 national elections women's representation can be divided into the following categories: ministers, 33%; assistant ministers, 60%; members of Parliament in the Senate, 26% and in the National Assembly, 24% and local government, 52.8%. The overall representation of women in politics is 49.6% (Lesotho CEDAW Report, 2010, p 33).

This picture is, however, misleading. Women's representation, particularly in local government, still reflects serious gaps, which existed prior to the 2011 local government elections. Of the 128 community council chairs only 17% were held by women, while no women chaired district councils (Lesotho APRM 2010, p xviii), yet women constituted 56% of the total membership of the district councils. While the majority of assistant ministers were women, these were inferior positions. It can therefore be argued that they held a majority of the junior positions. Since the 2011 Local Government Elections and the 2012 National Assembly Elections the situation has improved, with 30% of both district chairpersons and deputy

chairpersons being women (IEC 2011). Women make up 23% of the 22 ministers in the Cabinet and 43% of the six deputy ministers (Government of Lesotho, 2012).

The question that should occupy the minds of those who are concerned about women's development should be: given the large numbers of women and the fact that so many of them vote, why is their representation not commensurate with their numbers? The women's quota system alone cannot change this situation in a patriarchal society. There should be institutional transformation to deal with entrenched attitudes and belief systems.

LESOTHO'S ELECTORAL MODEL AND THE QUOTA IN LOCAL GOVERNMENT

As argued above, electoral and quota systems should be seen in a particular historical context. In Lesotho the development of an electoral model is the result of both practical imperatives and the influence of internationally agreed conventions. Lesotho uses a mixed member proportional system (MMP) at the national level and a parallel system at the local level. Because the focus of this article is local government, the national electoral model will be discussed briefly, while the local system will receive more attention.

Instability has followed every election in Lesotho since independence in 1965 and, in the wake of the political turmoil resulting from the national election results in 1998, a situation that led to South African military intervention in an operation that was later defined as a SADC exercise, the electoral model was changed from FPTP to MMP in an attempt to make the system more democratic, inclusive and representative. The National Assembly now comprises 80 constituency seats and 40 proportional representation seats. The final allocation is based on the principle of proportional representation, although parties are allowed to retain the constituency seats they have won. This means that if a party, in proportional terms, deserves 20 seats but has only won 18 in the constituencies, it will receive two PR seats to make up the 20. If it has more constituency seats than it deserves proportionally it retains them, but receives no PR seats.

Although it was believed that the MMP system would facilitate greater women's representation because parties would include significant numbers in their lists, only 17% of those elected in 2002, when the model was first applied, were women and 26% in 2007, when it was applied for the second time (Maraisane 2009, p 35). These figures are far below the 50/50 ratio required by the AU and SADC. They are even lower than SADC's original 30 %. This confirms that even a PR system can still perpetuate structural inequalities by maintaining an asymmetrical power balance between men and women, particularly when the

decision is up to the parties. Political party executives determining the lists are male dominated and the process is not informed by dialogue with women.

The discontent that followed the 2007 general elections related to the appropriateness of the application of the model in allocating seats to parties, not to women's representation, another indication of priorities with regard to electoral issues. However, after almost four years of dialogue, originally brokered by SADC and later led by Lesotho's civil society and religious sector, the system of women's representation was improved.

Each contesting party draws up a list of candidates to occupy the seats the party wins on the PR list. This list follows the 'zebra system', by which the names of men and women alternate (National Assembly Elections Act 2011). This improvement, which had the support of the Lesotho government, was a response to the decision by SADC and the AU that the goal should be 50/50 representation. Zebra lists are now a permanent part of the system. This means that should the ongoing, though subtle argument that Lesotho should use a full proportional representation system be won, it is possible that there will be 50/50 representation.

Of the 15 SADC countries Lesotho now has the sixth-highest representation of women in the legislature and is ranked 35 of 134 countries in the world (Lowe-Morna & Tolmay 2009, p 9). The discourse on women's representation challenges those features of structural inequality in representative politics which have become normative. With regard to local government, the system will be explained in the context of the analysis of the institutional arrangements within which the quota is applied. Decentralisation in Lesotho is introduced by the Constitution (1993, s 106), which provides that

[P]arliament shall establish such local authorities as it deems necessary to enable urban and rural communities to determine their affairs and to develop themselves. Such authorities shall perform such functions as may be conferred by an Act of Parliament.

The latter part of the constitutional provision is very significant because it bestows on Parliament the power to determine the nature of local government.

The Local Government Act, No 6 of 1997 is, itself, the result of the country-wide and expert led consultations through a white paper. In order to accommodate the women's quota this Act was amended twice, first by the Local Government (Amendment) Act No 5 of 2004 and then by the Local Government (Amendment) Act No 2 of 2011. Since the quota was effected through elections, the Local Government Elections Act No 42 of 1998 was also amended, first by the Local Government Elections (Amendment) Act No 75 of 2004 and then by the Local Government Elections (Amendment) Act No 4 of 2011.

The 2004 amendments to both Acts introduced the reservation of at least one-third of the seats in local councils for women, while the second amendments, in 2011, modified this. This meant that male candidates were barred from standing in the selected electoral divisions. There was a mixed reaction to the lead-up to the local government elections of 2005, with opposition parties believing that they should have been given more time to prepare. Although the opposition parties did not have a discrete body of complaints, many of the issues they raised emanated from the disharmony between the then recently overhauled National Assembly Elections Act (2001) and the Local Government Elections Act (1998), which remained unchanged.

The way in which these disputes were handled was a reversal of the gains of mature political dialogue that had led to the tranquil general election of 2002. The Ministry of Local Government, the opposition parties and the Independent Electoral Commission (IEC), however, converged in a forum organised by the Lesotho Council of Non-governmental Organisations (LCN) a few weeks before the polls. This forum eased tensions and thereafter opposition parties declared officially that they would allow their members to participate in the elections.

More interesting was the dispute over the application of the quota itself. The robust debate over electoral politics generated by the transition from FPTP to MMP was replaced when the women's quota was introduced in local government by populist slogan shouting, which perverted the political landscape.

Civil society organisations, particularly those coordinated by the LCN, took divergent positions on the implementation of the women's quota. Two of its sectoral commissions, the Democracy and Human Rights Commission (DHRC) and the Women and Children's Commission (WCC), were embroiled in 'friendly fire' after the DHRC endorsed the quota for women but questioned the wisdom of implementing it by reserving territories instead of seats, while the WCC was tricked into speaking in public against its sister commission. The DHRC proposed an alternative that was presented to the Minister of Local Government at a meeting attended by Gender Links's Colleen Lowe-Morna, who contributed useful insights. Two alternative models were proposed:

- That after determination of the number of seats that should be allocated to a community council one-third of that number of seats would be reserved while the rest would be assigned to electoral divisions. Both men and women would contest the electoral divisions, while the reserved seats would be contested by women only.

Or

- Electoral divisions should be abolished and one-third of the seats

reserved for women, while the rest would be contested by both men and women.

DPE 2009, p 5

Perhaps because of the political environment that then prevailed these issues were not genuinely explored and instead the LCN was demonised. The WCC, on the other hand, was mobilising women organisations to 'defend' what was referred to as a call for women. In the internal debate on these positions the WCC sympathised with the argument presented by the DHRC but acted with government. What the WCC could not convincingly respond to in the civil society discourse was the question why the women's quota could not be implemented without discrimination, particularly when civil society had such options?

One aspiring male local government candidate, Ntate Molefi Tšepe, barred from competing because his electoral division was reserved for women, challenged his exclusion in court, asking the court to

[declare] unconstitutional, the provisions of Section 26 (1) A (a) and (b) of the Local Government Elections Amendment Act to the extent that they authorise the exclusion of the applicant from participating as a candidate in the electoral division, litjotjela, 05 on the basis of his sex, in contravention of Section 18 (1) (2) and (3) of the Lesotho Constitution.

Judgement in *Molefi Tšepe*, p 2

This case was interesting because the applicant demonstrated in his papers that he was not opposed to the advancement of women through a quota, but to the implementation of the quota, which disqualified him on the basis of his sex. The respondents admitted the discriminatory nature of the quota, but argued that it was *reasonably justifiable in a democratic society*, hence it was not unconstitutional. In confirmation of what the LCN anticipated when it sought ways of becoming a friend of the court (an attempt that failed), Justice Nomngcngo (2005, pp 20-22) admits that it was hard to comprehend various electoral model options, which, in any event, would yield the same results.

In the judgement, with which Justice Kelello Guni concurred, Justice Nomngcngo (2005, p 22) said: 'Taking all these considerations into account we have come to the conclusion that the limitation that the Section 26 (1) A (a) & (b) imposes on the applicant's rights in so far as it does is reasonably justifiable in a free and democratic society' and is therefore not unconstitutional. Having heard the appellant and engaged with the issues raised, the Appeal Court dismissed the application and confirmed the decision of the High Court (Judgement in *Court of*

Appeal, Molefi Tšepe 2005, p 23). In the event, women won 56% of the seats in the local government election of 2005, the highest percentage on the continent.

Confirming the position advanced by the LCN in 2004-2005, however, when the time came for phase two of the use of the women's quota in local government elections, political parties and the government agreed to defer the polls in order to amend the Local Government Act of 1997 and the Local Government Elections Act of 1998 to consider affirmative action. One of the outcomes of this move was a change in the manner in which the women's quota was implemented in 2005. The review resulted in a change in the way in which seats are reserved for women in local government – this is now done without necessarily preventing men from contesting any electoral division. On this issue Shale (2011, p 4) wrote:

the changes made to the 2005 system are applauded for giving space for women and men to participate in elections equally. This is crowned by retaining the reservation for women. This conceptual cohabitation of affirmative action for women and principle of universal suffrage demonstrated in the new dispensation was not only denied in 2005; those who argued it was possible were not engaged on what they said but who they are!

This feature is important because it communicates clearly the intention of the quota: *to advance women, not to block men*. The new local government electoral model is a parallel system in which voters have two ballot papers – the first for the candidate to represent the electoral division and the second for the political party. One-third of the seats in each community/urban/municipal council are reserved for women. They are referred to as special seats for women and are shared among political parties on the basis of proportional representation.

The explanation derived from the local government elections legal framework (2011) is that once council boundaries have been decided by the Ministry of Local Government, the IEC, guided by population and other socio-economic considerations, will demarcate electoral divisions (each of which must return one candidate to represent it in the council) within every community/urban/municipal council. Further, the IEC will determine the number of special seats for women by dividing the number of electoral divisions by three. Each political party contesting the elections in a particular council and intending to field candidates for the special seats for women will draw up a list of women [in order of preference]. The number of names on the list must not be lower than the number of special seats and not higher than the total number of electoral divisions for that council.

The first vote is for the representative of the electoral division in the council, to be determined by a simple majority, the second is for the party. Although all

the votes are counted at the voting stations their effect in terms of representation is only determined when the results from all the voting stations have been added up, to establish the total number of votes for each political party in the whole council. The allocation of special seats for women is then calculated by means of the formula:

$$\frac{\text{Number of votes cast (for political parties)}}{\text{Number of special seats for women}} = \text{Quota}$$

The votes for each party are divided separately by the quota to determine the number of special seats each deserves. The figures below demonstrate the practical application of the concept. If the Nkau Community Council has 15 electoral divisions, three political parties contesting special seats for women and the total number of people who vote for parties in the second ballot is 2 050:

- i) Determination of number of special seats for women: $\frac{15}{3} = 5$
- ii) Determination of quota: $\frac{2\,050}{5} = 410$
- iii) Total votes for each party:
- | | | |
|--------------|---|--------------|
| Party Blue | = | 1 300 |
| Party White | = | 500 |
| Party Yellow | = | 250 |
| | | <u>2 050</u> |
- iv) Determination of special seats for each party:
- | | | |
|--------------|---|-----------------------------|
| Party Blue | = | $\frac{1\,300}{410} = 3.17$ |
| Party White | = | $\frac{500}{410} = 1.22$ |
| Party Yellow | = | $\frac{250}{410} = 0.60$ |

The final allocation will be Party Blue 3, Party White 1 and Party Yellow 1. The last gets a seat because, according to the formula, if all the available seats are not allocated, the first of the remaining seats will be allocated to the party with the highest decimal fraction until all seats are allocated.

In the 2011 local government elections the proportion of women dropped from 56% to 47% (author's calculation from IEC figures 2011).

WOMEN'S QUOTA: MERE STATISTIC OR A PLATFORM FOR ACTION?

There is no direct link between local government programming and the activism of women in community development. As indicated, it is Parliament that determines what local government should be, and that has been articulated in the Local Government Act. The community councils, where, between 2005 and 2010, women held 56% of positions and, after the 2011 local government elections, 47%, are mandated by the Local Government Act of 1997 to administer:

- natural resources and environmental protection;
- land/site allocation;
- minor roads (also bridle-paths);
- grazing control;
- water supply to villages (maintenance);
- markets (provision and regulation);
- burial grounds.

District councils (made up of representative community councils in the district), urban and municipal councils are mandated to take care of:

- all the functions of the community council;
- public health (eg, food inspection, refuse collection and disposal);
- physical planning, promotion of economic development (eg, attracting investment);
- streets and public places;
- parks and gardens;
- control of building permits;
- fire;
- education;
- recreation and culture;
- roads and traffic;
- water resources;
- fencing

The meaning of the women's quota in this situation, therefore, is that more women are needed to deal with these priorities. Because the Constitution stipulates that local government will perform such functions as shall be determined by

Parliament, it cannot perform functions that have not been prescribed. This is the first barrier against women using local government to change their situation for the better.

The priorities have been set for local government within a male dominated context and this important level of government does not reflect women's issues in relation to development and advancement. While the stipulated priorities are relevant to women as well, it is a male defined development agenda and therefore lacks gender sensitivity. Had women been given the opportunity to use their numbers to determine the work of local government surely those preoccupations of women in community development, such as vegetable production, home-based care for Aids patients, burials and similar concerns, would have featured prominently. Without proper institutional transformation, as is the case in Lesotho, a quota for women merely brings in more women to advance an otherwise male dominated development agenda, it does not give them the opportunity to advance their own agenda.

Women's representation was an issue during the local government elections of 2005 and 2011 but women's development was less of a priority for the councils between 2005 and 2010. One male councillor argued that all councillors were equally empowered and equipped to perform their general duties as members of the councils and that the role of women councillors was no different from that of men. He also lamented women councillors' lack of skills (interview Rapholo 2011).

The minimum educational qualification for council membership is literacy in Sesotho (Local Government Elections Act 1998). Given the porous verification measures, several councillors can read and write nothing except their names. One such example is given in the report of the local government by-election monitors, produced by Development for Peace Education (IEC 2008, pp 25-31). Though this may need to be confirmed by research, it appears that many of the illiterate councillors are men. Should this prove to be so it would not be justifiable to characterise women councillors as incapable simply because they are women.

Although women chaired 21.7% of the 25 councils studied by Selinyane and Setšabi there was, in terms of performance, no observable difference between councils chaired by women and those chaired by men (Selinyane & Setšabi 2008, p 12). This finding is corroborated by Matlaleng Hlalele, who argues that her role as chair empowered her and boosted her confidence in public affairs. On the other hand, she noted that some men believe that women councillors are not authoritative enough to hold positions of leadership.

She cites a situation when, on behalf of the council, she instructed a construction company to stop quarrying in the jurisdiction of her council because it did not have permission to do so. 'While they understood what I was

saying one could read and sense that they do not expect to be told to stop and follow instructions by a woman. Nevertheless, they did as advised,' she recalled (interview Hlalele 2011). Incidents like this could explain the submission that even though women make up more than half the total number of district and community councillors many report feeling unable to influence decisions by local government without the support of a man (Moran, Wolfson, Sello & Lerotholi 2009, p 76).

Although women have claimed a few key leadership positions this feeling of disempowerment is unlikely to change materially between now and the next local council elections, in 2016. This has nothing to do with women's abilities as leaders, it is attributable to the context within which they operate, namely the institutional arrangement. It would therefore be necessary to ensure that affirmative programming does not merely increase numbers but gives institutional support to women to bring about change.

The women's quota applied to the current institutional and structural arrangements of local governments prohibits women from using local government as a platform from which to advance progressive policies and laws. The vision of local government playing an important role in the response to HIV and Aids (Kimaryo, Okpaku, Githuku-Shongwe & Feeney 2004, p 33) is not accommodated in the legal framework of local government in Lesotho. Although the Guidelines for Scaling up the Fight against HIV/Aids (2005, pp 12-13) assign to the local government councils roles such as establishing community council Aids committees, consolidating HIV and Aids action plans, approving and allocating resources for HIV and Aids activities, appraising proposals from local NGOs, community based organisations and faith based organisations, these contradict the spirit of the Constitution, which limits the functions of local government to the prescriptions of the Local Government Act of 1997, which stipulates in schedules A and B what functions the councils will perform. The HIV and Aids activities undertaken by the councils fall short, therefore, of being legal.

In addition to the limitations imposed by its legal mandate local government in Lesotho faces other challenges, including the problems of the line ministries in decentralising some of their responsibilities. This has led to the situation where the work of some ministries which have officials in the communities, such as the Ministry of Agriculture and Food Security, Ministry of Health, Ministry of Trade, Industry, Marketing and Co-operatives, Ministry of Home Affairs, Public Safety and Parliamentary Affairs and Ministry of Natural Resources, for example, is not coordinated by the community councils. The ministries of Public Works and of Health and Social Welfare have now completed the categorisation of activities within their mandates that will be decentralised and transferred to local government, a scheme that has been officially launched by the prime minister.

While this is commendable, the challenge is that by law, community councils may not exercise control over some of the so-called functions (Shale 2011).

Further, the level of autonomy of the councils is still constrained. The Ministry of Local Government still holds power and must approve decisions of councils to open bank accounts. The majority of councils do not have bank accounts because the ministry has not approved them, yet the law requires the councils to produce regular audited financial reports. These and other challenges show that unless a quota for women is implemented with necessary institutional transformation, women are only relevant as statistics.

The changes in the application of the reservation of seats for women retained the principle without necessarily preventing men from contesting the seats. This improvement is important, because it obviates unnecessary resistance and garners much-needed support for women's causes.

ENHANCING THE WOMEN'S QUOTA THROUGH INSTITUTIONAL TRANSFORMATION

The Local Government Act of 1997 and the Local Government Elections Act of 1998, together with the amendments referred to above, remain institutional obstacles to the realisation of the true benefits of the women's quota they introduce and facilitate. Several calls have been made for the Local Government Act to be reviewed. The African Peer Review Mechanism Programme of Action 2009 stipulates, under Democracy and Political Governance Theme Objective II, that '[c]onstitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and the Supremacy of the Constitution are firmly established in the Constitution' and that decentralisation and, in particular, the Local Government Act should be revised (APRM 2010, p 263). It is further indicated in the First Annual Progress Report (2010, p 23) that the review process of the Local Government Act is on course and the inter-ministerial working group has been established. Surely such a process will be a wasted opportunity if it remains exclusionist, elitist and dominated by the ministry. It will actually be defeating the purpose of the APRM Action Plan, which includes civil society, community based organisations, community councils, chiefs and other ministries and the Independent Electoral Commission.

The institutional transformation needed to make the women's quota in local government meaningful must meet certain requirements: it must be informed by the contemporary gender and governance discourse, it must be people driven and it must recognise and use civil society.

In order to make the women's quota meaningful to women's empowerment in local government in Lesotho restricted jurisdiction of the councils in the form

of schedules of what they may do should be abandoned, council activities must be aligned to national policies and council members must be allocated gender sensitive portfolios. Finally, it is these changes that should inform the law reform process.

In the new dispensation each member of the community / municipal / urban council should have a portfolio making her or him responsible for a specific sector / issue. These portfolios should be determined by the council in line with national priorities and should then be allocated to members during the early meetings of the council.

The one-third of seats reserved for women should be allocated to fixed portfolios, for example, gender, political and governance affairs, gender, economic and entrepreneurial affairs and gender, social and cultural affairs. If there are more reserved seats in a council the gender specific seats could be increased in line with challenges for women, for example, politics and governance could be split into legal and participation portfolios. This means that women contesting these seats should compete and be directly elected.

This will enhance the women's cause in many respects. It will bring women's issues into the election debate, provide women with the opportunity to have their suitability tested by the public and, finally, elect the best of the best. The mandates of these portfolios could be prescribed to ensure that in the activities of all the other portfolios issues of women's empowerment are mainstreamed in line with the Gender and Development Policy and other policies and laws which seek to change women's political, economic and social status. These portfolios should be linked systematically to the national government ministries relevant to their mandate for necessary support and policy coordination.

The need to commit adequate financial resources to capacitating local government (APRM 2010, p 67) should also mean full fiscal decentralisation. Allocating funds to councils would empower them to determine their own budgets within the available resources. While the estimates for different portfolios would be informed by the rich debate and exchanges led by the responsible portfolio holders, there should be a financial quota for the gender portfolios, with at least one-third of the total council budget allocated to them.

In order to ensure that the community council planning is participatory, the holder of each portfolio should consult with the people about budget planning. This means that the community council's annual plans and budgets should reflect community voices. All portfolio holders should submit their proposals for scrutiny by the holders of the gender portfolios in order to ensure that they promote alternative, gender sensitive development approaches. In this institutional arrangement local government servants will provide technical expertise to the portfolios relevant to their skills. Community members should

be encouraged to attend the sessions during which councils deliberate on their budgets.

The role of civil society organisations in relation to local government cannot be over emphasised. The Transformation Resource Centre, LCN, Development for Peace Education (DPE), Justice and Peace Commission of the Catholic Church, Women and Law in Southern Africa, Rural Self Help Development Association, Federation of Women Lawyers, Young Christian Students, Lesotho Youth Federation, Survivors of Lesotho Dams, Lesotho National Federation of the Disabled, Lesotho Network of People Living with HIV / Aids, Bosele, Khathang Tema and several others interact constantly with the community and district councils.

Coordinated by the DPE the first three, in collaboration with the Centre for Conflict Resolution in Cape Town, are running a Conflict Transformation Programme which promotes dialogue among local government stakeholders in the districts of Maseru, Berea, Mohale's Hoek and Quthing. Further, the DPE has, in recent years, used its popular Community Parliament strategy to amplify community voices in the national budgeting processes. The wealth of experience should be harnessed for the general development of local government and to change the position of women through the quota.

THE POLITICAL AND LEGAL IMPLICATIONS OF THE STATUS QUO

The current situation in local government not only makes a mockery of the women's quota, it also compels the Ministry of Local Government and other public institutions to act *ultra vires* the Local Government Act. It is becoming increasingly strategic for community development oriented agencies to recognise local government structures in their efforts. The challenge is that this acceptance of the political call to empower the local processes is not supported by the legal framework.

The Ministry of Local Government and Chieftainship launched a massive countrywide HIV and Aids Gateway Approach, appealing to all those involved in working on HIV and Aids issues to take local councils on board. The political idea behind this approach was excellent, because councils are the competent development authority close to the people. After all, among the activities identified as women's domains in community development, this area is one of the most popular. In support of this approach, development agencies, notably the United Nations Fund for Population Activities and UNAIDS, the joint UN programme on HIV / Aids, supported the programme, known as the Essential Services Package. This was a compilation of key interventions in relation to HIV and Aids, among which councils would set their own priorities. In support of this, the National

Aids Commission has awarded funds in the amount of M30 000 to each of the 128 councils to implement their priorities.

The Local Government Act read together with the Constitution, as referred to above, limits the functions, mandate and jurisdiction of the councils, which differ at community and district/urban/municipal levels. The Act provides for the formation of sub-committees in the councils even beyond those that are mandatory. Almost all the councils have social welfare sub-committees which deal with issues that affect communities, but their functions extend beyond the mandate of the councils provided for in the law. The sub-committees should advance the mandate of the councils and nothing beyond, but this is not happening.

Institutional transformation has the potential to ensure that women and girls are protected against gender-based violence, including sexual violence (National HIV and Aids Policy 2006, p 23), not only within the legal framework, but also within the political environment that informs the campaign messages for the proposed gender portfolios.

If local government continues as it is it will be at the expense of principles of good governance. As indicated, the government has committed to a review of the Local Government Act. Not to do this and to continue to use local government for political convenience will point to a weakness of the political will not only to make local government a platform for women's empowerment but also to realise the objectives of initiatives like the APRM and the Millennium Development Goals.

CONCLUSION AND RECOMMENDATIONS

The women's quota will not bear fruit unless it is in place within an institutional framework that is informed by progressive political thinking. This article encourages further debate and engagement in search of the perfect match between ideas and the institutions that can nurture and uphold them. In essence, people have the potential to use political institutions to achieve their goals – a departure from the growing belief that in so-called democracies people may not even fantasise about a political alternative.

If political representation of women is advanced through a quota it is not for the sake of statistics but to place women strategically in decision-making positions so they can inform political decision making. If the quota does not present its beneficiaries with an opportunity to question the adequacy of the framework within which they operate it is bound to produce results contrary to the intentions behind its introduction. It is on this basis, therefore, that the current women's quota in local government in Lesotho is interrogated. What this article has done is to advance a particular point of view as a contribution to the realisation of the goals the women's quota seeks to achieve.

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