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ELUSIVE QUEST BY WOMEN FOR LEGISLATIVE NUMBERS IN KENYA'S NATIONAL ASSEMBLY OF THE 11TH PARLIAMENT (2013 -2017)

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**ELUSIVE QUEST BY WOMEN FOR LEGISLATIVE NUMBERS IN KENYA'S
NATIONAL ASSEMBLY OF THE 11TH PARLIAMENT (2013 -2017)**

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Abstract

Purpose: Application of gender quotas in the 2013 general elections in Kenya led to 68 women legislators joining the National Assembly. This was the largest number of women elected to the legislature since independence in 1963. Studies show that such surges embolden women to pursue legislative agenda on gender equality and social welfare issues. This article examines women legislators' quests for further increased numbers in Kenya's National Assembly 2013 -2017 and the results.

Methodology: This was a descriptive study of Kenya's National Assembly of the 11th parliament (2013 -2017). A total of 11 women and four key informants were identified through stratified and purposive sampling respectively. Data was collected using semi-structured interview schedules. Responses were recorded in writing and audio-tape. The study also did a content analysis of the Hansard. Data was transcribed, manually processed, analysed and discussed under each study objective. Quantitative data was captured in tables with descriptions while qualitative data was narrated with inferences.

Findings: The study established that efforts to increase women's numbers in the legislature were unsuccessful because of resistance from male colleagues. However, women achieved an increase in committee membership and leadership. The article concludes that resistance to the proposed affirmative law to increase women's legislative numbers was rooted in patriarchy and male entitlement to power.

Unique contribution to theory, practice and policy: The article demonstrates how the quest to embed affirmative action in law was frustrated by patriarchy. It states that for women to succeed on such pursuits, they need to be assertive and strategic. It further demonstrates that women's occupation of parliamentary leadership positions enabled them to showcase their abilities and debunk the notion that they are inferior. This coheres with liberal feminism, that marginalising women denies the society the benefit of their talents. The article proposes that women should seek influential parliamentary committees instead of seeking a general spread in all of them. A constitutional amendment to have an unequivocal provision on elections that automates the desired proportions of women to men in the National Assembly is also recommended.

Key words: *Affirmative Action, Critical Mass, National Assembly, Patriarchy, Resistance.*

1.0 INTRODUCTION

Studies show that at the global level, women are a minority in parliament. According to IPU (2019), they constituted only 24.3% and 24.1% of lower and upper houses respectively globally as at January 1, 2019. In Sub-Saharan Africa, women made up 23.9% and 22.2% of lower and upper houses respectively. Kenya had a women’s proportion of 21.8% in the National Assembly and 30.9% in the Senate, the two Houses that compose parliament.

Most countries that have realised a significant increase in the number of women in parliament have used gender quotas (IDEA, 2019). In Sweden, Denmark and Norway, this was done through voluntary quotas adopted by political parties (IPU, 2012). Argentina and Mexico applied legislative quotas prescribed in statutory law obligating political parties to set aside a specific proportion of their electoral seats for women (Carrio, 2005). Rwanda reserved 30% of seats in the Chamber of Deputies and 24 slots in the Senate for women through the country’s Constitution (Powley, 2005; IEA, 2015). It is generally considered that when women reach 30% of parliament, they have potential to significantly influence legislative processes and outcomes (IPU, 2019).

Since independence, Kenya’s National Assembly has been male-dominated as Table 1 below shows.

Table 1: Number and Percentage of Women Elected to the National Assembly 1963-2017

Year	Electoral Seats	Elected Women	Women as % of Elected MPs	Nominated Women	Women as % of Nominated MPs
1963	158	0	0%	0	0
1969	158	1	0.63%	1	8.3
1974	158	4	2.53	2	16.6
1979	158	5	3.16	1	8.3
1983	158	2	1.27	1	8.3
1988	188	2	1.06	0	0
1992	188	6	3.19	1	8.3
1997	210	4	1.90	5	41.6
2002	210	10	4.76	8	66.6
2007	210	16	7.62	6	50
2013	337	63	18.9	5	41.6
2017	337	70	20.8	6	50

(Source: FIDA-K, 2013 with updates)

The table above shows that the highest percentage of women elected to the National Assembly as a proportion of all electoral seats from independence to 2017 was 20.8%, below the 30% threshold considered necessary to accord them significant legislative influence (IPU, 2019). The 2013 -2017 National Assembly had 68 women out of 349 members. This was a significant increase from 2007 – 2013 when there were only 22 women in the institution. This constituted an increase from 7.62% in 2007 to 19.5% in 2013.

The increase resulted from use of gender quotas in the 2013 general elections by virtue of Article 81 of the Constitution which reserved 47 National Assembly seats to be contested for by only women at county level. This was meant to increase their numbers in parliament and, presumably, legislative influence. Each county is further divided into 290 single constituencies seats competed for by both men and women. The 47 county seats for women straddled several single constituencies hence were some kind of super seats. Beyond the 47,

16 women were elected on the single constituency seats and five directly appointed by political parties to fill the 12 slots based on numerical parliamentary strength.

Despite the surge in numbers, women remained a minority in the National Assembly, such status has been shown to compromise their effectiveness primarily because of being outnumbered when decisions are made by voting (Inter-parliamentary Union, IPU & United Nations Development Programme, UNDP, 2017; Brechnemacher, 2018).

The study from which this article is extracted was undertaken to investigate the influence of women in Kenya's National Assembly 2013 -2017 from global evidence that an increase in numbers favours their pursuits on gender equality and social welfare issues. This happens whether they remain an overall minority or not (Karam & Lovenduski, 2005; Brechnemacher, 2018; Mügge et al, 2019).

The central problem addressed by the study was that since this was the first parliament in Kenya to benefit from quotas, it was not clear what effect this would have on legislation in the National Assembly. Thus the study sought to assess whether and how the increased numbers enhanced women's ability to influence legislation in the immediate post-quotas National Assembly. The findings would be useful to the State, which is a signatory to international and regional treaties on gender equality to show progress in closing the gender gap in representation and legislation. They can also be used by women to justify claims for gender balance in representation. Scholars in gender and politics can also use the findings in comparative studies.

The study established that one of the agenda of women in the National Assembly was a further increase in numbers in the legislature through affirmative action. Others were quests for increased membership and leadership of committees. These are the two areas covered in this article.

Part One of the article is the background. Part Two is a brief literature review on quotas and women's legislative influence. Part Three explains the theories used. Part Four outlines the methodology employed. Part Five presents and discusses the results. Part Six is the conclusion.

2.0 LITERATURE REVIEW

The importance of numbers for women legislators has been established by various scholars. For example, Grey (2001) notes that women legislators in New Zealand became more assertive as their numbers increased. Norris (2000) observes that a surge in numbers gave women legislators a stronger bargaining power in the United Kingdom. Karpowitz, Mendelberg and Mattioli (2015) also show that women's influence is stronger when they are many under majority rule and suggests that this is enhanced by space to speak in parliament. However, Tripp (2000) cautions that an expanded physical presence of women alone is deficient for effective legislative influence if the configuration of legislatures inherently suppresses their interests. A similar sentiment is expressed in Mendelberg et al., (2013).

Experiences from Africa show that an increase in numbers has a positive effect on women's legislative influence. Hassan (2018) documents, for example, that Egyptian women legislators were emboldened by an increase in numbers to initiate legislation seeking more severe penalties for perpetrators of female genital mutilation. The Tanzanian, South African, Ugandan and Rwandan counterparts also capitalised on numerical solidarity to get laws addressing marriage, women' property rights and domestic violence passed (Goetz & Hassim, 2002; Powley, 2005; Okello-Orlale & Ugangu, 2010; Froimovich et al., 2013).

Studies show that despite increasing women's bargaining power in legislatures, quotas are associated with a number of problems. They compromise the legitimacy and credibility of women as politicians as shown in Asiedu et al., (n.d.), Powley (2005) and Falch (2010) with regard to Tanzania, Burundi and Rwanda respectively. They are also instrumentalised by male political patrons for selfish ends (Asiedu, n.d.). Furthermore, quotas lead to contempt towards the beneficiaries. For example, such women were considered tokens placed merely to fill space and comply with the law in Burundi (Falch, 2010). Comparable findings were recorded in Nepal (Froimovich et al., 2013). In Rwanda, there was "an obvious status difference between seats reserved for women and those gained in open competition with men", the latter being considered superior (Powley in IDEA, 2005, p. 160).

Previous studies on Kenya's National Assembly have examined efforts to embed affirmative action in representation. Biegon (2016) is a compendium of articles on past efforts to ensure gender parity in political representation in Kenya. It decries the non-implementation of the constitutional provision that no more than two-thirds of all parliamentary positions should be held by one gender and posits that this remains a key struggle towards equality. Institute of Economic Affairs, IEA (2015) examines what it would cost financially to implement the principle and concludes that the gains outweigh the costs hence debunks the notion that affirmative action would astronomically increase the public wage bill. Kanyi (2016) traces the history of affirmative action to increase women's representation in public institutions, including parliament. Like IEA (2015), it advocates implementation of the Constitution on affirmative action to make gender equality in representation a reality. The Centre for Rights Awareness and Education, CREAM (n.d.) documents attempts to legislate on the constitutional affirmative principle. It concludes that the failure of the attempts can be attributed to lack of political will, disrespect for judicial decisions and impunity.

The literature reviewed for this study show gaps with regard to the quest for increased numbers in Kenya's National Assembly. For example, Mbugua (2017) only focuses on use of solidarity from increased numbers to support three bills namely the Basic Education Amendment Bill 2017, Breastfeeding Mothers Bill 2017 and Magistrates Courts Bill 2015¹. This study looked at how women applied increased numbers to pursue a wider range of legislative pursuits and especially further increase in numbers. Musyoka (2011) looks at the relationship between increased numbers of women and enactment of legislation addressing women's interests. However, it focused on the 10th parliament, which had a smaller number of women (22), while this study looks at the 11th legislature, which had more (68). Furthermore, it solely relied on content analysis of the Bills while this study also interviewed women legislators and captured personal reflections on their quest for increased numbers. CREAM (n.d.) traces the efforts to legislate on a constitutional affirmative principle that could increase women's numbers in the National Assembly. It does not, however, examine women's quest for increased numbers in parliamentary committees and why this is important, as this study does. Moreover, it concludes that failure of the attempts is attributable to lack of political will, disrespect for judicial decisions and impunity. This study goes further to show that internal dynamics within the National Assembly and the disadvantage of low numbers, hence men's domination, is a primary cause of the failure to get the intended law passed.

¹ A Bill refers to proposed legislation that is introduced to the National Assembly, debated and, if accepted by members, handed over to the country's President for signature to make it law. A Bill may originate from a political party, the executive arm of government, committees of the legislature, individual legislator or member of the public (National Assembly of Kenya, 2017)

This article therefore builds onto the past studies, fills the gaps identified and demonstrates that resistance to affirmative action is rooted in patriarchy and male entitlement to power. It further contends that affirmative action delegitimises women hence continued reliance on it as the panacea perpetuates their treatment as inferiors.

3.0 THEORETICAL FRAMEWORKS

The study used the Critical Mass Theory developed from studying the male-dominated Industrial Supply Corporation in the United States of America in the 1970s (Kanter, 1977). Critical mass, a concept derived from Nuclear Physics, explains that addition of uranium to an existing assemblage enhances fission between neutrons and leads to the likelihood of an atomic explosion. After a certain limit, addition of extra uranium causes a bigger effect than that of the original quantity. The theory posits that in the human context, when a minority reaches a certain numerical strength, its influence on the culture of an institution becomes significant.

Tenet One of the theory identifies four group types in an institution. In uniform groups, there are no minorities. Skewed groups have one type constituting a dominant majority with the minority being tokens unable to influence the group culture. Tilted groups have a numerically significant minority that can influence the group culture. Balanced groups consist of two types each of which can influence the institutional culture. From this typology, the National Assembly of Kenya 2013-2017 was skewed as it had a male to female ratio of 81:19, not enough to have it classified as tilted. Women in it were, therefore, tokens.

Tenet Two explains that tokens are subjected to exclusivist, stereotypical and demeaning behaviours by male colleagues. The theory argues that women in such circumstances resort to solidarity from numbers and loyalty to men in order to navigate the masculine terrain. Tenet Three argues that a shift in women's absolute numbers has a positive effect on their experiences because they are able to coalesce around identity to neutralise male domination.

The study used this theory to examine women's efforts to maximise on their increased numbers (Tenet Three) for legislative influence. It also uses the theory to show how the pursuits for extra numbers was neutralised by male domination (Tenet 2).

A key limitation of the theory is its assumption that the only determinant of women's influence is numbers. In response, the study used liberal feminism to demonstrate that patriarchy was the main cause of resistance to women's legislative agenda. Liberal feminism originated from the French Revolution of the 18th century which dismissed the entitlement of monarchs and aristocrats to political power (Duman, 2012). From a gender perspective, it has been used to dismiss the notion that women are naturally inferior to men and therefore should be subordinate in all spheres of life. Modern users of the theory apply it to show that the historical discrimination against women should be systematically transformed through policy and legal action (Davies, 2011). The theory has been criticised for its over-emphasis of women in the public sphere and little attention to private gender relations, class, race, sexual differences and the power of ordinary women to create change (Mannathoko. 1992; Lewis, 2019). It was found useful, however, because of its emphasis of legal change as fundamental to achieving gender equality, which is what the women's legislative agenda in the National Assembly 2013 -2017 sought to do.

4.0 METHODOLOGY

4.1 Study Area

The study site was the National Assembly of Kenya in the capital city, Nairobi. The Assembly carries out national legislation, allocates public revenue for government use, oversees the use of public funds and represents Kenyans through 349 members.

4.2 Study Design

The research was a descriptive study of Kenya's National Assembly of the 11th parliament (2013 -2017). The advantages of the design lay in: enabling intensive focus on study themes and subjects hence generation of detailed information; flexibility in data collection with questions reorganised according to the flow of responses; and relevance in studying subjects in their operational contexts.

4.3 Target Population

The study focused on the 68 women in the National Assembly, being: 47 beneficiaries of quotas; 16 members on non-reserved seats; and five legislators directly appointed by parliamentary political parties.

4.4 Sampling Procedure

The study identified respondents through stratified sampling based on: mode of election; membership and leadership of parliamentary committees; activity in debates; and initiation of successful Bills. A total of 11 women (16% of 68) were interviewed, derived from four of the seven parliamentary political parties making the two largest coalitions which contributed 94% of all members. These were Jubilee and the Coalition for Reforms and Democracy. Four purposively sampled key informants (KIs) - three male and one female – were also interviewed.

4.4 Data Collection, Processing and Analysis

The study collected field data between October 2015 and November 2018. It used semi-structured interview schedules administered to individual women legislators and key informants. This enabled in-depth investigation and re-arrangement of questions according to the flow of responses, facilitated triangulation of information to identify common patterns and enhanced direct interaction with respondents and probing for clarification. Use of the tool also: eliminated data contamination from multiple views, which is common in group discussions; generated detailed responses, diverse perspectives and vivid illustrations of findings; and eradicated the problem of missing responses that is associated with mail questionnaires. Responses were recorded in writing and audio-tape.

Content analysis of the National Assembly Hansard was also conducted from electronic copies available at the legislature's website (www.parliament.go.ke). This had two advantages. First, it was cost-effective since the Hansard was publicly available and easily accessible. Second, the data was free from bias as Hansard is a verbatim record of daily parliamentary proceedings. Use of the Hansard also ensured reliability as the corpus is available to any other scholar conducting a similar investigation or verifying the data. The data was extracted and coded thematically according to study objectives.

Validity was ensured by basing the analysis on study variables. Responses interviews were triangulated with content from the Hansard. Relevant quotes were extracted and used to illustrate the findings.

All the data was transcribed, organised according to study objectives and manually processed. Quantitative data was captured in tables with descriptions while qualitative data was narrated with inferences. The primary sources of data were anonymised by coding as follows: WL (Woman Legislator), ML (Male Legislator) and KI (Key Informant). Respondents were also allocated specific numbers for identification and attribution.

5.0 FINDINGS AND DISCUSSION

The pursuit for increased numbers of women in the National Assembly and its committees was identified as a priority by six of the 11 women interviewed and all the four key informants. The quest was supported by all women during parliamentary debates. Below is an examination of the pursuits and their eventual fates.

5.1 Quest for increased numbers by embedding affirmative action in law

The pursuit for affirmative action to increase women's legislative numbers is traceable to 1997 when a Bill was moved by a woman legislator to reserve at least 33% of parliamentary seats for women. The Bill was defeated, however, with one of the arguments by male legislators being that:

members of parliament represented everybody, there was already one Assistant Minister for Culture who was a woman and the Constitution did not prevent women from coming to parliament (Kanyi, 2016).

The above argument shows that opposition to the affirmative action Bill rested on a persuasion that representation is not an identity issue and that the small number of women in the Cabinet was not considered problematic by male legislators. More critical is the insinuation that since the Constitution did not bar women from joining the institution, they had themselves to blame for the low numbers, which is tantamount to what the Critical Mass Theory calls "victim blaming", where a sufferer is castigated for own plight. The arguments would be valid if they explained why women could also not represent "everybody", like their male colleagues, and reasons behind the appointment of only one to the Cabinet, yet there were nine in that legislature as captured in Federation of Women Lawyers-Kenya, FIDA-K (2013). In essence, the argument is escapist and conveniently assumes that constitutional requirements always create the desired effect.

A version of the Bill was tabled by another woman legislator in 2001. The Attorney-General (AG) advised, however, that it be referred to the Constitution Review Commission of Kenya, which was working on embedding gender quotas in law (Kanyi, 2016). Affirmative action was eventually provided for in Article 27 of the Constitution of Kenya 2010 which directs that:

The State shall take legislative and other measures to implement the principle that not more than two - thirds of the members of elective or appointive bodies shall be of the same gender (including) affirmative action programmes and policies (Republic of Kenya, 2010, p. 24).

The above constitutional provision allows use of gender quotas to reduce institutional gender gaps. Against this background, the AG, on 8 October 2012, sought an advisory opinion from the Supreme Court on whether the principle was to be applied immediately or progressively. The court, on 11 December 2012, ruled that it was not to be applied instantly but directed the National Assembly to pass relevant legislation on it on or before 27 August 2015 (CREAW, n.d.). By this ruling, the Supreme Court prescribed a deadline for the National Assembly to comply with the Constitution.

Following the Supreme Court ruling, the AG constituted a technical working group to develop an implementation formula on the principle. The group recommended nomination of over 90 more women to the National Assembly in future elections and presented it as the basis for a constitutional amendment Bill. On 30 April 2015, however, the Justice and Legal

Affairs Committee (JLAC) of the National Assembly published the Constitution of Kenya (Amendment) Bill which did not reflect the recommendation (IEA, 2015).

The Bill was opposed by women legislators for proposing a vague process called “progressive realisation” and not specifying a time frame for implementation (Hansard 26 October 2016PM, p. 6-35). It is inferable that this kind of drafting was in-built with cynical resistance to the principle, an indication that majority members of the committee, men, were uncomfortable with it hence crafted a document that would automatically be rejected by women. This interpretation is given credence to by the fact that the next two Bills from the same committee were also non-committal on a time frame (CREAW, n.d.). Noting that all the two-thirds gender rule Bills were sponsored by either the Leader of the Majority or his JLAC counterpart, both influential men, the failure suggests that they did not campaign for but tabled them as a matter of routine duty.

The following observations arise from these findings. First, although the Supreme Court prescribed a specific date for enactment of the necessary legislation, it neither obliged the National Assembly to report compliance with the ruling nor spelled out consequences for defaulting. In effect, therefore, implementation of the ruling was discretionary. This hints that even the judiciary was half-hearted in its support for affirmative action. Second, the very Constitution the ruling was seeking to enforce allowed the National Assembly, through Article 261 (2), to defer passage of the legislation by a year. This made the ruling self-defeating and created a loophole for procrastination, which the National Assembly capitalised on to postpone further debate on the Bill (Hansard 25 October, 2016PM; CREAW, n.d.).

In an apparent bid to comply with the Supreme Court ruling, another Bill was moved by the Leader of the Majority Party (male) before expiry of the 27 August 2015 deadline. It required nomination of additional women in proportion to the numerical strength of each political party represented in the National Assembly. This Bill was supported by women legislators, a sample of whose arguments are reflected below.

In the last parliament where we were only 22, we were unable to pass crucial Bills that affect women. In this current parliament, we have passed four critical laws that touch on women because we have a bigger voice. We are asking for a much bigger voice so that we can even bring more (such) laws (WL-12, Hansard, 22 March 2016PM, p. 21).

The two-thirds principle tries to (ensure) that we do not have one gender that dominates politics and the House. If the voice of women is missing, then a lot is missing (WL-2, Hansard 21 April 2016AM, p. 27).

The statement by WL-12 claims that since the 68 women had influenced passage of laws beneficial to women, an increase in numbers would lead to more such pieces of legislation. While this may not necessarily be true, it is based on linear logic which assumed that women legislators always acted in unison and had the requisite numbers to pass laws. The remarks by WL-2 emphasise that women’s increased numbers help in diversifying legislative voices, enhancing inclusion and improving the quality of legislation. Both statements converge on the fact that male domination needed to be reduced.

The remarks echo studies that women parliamentarians rely on their increased numbers from gender quotas to make legislation more responsive to the interests of womenfolk (Strachan, 2015; Uganda Bureau of Statistics, UBOS, 2017; Hassan, 2018). This coheres with the Critical Mass Theory that an increase in the number of women in an institution is an initial measure of non-discrimination and a means to further outcomes (Kanter, 1977). It also shows

that the women's agenda was anchored on liberal feminist ideas about inclusion in representation as a right (Mill, 1869).

The disadvantage of low numbers was particularly felt during voting on one of the two-thirds gender rule Bills proposing nomination of women in proportion to the numerical strength of parliamentary political parties. The Bill was supported by women because it prescribed a clear time frame for realising the principle (Hansard, March 22, 2016).

Women legislators assigned themselves to lobby individual male colleagues to support the Bill (WL-5, OI, 18. 1. 2017). Statistically, if each of them was successful, they would get 68 additional supporters. Added to their own numbers, this would aggregate to only 136 votes, which is 97 less than the minimum 233 required for a constitutional amendment. The strategy could, therefore, only succeed if each convinced a minimum of three male colleagues.

The women legislators also "*invited male colleagues to a dinner dance on the eve of voting on one of the two-thirds gender rule Bills so as to lobby them*" (WL-2, OI, 24.7.2016). This strategy also failed to ensure passage of the Bill as the votes did not amount to the threshold required of two-thirds of all members of the Assembly. On the first vote, the Bill mustered 195 supporters which included all the 60 women in the chambers (Hansard, 27 April 2016PM). When the exercise was repeated, it received only 159 votes which included all the 63 women in chambers (Hansard, 5 May 2016PM). These statistics show that not all the women were present on both days. Given the threshold required, even if all voted in the first round, there would still have been a deficit of 22 votes. This means that overwhelming support of male colleagues was imperative. This was not forthcoming. That all those who voted against the Bill and abstentions were men shows a clear gender divide on the issue (Miruka, Wamue-Ngare & Okemwa, 2020).

Despite the above, a large number of men (135) voted for the Bill on the first attempt. This means that not all were opposed to affirmative action. The failure of the Bill may not, therefore, be attributable to general male hostility but a combination of factors including women's low numbers. The result suggests that without gaining numerical significance in the legislature, women run the risk of losing on matters determined by voting. Alternatively, they would have to forge reliable alliances with male colleagues (Miruka, Wamue-Ngare & Okemwa, 2020).

Women legislators also became conciliatory when an advocacy message from the Federation of Women Lawyers – Kenya (FIDA-K) that it would be monitoring voting patterns on one of the two-thirds gender rule Bills infuriated male colleagues (Miruka, Wamue-Ngare & Okemwa, 2020). One male legislator reacted as follows:

This is coercion and trying to threaten members of parliament to vote in a particular way. When we finally vote for (the Bill), will we have (done so) because our conscience says so or because people like FIDA-Kenya are wielding a big stick over our heads? (Hansard, 27 April 2016AM, p. 2).

The above reaction is inlaid with an attitude that FIDA-K was blackmailing parliamentarians through threats of shame if they did not support the Bill. One of the women tried to manage the fallout by apologising for the message (WL-18, Hansard, 27 April 2016AM). Unfortunately, the apology was unsuccessful. As stated by a male key informant, "*putting a gun over the heads of members of parliament backfired because it fortified men's resolve to ensure that the Bill was defeated*" (KI-2, OI, 7.3.2017). This view clearly shows that male legislators opposed the Bill as revenge against FIDA-K's audacious advocacy, in effect hurting women legislators' interests.

It can be inferred that the FIDA-K message provided men with a convenient excuse to show their distaste for affirmative action. The fact that only men criticised the message connotes that they conveniently construed it to target them only although it was addressed to all members of the National Assembly. This shows a guilty conscience on their predetermination to oppose the Bill. If not, they should logically have just ignored the message and voted with their “*conscience*” as KI-1 put (KI-1, OI, 15.2.2017).

It is therefore logical to conclude that the defeat of the Bill was informed by male legislators’ distaste for affirmative action. Such inference is linked to the sentiments expressed by KI-1 and KI-2 that affirmative action was not adding value and men’s feeling that the Bill would make women *muscle into their territory* (WL-9, OI, 16. 1. 2017). This attests to men’s patriarchal mindset of entitlement to political leadership and a fear that affirmative action would erode it. In other words, the resistance was purely protectionist to sustain male domination at all costs. The net effect is that the disadvantage of numerical inferiority for women was sustained.

Mobilisation of male colleagues falls under loyalty tests in the Critical Mass Theory, where women pander to men for success (Kanter, 1977). As pointed out by Miruka, Wamue-Ngare and Okemwa (2020), this does not guarantee positive results, hence need for fallback measures. On the other hand, conciliation demonstrates “fear of retaliation” when faced with hostility from men (Kanter, 1977, p. 390).

As the study shows, all the Bills² introduced in the legislature to embed affirmative in law were, however, defeated due to resistance by the majority male legislators. However, through assertiveness, women achieved a greater presence in the committees and their leadership.

The article observes, therefore, and concurs with Childs and Krook (2009), that women need to move from being “token individuals” to a significant minority that can counter-balance male domination. This coheres with the Critical Mass Theory that when rarity shapes the institutional environment, it makes women lonely among peers (Kanter, 1977). In principle, therefore, there is justification for deliberate measures to increase women’s numbers, as postulated in liberal feminism, in order to challenge discrimination and male domination (Lewis, 2019).

5.2 Quest for increased numbers in parliamentary committees

A related quest by women legislators was to raise their proportion in committees of the National Assembly. As at October 25, 2016, the National Assembly had 30 committees categorised into four. First are departmental committees, such as on health, which mirror the functions of government ministries. It is these committees that generate majority of the Bills. Second are oversight committees, such as on public accounts. They scrutinise government’s compliance with the law and accountability principles in use of public resources. Third are housekeeping committees, such as on health and catering, which handle the internal operations of the National Assembly such as procedures, privileges and members’ welfare. Last are select committees, such as on implementation of the Constitution. These committees deal with specialised functions such as budgets, regional integration, implementation of legislation and constitutionalism (NAK, 2007).

²,

Article 124 of the Constitution of Kenya 2010 mandates the establishment of committees, as these are the main avenues through which legislative work is done. Committees enhance division of labour among members, examine issues in more detail than done in plenary and provide avenues for communication with the public. They also: generate, review and monitor legislation; scrutinise government expenditure; and conduct research. Departmental committees generate, review and approve Bills for debate hence are the most crucial in legislation (NAK, 2017).

Standing Order No 174 of the National Assembly requires that committee members be nominated to reflect the relative numerical strength of parliamentary political parties. Members are nominated by the House Business Committee in consultation with political parties. The latter can retain or remove a legislator from any committee in line with its internal interests.

In the previous National Assembly (2007 -2012), 10 of the 25 committees had no female member. These were committees on: defence and foreign relations; energy, communications and information; finance, planning and trade; health; local authorities; transport, public works and housing; public investments; local authorities and funds accounts; house broadcasting; and Constituency Development Fund. Women's highest presence was 6% in the Select Committee on Review of the Constitution. This limited women legislators' opportunity to influence decisions in their favour (FIDA-K, n.d.).

To address the situation, women in the National Assembly of the 11th parliament petitioned to be allocated at least one third of committee positions or numbers reflecting their proportion relative to the total membership (Hansard 17 April 2015AM; 25 February 2016PM).

They demanded fair inclusion as follows.

I know that the entire House does not constitute one-third in terms of gender. However, we must be alive to proportionality. I do not think one woman out of 19 men represents proportionality (WL-1, Hansard, 25 February 2016PM, p. 15).

In the remarks above, WL-1 identifies the obvious skewed distribution of committee positions in favour of men. The remark arose during debate on composition of the National Constituency Development Fund Committee. It elicited the following reactions from male legislators.

Maybe, you could give us the total number of women in the House. Are we likely to get into a situation where women will be in all the committees? Obviously, we also do not want people to be overworked (Speaker, Hansard, 28 November 2013AM, p. 3).

There is no single committee that has one-third representation of women, the reason being that the total proportion of women members is 20 per cent. If you were to put a third of them in every committee, one woman member will end up being in five committees (ML-6, Hansard, 25 February 2016PM, p. 15).

The above reactions, based on women's overall minority, manifest a denial of the disproportion pointed out and rotate around workload as justification for the disparity. The National Assembly eventually agreed to allocate at least 20% of the positions in each committee to women to reflect their overall proportion (Hansard, 17 April 2013AM). Whether the agreement was faithfully implemented is evident from Table 2 below.

Table 2: Committee Membership by Sex at October 25, 2016

	Name of Committee	Male	Female	Total
1	Administration & National Security	22 (81%)	5 (19%)	27
2	Agriculture, Livestock & Co-operatives	24 (83%)	5 (17%)	29
3	Defence & Foreign Relations	23 (79%)	6 (21%)	29
4	Education, Research & Technology	18 (64%)	10 (36%)	28
5	Energy, Communication & Information	22 (81%)	5 (19%)	27
6	Environment & Natural Resources	21 (75%)	7 (25%)	28
7	Finance, Planning & Trade	26 (93%)	2 (7%)	28
8	Health	25 (86%)	4 (14%)	29
9	Justice & Legal Affairs	25 (86%)	4 (14%)	29
10	Labour & Social Welfare	20 (69%)	9 (31%)	29
11	Lands	23 (82%)	5 (18%)	28
12	Transport, Public Works & Housing	26 (90%)	3 (10%)	29
13	Public Investments	24 (89%)	3 (11%)	27
14	Public Accounts	24 (89%)	3 (11%)	27
15	Budgets & Appropriations	43 (86%)	7 (14%)	50
16	Selection	13 (65%)	7 (35%)	20
17	Appointments	14 (64%)	9 (36%)	25
18	Delegated Legislation	26 (93%)	2 (7%)	28
19	Implementation	22 (79%)	6 (21%)	28
20	Regional Integration	21 (75%)	7 (25%)	28
21	Constitutional Implementation Oversight	19 (73%)	7 (27%)	26
22	National Government Constituency Development Fund	18 (95%)	1 (5%)	19
23	Catering & Health Club	22 (76%)	7 (24%)	29
24	House Business	21 (66%)	11 (34%)	32
25	Liaison	17 (71%)	7 (29%)	24
26	Procedure & House Rules	13 (81%)	3 (19%)	16
27	Pensions	3 (100%)	0 (0%)	3
28	Privileges	9 (82%)	2 (18%)	11
29	National Cohesion & Equal Opportunity	9 (64%)	5 (36%)	14
30	Parliamentary Broadcasting & Library	12 (71%)	3 (29%)	15

Source: <http://www.parliament.go.ke/the-national-assembly> (Accessed on January 9, 2017).

Table 2 above shows that the highest numbers of women were in Education, Research and Technology Committee (36%), Committee on Appointments (36%) and House Business Committee (34%). It further indicates that the lowest numbers were in committees dealing with finance, planning and infrastructure, a reflection of the 10th parliament. Observably, this perpetuated the notion that some themes are exclusive to men, as pointed out by Erikson and Josefsson (2019).

The table also reveals that some committees had fewer women than others even when the total numbers were the same. For instance, both the JLAC and the Labour and Social Welfare Committee had 29 members each but the former had only four women while the latter had nine. The three-member Pensions Committee had no woman.

This pattern shows that the allocation of the positions did not use any standard formula. Furthermore, the distribution did not comply with Standing Order 173 (1) which requires that selection of committee members should

give consideration to gender balance and so far as may be practicable, ensure that no more than two-thirds of members of a committee of the Assembly be of the same gender.

It is further inferable from the table that the 20% agreement was implemented in only 13 (43%) of the 30 committees. Reneging on this agreement suggests that the National Assembly accepted it for expediency rather than conviction or recognition that the overall numbers would not allow such to be achieved.

Based on the total size of the National Assembly (349), if the 30 committees were evenly constituted, each would have 11 members with two women. Men would therefore still be a majority. The numerical inferiority of women was therefore a fatalistic pre-destination that would not be overcome by any clamour for greater inclusion. As such, therefore, the quest only rested on the premise that it is easier to be heard in committees than in the plenary where competition for attention is higher.

Since legislative work is principally done in committees, the paucity of women in the structures means that they were by default disadvantaged from influencing legislation. Respondents confirmed this in the following remarks.

Our small number in House committees means that where the men oppose an element, we are outnumbered and cannot get our way ... This happened with a provision to establish shelters for victims of domestic violence which was removed from the Protection Against Domestic Violence Bill because the majority men in the committee rejected it. If we had the numbers, we could have argued for them (WL-4, OI, 6.8.2016).

The statement above illustrates the primacy of numbers in determining the contents of Bills and how minority compromised women's ability to influence a committee decision that would have addressed a problem of primary concern to women, namely sanctuary for survivors of domestic violence.

The importance of numbers in committees was further illustrated by WL-4 as follows in reference to the JLAC with regard to one version of the two-thirds gender rule Bill that women opposed:

The committee has 25 male and four female members. I want women to know that the Bill before this House today is nothing but a show of might; that the 25 men of the committee were able to canvass, collude and do many things to bring this Bill here (Hansard, 15 October, 2016PM: 23).

The above remark indicates that women in the JLAC disapproved of the Bill but were ignored by their male colleagues who conspired to present it, nevertheless, knowing that it was ill-fated. This can be interpreted to mean that presenting the Bill was mere pretence that the committee wanted to have the two-thirds rule passed, which indicates a conspiracy against it and the whole principle of affirmative action.

In the view of a key informant, minority "*made women and their contributions relatively invisible and marginal*" (KI-1, OI, 15.2.2017). This implies then that women's influence was compromised not by technical incompetence but numerical inferiority. The earlier argument by ML-6 that the two-thirds principle could not be applied in allocating committee positions because women were overall fewer suggests that they could only hope to realise fair inclusion

if their proportion was equal to or came close to that of men. This in turn emphasises the importance of increased numbers to boost women's significance in determining legislative outcomes.

Considering, however, that there was no woman in 10 (40%) committees in the 10th parliament, there was remarkable progress in this National Assembly. This is based on the finding that all the committees had women members except the one on pensions. Women's maximum presence also increased from 6% to 36%. Furthermore, this National Assembly surpassed the 30% threshold of women's membership in six committees, which it had not done by 2014 (Nthiiri, 2014).

Interrogated against the Critical Mass Theory that the 30% threshold begins to tilt an institution and accord women power to influence its decisions and culture, the configuration achieved implies a higher potential to determine legislative proposals tabled by committees for debate. Notwithstanding this supposition, the fact that women remained a minority in all committees means that they would not be able to tilt decisions without the support of male colleagues. In other words, they were still in an overall position of disadvantage.

5.3 Quest for increased numbers in the leadership of parliamentary committees

Women legislators also sought committee leadership positions to acquire opportunities for legislative influence. As one respondent stated, this was because *chairpersons mobilise support for and determine the final contents of Bills* (WL-4, OI, 6.8.2016). They also influence *the committee decisions, including making sure that statutes are gender-sensitive, because (they) are the last persons to read the Bills* (WL-2, OI, 24.7.2016).

The above remarks raise key points on committee leadership. First, it confers opportunity to shape legislative decisions. Second, occupants can influence the gender-sensitivity of Bills. Third, it accords occupants advance knowledge of the contents of Bills hence ability to better prepare for debate. Thus occupying the positions would put women in vantage positions to influence legislation.

The importance of committee leadership inheres in the powers and roles of the chairpersons. Standing Order 180 designates chairpersons as the committee spokespersons. This automatically gives them more speaking opportunities than ordinary members by virtue of having to respond to petitions and present Bills and departmental reports. From this, they gain greater visibility and have platforms to demonstrate their leadership skills and authority as well as propagate their ideas to influence legislation.

To this end, women insisted that *"men should not take all the positions"* (WL-5, OI, 18. 1. 2017). The demand was articulated as follows, to pre-empt domination of committee leadership by men.

I want to remind the committee that is looking at the Standing Orders that we

Expect to be given our rightful role in committees. First of all, we must have some committees chaired by women (WL-12, Hansard 24 April 2013AM, p. 7).

Table 3 below lists the committees led by women and respective positions held.

Table 3: Committee Leadership Positions by Women

	Chairpersons	Vice Chairpersons
1	Education, Research & Technology Committee.	Justice & Legal Affairs Committee.
2	Environment & Natural Resources Committee.	Labour & Social Welfare Committee.
3	Committee on Health.	Budgets & Appropriations Committee.
4	Committee on Regional Integration.	National Government Constituency Development Fund Committee.
5	Committee on Implementation.	Procedure & House Rules Committee.
6	Catering & Health Club Committee.	
7	Liaison Committee.	

Source: <http://www.parliament.go.ke/the-national-assembly> (Accessed on January 9, 2017).

As Table 3 above shows, women chaired seven committees and were vice chairpersons of five. Considered against the total number of committees (30), they still constituted a minority in the leadership as they only chaired 23% of the structures.

Miruka, Wamue-Ngare & Okemwa (2020) show that women chairing committees used their positions to promote issues they had a vested interest in. For example, the chairperson of the Departmental Committee on Education, Research and Technology proposed that CWRs be included in the distribution of sanitary pads to school girls. This is an initiative that would reduce absenteeism and enhance female education and hygiene (Hansard, 23 July 2014AM). The Environment and Natural Resources counterpart moved the Water Bill (No. 8 of 2014) which included rain harvesting technologies to reduce women’s workload in fetching water (Hansard, 23 October 2014PM).

Mzalendo (2015) confirms that among the most active and effective legislators in this National Assembly were three women chairpersons of committees. One such legislator confirmed that she used her

role in the leadership of the Justice and Legal Affairs Committee to accelerate drafting and tabling of Bills on marriage, matrimonial property and domestic violence (WL-4, OI, 6.8.2016).

It is inferable from the above that were WL-4 not in the leadership of the JLAC, the Bills would have been time-barred for debate. The findings cohere with Parry (2014) that women’s ascension to parliamentary leadership positions affords them greater legislative influence. They demonstrate that the quest for committee leadership had merit because “committee leaders (have) greater power over legislation compared to ordinary members of parliament” (Joshi & Goehring, 2018, p. 357).

Beyond leading committees, women also petitioned against allocation of stereotyped positions as captured below.

...you should not take us to committees that are seen to be junior ... We can chair important committees. I am saying this because I know that many times in the history of this parliament, women are taken to the Catering Committee. We are not here to cater for anybody (WL-12, Hansard 24 April 2013AM, p. 7).

The remarks clearly pre-empt stereotypical allocation of the Catering Committee to women. Despite the protests, however, leadership of the committee was still allocated to a woman as shown in Table 3. The statement that “we are not here to cater for anybody” is essentially a protest against extending women’s domestic gender roles to the public sphere. This is a

problematic norm that women are automatic caretakers (Bouka, et al, 2018). From a theoretical perspective, it coheres with the “woman’s slot” tendency in the Critical Mass Theory, that certain positions are automatically assigned to women regardless of their interest and based on rigid assumptions about gender roles. Logically then, retention of this pattern is symptomatic of a residual mindset that despite their high offices, women legislators are still bound by traditional gender norms, which is a tactic to confound their space.

The above findings reflect global experiences. Brechnemacher (2018) shows that even when women’s numbers in parliament increase, they tend to be underrepresented in internal leadership positions. It attributes this to the parliamentary tradition that vest seniority on longevity in parliament, which disadvantages women since most are first-time legislators. This coheres with findings from a global survey which established that consideration of party balance in configuring parliamentary committees results in women being a minority in their leadership, which is a reflection of their overall rarity in legislatures, resulting in compromised power, authority and influence (IPU & UNDP, 2017).

In the context of the Critical Mass Theory, the quest to increase women’s numbers in the National Assembly, its committees and their leadership is a first step towards reducing discrimination and alienation by the dominant male group (Kanter, 1977). It resonates with the idea in Mill (1869) that whimsical discrimination against women is unjust and coheres with the position that inclusion widens the range of talents available to society. The quest can also be seen as a claim to diversity, envisaged in articles 27 (8) and 81 (b) of the Constitution of Kenya 2010 and its Bill of Rights that outlaw discrimination on various grounds including gender.

6.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.1 Summary

The study established that the quest to entrench affirmative action in law was persistently resisted by male parliamentarians who constituted the majority, hence indicating the disadvantage of numerical inferiority for women. The quest in the 2013 -2017 Assembly was based on an express affirmative constitutional principle on gender-based proportionality in representation. Despite this, it still failed. Observably, this was a backlash against affirmative action and a patriarchal strategy to perpetuate male domination. This points to the need to neutralise such resistance by dismantling patriarchy. However, women gained increased presence in parliamentary committees and their leadership, largely due to assertiveness.

6.2. Conclusions

Since the two-thirds gender rule Bills were based on a constitutional provision with a prescribed deadline, their failure means that the National Assembly was operating unconstitutionally. The article further notes that the fiasco around the Bill could have been avoided if the Constitution had prescribed an electoral process that would automatically yield the desired configuration without requiring further legislation to effect it. Failure to do this suggests that the architects of the Constitution were unable to reach consensus on the issue, schemed to frustrate it or merely abdicated their responsibility. The article recognises, however, that merely increasing the number of women in the National Assembly without ideologically re-configuring it is self-defeating.

On committees, the article concludes that although women still constituted a minority, their improved inclusion was a result of assertiveness. The fact that they had to fight for these positions, however, illustrates that the mere existence of a constitutional principle and a plenary agreement did not guarantee inclusion. Findings that they were effective as

committee leaders confirms the liberal feminist standpoint that marginalising women is fallacious and denies the society the benefit of their talents. Nevertheless, the persistent allocation of the leadership of the Catering Committee to them, despite a clear objection, is indicative of a problematic fixed mindset that women in public spaces must still conform to traditional gender norms.

The study affirms Tenet One of the Critical Mass Theory on how tokens in skewed groups are disadvantaged by numbers from asserting significant institutional influence. It categorically illustrates the theory's postulate that women as tokens experience "loneliness among peers" due to rarity (Kanter, 1977: 382). This compromises their ability to influence legislation and reduce male domination. As stated in Childs & Krook (2009), women must therefore graduate from being tokens to a significant minority if they are to counter-balance male domination in legislation.

Considering, however, that quotas create legitimacy deficits for beneficiaries, the article observes that there is need to consider whether they should be the only means of reducing male domination. It notes that over-reliance on them perpetuates treatment of women as inferiors and stimulates resistance from male colleagues.

6.3 Recommendations

The article proposes that women should seek membership in and leadership of influential committees from where they can influence legislation on affirmative action and other gender equality matters. One of these is the Justice and Legal Affairs Committee which would be critical for this pursuit as it is the entity that deals with Bills on constitutional, legal and judicial subjects.

Additional to this, women should lobby for an electoral law that automates the desired proportions in the National Assembly. Such a mechanism is provided for with regard to county assemblies through Article 177(b) of the Constitution which requires nomination of special members to fill the gap from election and ensure that not more than two-thirds of the seats are occupied by people of the same gender.

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