

**INTRODUCTION OF AFFIRMATIVE ACTION IN THE COMPOSITION OF  
KENYA'S PARLIAMENT; A CRITICAL EVALUATION**

**BY**

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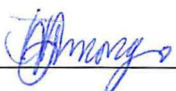
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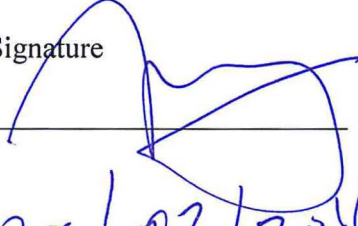
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## Dissertation Declaration Form

I, Jared Mogaka Nyamongo, declare that this dissertation is my original work and has not been submitted for the award of a degree in any other university.

Signed  Date 30/03/2016

Researcher: Jared Nyamongo

Supervisor Signature 

Date 30/03/2016

## **Abstract**

This project aims to analyse the effectiveness of Article 97(1)(b) and Article 98(1)(b) of the Constitution of Kenya in ensuring there is substantive representation of women in the parliament of Kenya. The dissertation analyses the contributions of women in the 11<sup>th</sup> parliament. The study utilises a documentary review using sources of primary data such as records of members of Parliament who spoke, bills and various policies that were introduced and by whom they were. The study finds that the Articles have increased the participation of women in the 11<sup>th</sup> parliament. They have also resulted in pro-female policies and legislations being discussed in parliament. The study recommends that we must not restrict women to the “role of the kitchen” and that we must legislate laws that increase the scope of affirmative action to all aspects of the public service and not just parliament.

## List of Abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COTU	Coalition of Trade Unions
ICCPR	International Covenant on Civil and Political Rights
KANU	Kenya African National Union
KEWOPA	Kenya Women Parliamentary Association
KURA	Kenya Urban Roads Authority
LSK	Law Society of Kenya
MP	Member of Parliament
NSSF	National Security Social Fund
OPCT	Older Person Cash Transfer
PAC	Public Accounts Committee
PIC	Public Investment Committee

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## 1.0 Background

### 1.1 Introduction

The struggle for increased presence of women in parliament is one that has been long and winding as noted by Professor Kameri-Mbote.<sup>1</sup> The French, for example, began the journey to allaying the chronic deficiency of women in political representation in the 1970s, while ‘in Belgium, a 1994 law established that there should be at least 25 percent female candidates on all electoral lists, with the provision that this percentage would increase with each election, up to 33 percent in 1999, with the ultimate goal fixed at 40 percent between 2010 and 2015’.<sup>2</sup>

In 1997 Hon Phoebe Asiyo tabled before Parliament a motion to increase women’s representation to parliament to at least one third: this motion was ‘soundly defeated’.<sup>3</sup> The continued fight eventually led to what some consider to be an effective victory for women and women’s rights in the Constitution of Kenya 2010.

The year 2010 was an important one in Kenyan history. On 1 April 2010 the citizens of the Republic of Kenya passed the proposed Constitution of 2010, which paved way for the constitutional referendum that was held on July 2 2010. This was important to the entire nation as the proposed Constitution advanced a number of changes that would affect the social and political structure of the country. Among these changes were the radical and divisive Articles that enshrined the place of women in our Parliament. Article 97(1)(b) concretised the number of women in the National Assembly stating that there shall be ‘forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency’.<sup>4</sup> While, Article 98(1)(b) replicated that effect, declaring that the senate must have ‘sixteen women members who shall be nominated by their political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90’.<sup>5</sup> These articles were included in the Constitution

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<sup>1</sup> P. Kameri-Mbote, *Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourse* Inaugural Lecture presented on 24th January 2014 at the University of Nairobi

<sup>2</sup> Ruiz B & Rubio-Marin R, ‘The gender of representation: On democracy, equality, and parity’ 6 *International Journal of Constitutional Law*, 287 (2008), 290

<sup>3</sup> P. Kameri-Mbote, *Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourse* Inaugural Lecture presented on 24th January 2014 at the University of Nairobi

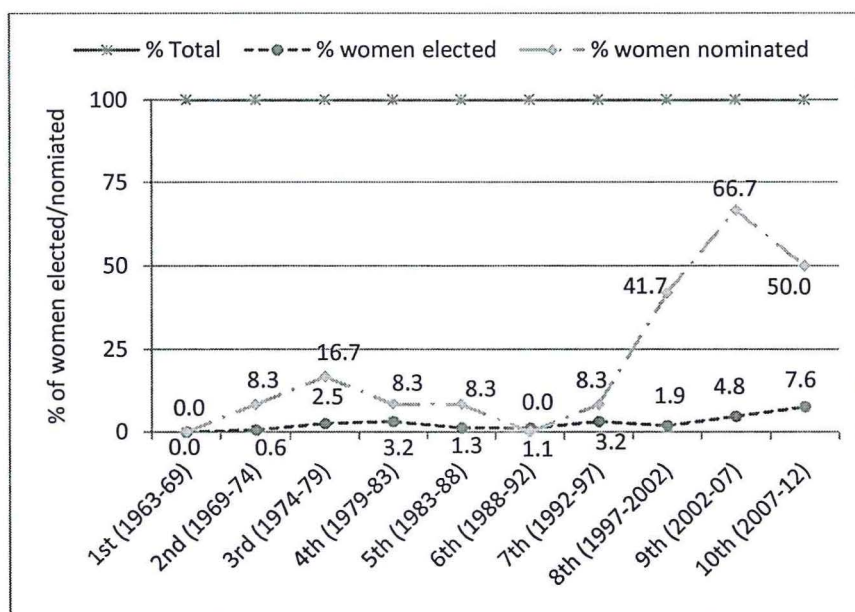
<sup>4</sup> Article 97(1)(b), *Constitution of Kenya*, 2010

<sup>5</sup> Article 98(1)(b), *Constitution of Kenya*, 2010

in a bid to protect the marginalised women who had previously not had effective representation in parliament.

**Table 1.1: Women representation and participation in Kenya's parliament: 1st to 10th parliaments<sup>6</sup>**

Parliament	Period	Total no. of constituencies	No. of women elected	Available slots for nomination	No. of women nominated
1 <sup>st</sup> Parliament	1963-1969	158	0	12	0
2 <sup>nd</sup> Parliament	1969-1974	158	1	12	1
3 <sup>rd</sup> Parliament	1974-1979	158	4	12	2
4 <sup>th</sup> Parliament	1979-1983	158	5	12	1
5 <sup>th</sup> Parliament	1983-1988	158	2	12	1
6 <sup>th</sup> Parliament	1988-1992	188	2	12	0
7 <sup>th</sup> Parliament	1992-1997	188	6	12	1
8 <sup>th</sup> Parliament	1997-2002	210	4	12	5
9 <sup>th</sup> Parliament	2002-2007	210	10	12	8
10 <sup>th</sup> Parliament	2008-2012	210	16	12	6



**Fig. 1: Proportion of women elected/nominated to Parliament**

<sup>6</sup> Kamau N, *Women and political leadership in Kenya: ten case studies*, Heinrich Böll Foundation, Nairobi, 2010, 3

The effect of these laws was visible as it resulted in an increase of women representation in Parliament. As clearly shown in Figure 1, the proportion of women elected to parliament expressed as a percentage of total elective seats and the proportion of women nominated expressed as a percentage of number of seats open for nomination has increased over time. Furthermore, the proportion of women nominated as increased much more compared to those elected, which indicates the power of legislation. Cumulatively, the 11<sup>th</sup> Parliament has 19.14%<sup>7</sup> female representation an improvement from the 9.8% that sat from 2009 to 2013<sup>8</sup> and from the meagre eight female MPs that were in Parliament in 1997. In the 2010, Professor PLO Lumumba and Dr Luis Franceschi note that Article 97(1)(b) and Article 98(1)(b) are ‘the aspiration towards a more inclusive Parliament especially in terms of gender’.<sup>9</sup>

PLO Lumumba and Luis Franceschi note that these articles are rooted in Article 3 of the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup> which declares that ‘The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant’.<sup>11</sup> Further, Article 7 of the Convention on The Elimination of all forms of Discrimination Against Women, 1981 (CEDAW) states that State Parties ‘shall ensure to women, on equal terms with men, the right:

- (a)<sup>12</sup> To vote in all election and public referenda and to be eligible for election to all publicly elected bodies;
- (b)<sup>13</sup> To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c)<sup>14</sup> To participate in non-governmental organizations and associations concerned with the public and political life of the country.’

<sup>7</sup> <http://data.un.org/Data.aspx?q=kenya&d=MDG&f=seriesRowID%3A557%3BcountryID%3A404> on 17 February 2015

<sup>8</sup> <http://data.un.org/Data.aspx?q=kenya&d=MDG&f=seriesRowID%3A557%3BcountryID%3A404> on 17 February 2015

<sup>9</sup> Lumumba PLO & Franceschi L, *The Constitution of Kenya, 2010 An Introductory Commentary*, Strathmore University Press, Nairobi, 2014, 370

<sup>10</sup> Lumumba PLO & Franceschi L, *The Constitution of Kenya, 2010 An Introductory Commentary*, 370

<sup>11</sup> Article 3, *International Covenant on Civil and Political Rights*, 23 March 1976, No. 14668

<sup>12</sup> Article 7(a), *Convention on The Elimination of all Forms of Discrimination Against Women*, 1981

<sup>13</sup> Article 7(b), *Convention on The Elimination of all Forms of Discrimination Against Women*

<sup>14</sup> Article 7(c), *Convention on The Elimination of all Forms of Discrimination Against Women*

\* Ballot papers in postboxes - incidents.

The Convention seeks to concretise the principal of equal representation of gender in parliament. It seeks to ensure that men and women have a level playing ground when it came to running for political office. This was borne of the realisation that women had been largely marginalised historically and as such needed to be given an equal playing ground. This is further emphasised by the Beijing Declaration which in Article 13 defends ‘Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace’.<sup>15</sup>

Women face a multitude of challenges when getting into parliamentary positions. They face the traditional prejudice that exists in many African cultures against having women in power as a result of our highly patriarchal society, as Baum B points out, ‘recognizing (or defining) women as fundamentally “different” from men has generally left women subjected to androcentric cultural norms that privilege men while sharply restricting what women can do or be’.<sup>16</sup> Among the Setswana, the phrase, ‘*ga nke di etelelwa pele ka managadi*’ is often used as a reason for the lack of women representation in their Parliament.<sup>17</sup> The phrase when translated into English reads ‘cows will never lead the herd’. This phrase is indicative of a mind-set that not only plagues Botswana but Africa as a whole. It is important to note that although an African country Rwanda has the highest percentage of women legislators in the world with 63.8% of seats in the lower house.<sup>18</sup> However, there has been a struggle by women in Kenya to establish themselves in Parliament and the law making process.

## 1.2 Problem Statement and Justification

A number of studies that have been conducted in this field focus on Kenya’s Parliaments and laws that are pre-Constitution of Kenya, 2010. For example, Barasa V discusses substantive representation of women in Kenya. She notes that her study is a ‘starting point for further research into the gender and politics of representation in Kenya and beyond’.<sup>19</sup> The present study, however, strives to be different.

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<sup>15</sup> Article 13, *Beijing Declaration*

<sup>16</sup> Baum B, *Feminist Politics of Recognition*, *Signs*, Vol. 29, No. 4 (Summer 2004), pp. 1073-1102, 1074.

<sup>17</sup> Bauer G, ‘Cows Will Lead the Herd into a Precipice’: Where Are the Women MPs in Botswana? *Botswana Notes and Records*, Vol 42 (2010), 62.

<sup>18</sup> <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> on 3 March 2015

<sup>19</sup> Barasa V, *More Women in the Kenyan Parliament: Do Numbers Really Matter? Discussing Substantive Representation with Female MPs in Kenya*, Unpublished LLM Thesis, Joint European Masters Degree in Women’s and Gender Studies, August 2012, 89

It aims to discuss and evaluate the overall impact of Articles 97(1)(b) and Articles 98(1)(b) of the Constitution of Kenya 2010. Furthermore, this study aims to gauge and compare the impact of the increase of women representatives on the debates in parliament as well as the laws that parliament has made since the beginning of the term of the 11<sup>th</sup> parliament and the overall effect of Articles 97(1)(b) and Articles 98(1)(b) on Kenyan politics. The research aims to evaluate the impact of the aforementioned articles on women representation in Parliament and subsequently the effect on the legislation and the level of women participation in Parliament. The research seeks to ask one question albeit a multi-layered question;

1. Have the intentions of Articles 97(1)(b) and Articles 98(1)(b), as well as other legislation, been met by the members of Kenya's 11<sup>th</sup> Parliament?

Specifically, emanating from this general question three questions are asked:

- i. Has the increase of women in the legislature led to a substantive increase in women's participation in Parliament?
- ii. Has the increase of women in the legislature translated to an increase in the number of gender sensitive laws in Kenya?
- iii. Has the increase of women in Parliament resulted in an increase of more pro-female policies and legislation being discussed in the 11<sup>th</sup> Parliament?

This study is guided by the following assumptions;

1. Despite a robust constitutional framework promoting affirmative action, Kenya's 11<sup>th</sup> Parliament has not seen an increase in gender issues being debated as well as gender sensitive laws being tabled.
2. Affirmative action was meant to increase women's participation in parliament.
3. Affirmative action was intended to promote women's issues in parliament.
4. The intentions of Articles 97(1)(b) and Articles 98(1)(b) have not been met.

### **1.3 Theoretical Framework and Literature Review**

The impact of Articles 97(1)(b) and Articles 98(1)(b) can be looked at by using the feminist approach. The liberal feminist approach in particular is of import to this discussion and analysis. Liberal Feminism advocates for the ideology that gender differences are not based on biology and that our common humanity supersedes our

procreative differences. Lorber J. states that in liberal feminism 'Women should have the same rights as men and the same educational and work opportunities'.<sup>20</sup> Tong R furthers Lorber J consideration by noting that 'gender justice, insist liberal feminists, requires us, first, to make the rules of the game fair and, second, to make certain that none of the runners in the race for society's goods and services is systematically disadvantaged'.<sup>21</sup> In addition, Kimotho G expresses that 'because society perceives women as inept compared to men, they are excluded from areas of public influence'.<sup>22</sup> The aim of liberal feminism in Kenya was entombed in the Constitution of Kenya, 2010 which tried to remedy the problem proposed by Kimotho G<sup>23</sup> by declaring that 'Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.<sup>24</sup>

Baum B, on the other hand, considers the roles that culture and society have towards feminism and being recognised politically. Baum B states that, 'This elision between the social and the cultural oversimplifies the interplay of power and culture in the production, persistence, and transformation of gender identities'.<sup>25</sup> Baum B also declares that to 'confront directly the tensions between the politics of cultural difference and the politics of social equality',<sup>26</sup> he will utilise 'feminist critical theory of recognition—one that comprehends gendered cultural and religious identities as more than mere effects of patriarchal power'.<sup>27</sup> My research also considers a similar approach and theoretical framework as that used by Baum B, I believe it is an important addition and distinction to the liberal feminism approach.

Furthermore, I shall endeavor to utilise the critical mass theory. Dahlerup notes that critical mass theory advocates that there is a certain number or percentage of women in political assemblies which must be attained for women to gain an effective representation in parliament.<sup>28</sup> Dahlerup notes that research indicates that 'a certain minimum representation, for example, 30%, before the minority, here women, are able to make a

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<sup>20</sup> Lorber J, *The variety of feminisms and their contributions to gender equality*, Bis, 1997, 3

<sup>21</sup> Tong R, *Feminist Thought: A More Comprehensive Introduction*, Westview Press, Colorado, 2007, 2

<sup>22</sup> Kimotho G, 'Substantive Representation of Women in the Parliament of Kenya: A Critical Analysis of The Constitutional and Statutory Provisions' Unpublished LLB Thesis, University of Nairobi, 20 May 2014, 5

<sup>23</sup> Kimotho G, 'Substantive Representation of Women in the Parliament of Kenya: A Critical Analysis of The Constitutional and Statutory Provisions' Unpublished LLB Thesis, University of Nairobi, 20 May 2014, 5

<sup>24</sup> Article 27(3), *Constitution of Kenya* (2010)

<sup>25</sup> Baum B, *Feminist Politics of Recognition*, 1076

<sup>26</sup> Baum B, *Feminist Politics of Recognition*, 1077

<sup>27</sup> Baum B, *Feminist Politics of Recognition*, 1077

<sup>28</sup> Dahlerup D, 'The Story of the Theory of Critical Mass' *2 Politics & Gender* (2006), 511

substantial difference in politics'.<sup>29</sup> Indeed the Constitution has attempted to ensure that parliament shall enact legislation to ensure that there is increased representation of women in Parliament, the Constitution recognizes that women are indeed one of the marginalized groups.<sup>30</sup> The critical mass theory will aid in analyzing whether the increase in the descriptive representation of women as effectuated by Article 97(1)(b) and Article 98(1)(b) of the Constitution of Kenya, 2010, have been effective in increasing the substantive representation of women.

The question on the impact of women representatives on the legislature has been considered by Carroll SJ, who raises the questions, 'Why should women hold a larger proportion of public offices in this country? What difference does it make if most positions of political power are filled by men?'<sup>31</sup> Carroll SJ discovered that 'An overwhelming majority of women candidates, and of those elected, feel that they can do a better job of representing women's interests than their male counterparts'.<sup>32</sup> She then concluded that the strong level of support for feminist concern should be encouraging for those who 'hope that the election of larger numbers of women will lead to significant changes in policy outcomes'.<sup>33</sup> These conclusions are reflected by the research and findings of Thomas S.

Thomas S sought to examine the impact that women had on state legislative policies as well as on their policy priorities. She further examined what impact women legislators had on the overall national legislature.<sup>34</sup> She found that women are more likely to successfully steer legislature that impacts on children, women and the family. She additionally discovered that women are more likely to introduce and pass distinctive legislation in situations in which they may find support-in this case, circumstances of increased numbers, or support from the creation of women's legislative caucuses. Thomas S, worked with two areas that were traditionally of interest to women-education and medical issues as well as welfare. She found that women in nine of the twelve states had more priority bills in this area than the men in their states. She also found that women gave less priority to bills dealing with the issue of business.

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<sup>29</sup> Dahlerup D, 'The Story of the Theory of Critical Mass', 511

<sup>30</sup> Article 100(1)(b), *Constitution of Kenya* (2010)

<sup>31</sup> Carroll SJ, *Woman Candidates and Support for Feminist Concerns: The Closet Feminist Syndrome*, *The Western Political Quarterly*, Vol. 37, No. 2 (Jun., 1984), 307

<sup>32</sup> Carroll SJ, *Woman Candidates and Support for Feminist Concerns: The Closet Feminist Syndrome*, 321

<sup>33</sup> Carroll SJ, *Woman Candidates and Support for Feminist Concerns: The Closet Feminist Syndrome*, 321

<sup>34</sup> Thomas S, *The Impact of Women on State Legislative Policies*, *The Journal of Politics*, Vol. 53, No. 4 (1991),

The Thomas S study is important to the discussion as it draws us to looking at this issue from the international perspective. On the other hand, a study by the African Women Child Service similarly attempts to analyse this situation from an international perspective, but is more relatable as it centres on Eastern Africa as its geographical location for discussion.

The African Women and Child Service surveyed the effect of women leadership in Eastern Africa. Their study analysed the impact of a critical mass of women on such areas as institutional culture, gender, and service delivery. They discussed the role women play in Parliament in five jurisdictions; Uganda, Tanzania, Rwanda, Kenya and Tanzania. Further they analysed the impact that women have had in Parliament in all these countries. Their analysis on the Kenyan jurisdiction began with a history of the women's fight for representation. They, however, note that although the changes are being made towards the representation of women it will only be effective if 'they attain high level and adequate political and public decision making representation by committed women and gender sensitive men of their choice in the envisaged democratic arrangement'.<sup>35</sup>

#### **1.4 Research Design, Methodology & Limitations**

This study utilised documentary review that analysed and then drew logical conclusions from the information derived from them. The study sought to use other sources of primary data such as records of members of Parliament who spoke, bills and various policies that were introduced and by whom they were introduced.

The study will have a number of limitations;

1. There might be a lack of information available concerning the last two years of the 10<sup>th</sup> parliament.
2. Time will be an important limitation for this research as there is a limited amount of time to collect information that will be pertinent to this research

However, there are a number of delimitations as well;

1. A number of companies and public interest groups have dedicated themselves towards documenting the work that parliament does and as such will provide information on such.

There were no ethical restrictions foreseeable in the carrying out of this research.

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<sup>35</sup> African Woman and Child Features Service (AWC), Beyond Numbers: Narrating the Impact of Women's Leadership in Eastern Africa, AWC Feature Service, 2010, 104

## 1.5 Chapter Breakdown

Chapter 1 introduces the research problem and the methodology. The second chapter presents the literature review and discusses the theories—feministic approach and critical mass theory—relevant to the present study. In Chapter 3, the historical development of women representation in Kenya is presented followed by an in-depth analysis on the impact of the affirmative action laws on women’s participation in parliamentary debate as well as in the different committees in Parliament.

Chapter 4 presents a comparative study of Kenya and other jurisdictions in relation to the subject of gender equality and representation in Parliament. It presents two case studies of two countries, namely Rwanda and Argentina that utilise quota systems as well as looks into the effect of these quota systems on the laws that the parliaments are drafting. Rwanda was chosen due to its geographical proximity to Kenya, furthermore, because of its having the highest percentage of women in its legislature. Argentina was chosen due its being the first country in the world to pass gender quotas. The two country case studies provide an opportunity for comparing and contrasting with Kenya’s own experience. Chapter 5 discusses the findings from Chapters three and four as well as relates them to the feminist and critical mass theories. Finally, in Chapter 6 I present the summary, conclusion and recommendations.

## **2.0 Theoretical Framework**

### **2.1 Introduction**

This chapter provides the theoretical framework that will inform analysis of the project. The chapter begins with a brief explanation for why there is a need for more women in Parliament. The chapter then provides an understanding of liberal feminism, radical feminism and critical mass theory as well as their relation to having more women in parliament and the effect women parliamentarians will have in parliament.

### **2.2. Why there is need for more women in Parliament**

Patriarchal systems are often accused of driving the political agenda leading to less focus on women's issues. The lack of a critical mass of women in parliaments ensures that they do not have enough traction to marshal enough support from the male dominated Parliaments in order to push through their agenda. It is noted that 'these male-dominated organizations reflect certain male biases, the precise kind varying by country and culture'<sup>36</sup> making it increasingly difficult for the women MPs to effectively ensure that the issues they feel important to discuss or often not discussed. Consequently, getting more women into parliament is only the beginning of ensuring that women's issues are heard.

The struggle to ensure that there is an increase of women representation in parliament is reflective of the struggle for equality between men and women. It is notable that 'one of the most widely accepted normative principles of democracy is political equality,<sup>37</sup> yet although women compose "50% of the population and the labour force" 'decision making and priority setting continue to be largely in the hands of the men'.<sup>38</sup> Professor Kameri-Mbote notes that the struggle for equality has been 'long and winded'.<sup>39</sup> Equality between men and women has been the centerpiece of the feminist movement.<sup>40</sup> Jaggar notes that feminism has existed for as long as subordination of women has occurred.<sup>41</sup> This long history has resulted in a divergence of feminist theories resulting in a wide range of labels for feminist thinking, including but not limited to: liberal, radical, Marxist/socialist,

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<sup>36</sup> Lovenduski J & Karam A, 'Women in Parliament: Making a difference' in Ballington J, *Women in parliament: beyond numbers*, International IDEA, 2002, 1.

<sup>37</sup> Bühlmann M & Schädel L, 'Representation Matters: The Impact Of Descriptive Women's Representation On The Political Involvement Of Women', 48 *Representation*, 1 (2012), 101.

<sup>38</sup> Ballington J & Karam A, *Women in Parliament: Beyond Numbers*, International Institute for Democracy and Electoral Assistance, Stockholm, 2005, 24.

<sup>39</sup> P. Kameri-Mbote, *Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourse* Inaugural Lecture presented on 24th January 2014 at the University of Nairobi.

<sup>40</sup>The term feminist refers to all those who seek to end women's subordination, regardless of the grounds.

<sup>41</sup> Jaggar A, *Feminist Politics and Human Nature*, 12.

psychoanalytic, care-focused, multicultural/global/colonial, ecofeminist, and postmodern/third wave. However, for this theoretical framework, I will restrict myself to an analysis of liberal and radical feminism as applies to the issues of women representation in all parliaments.

### 2.3 Liberal Feminism

Liberal feminism is an historical tradition that grew out of liberalism.<sup>42</sup> The liberal feminist theory posits that female subordination is rooted in a set of customary and legal constraints that blocks women's entrance and success in the so-called public world.<sup>43</sup> Liberal feminists believe that this inequality is a result of nurture rather than nature. Roles are taught at nursery with boys encouraged to train towards "masculine" jobs such as engineering while girls are taught to aspire towards more "feminine" service occupations. Liberal feminists do not have a problem with women aspiring and succeeding in such fields if they choose to willingly enter into that field, however, they believe that the choice is stripped from the girls at a very early age. Jaggard observes that 'women congregate in these occupations because discrimination denies them access to prestigious, powerful and well-paying positions that are predominantly held by men'.<sup>44</sup> Indeed, Susan Wolf concurs that rather than being affirmed as persons who deserve as much dignity as men, women across diverse cultures "have been recognized as women—indeed, as 'nothing but women'—for too long".<sup>45</sup> Kimotho G notes that as a result of this perception there has been a persistent lack of equal representation of women in public service organisations. This is especially more pronounced in the political arena.<sup>46</sup>

While liberal feminist thought predates the eighteenth century, the first fight for equal women representation as an ideal for which feminists strive can be traced to the nineteenth century. At this juncture in time John Stuart Mills and Harriet Taylor declared that 'if society is to achieve sexual equality, or gender justice, then society must provide women with the same political rights and economic opportunities as well as the same education that men enjoy'.<sup>47</sup> Certainly, Lorber J notes that the goal for liberal feminism in the United

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<sup>42</sup> Wendell S, 'A (Qualified) Defense of Liberal Feminism' 2 *Hypatia* (1987), 65.

<sup>43</sup> Tong R, *Feminist Thought: A Comprehensive Introduction*, Urwin Human Ltd, Oxon, United Kingdom (1989) 2.

<sup>44</sup> Jaggard A, *Feminist Politics and Human Nature*, 177.

<sup>45</sup> Wolf S, *Multiculturalism: examining the politics of recognition*, Princeton University Press, Princeton, New Jersey, 1994, 76.

<sup>46</sup> Kimotho G, 'Substantive Representation of Women in the Parliament of Kenya: A Critical Analysis of The Constitutional and Statutory Provisions' Unpublished LLB Thesis, University of Nairobi, 20 May 2014, 5.

<sup>47</sup> Tong R, *Feminist Thought: A More Comprehensive Introduction*, 16.

States of America was embodied in the Equal Rights Amendment Act which stated, “Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex.”<sup>48</sup>

Susan Wendell states that liberal feminism is ‘committed to major economic re-organization and considerable redistribution of wealth, since one of the modern political goals most closely associated with liberal feminism is equality of opportunity, which would undoubtedly require and lead to both.’<sup>49</sup>

It is the opinion of liberal feminists that contemporary society treats women in a manner that violates liberal political principles of equality, liberty and justice.<sup>50</sup> They believe that justice requires equal opportunities and equal consideration;<sup>51</sup> certainly, in light of this, by denying women equal opportunity for representation in parliament we are denying them justice. Liberal feminists, Jaggar notes, are of the assumption that ‘women’s conspicuous underrepresentation in public life is less as a result of choices made freely by women than it is a result of women’s lack of equal opportunities to enter and rise in public affairs.’<sup>52</sup>

It is the goal of liberal feminists to incorporate women fully into the mainstream of contemporary society. Jaggar observes that “mainstream” refers to the public life of industry, commerce, education and political office.<sup>53</sup>

Critics of liberal feminism argue that the individualist assumptions that belie the liberal feminist movement make it difficult to understand the social structures and cultural background that disadvantage women. It is argued that while women are dependent on men they are still dependent on the patriarchal state, institutional changes like the introduction of a women’s suffrage are insufficient to emancipate women.<sup>54</sup>

## 2.4 Radical Feminism

The origins of the radical feminist movement can be traced to the era for the fight for equality by African Americans. Bryson V notes that ‘after 1964, sections of the black movement shifted away from liberal civil rights ideas to more radical and militant concepts of black power, white imperialism, black separatism and liberation through revolution,

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<sup>48</sup> Lorber J., *The variety of feminisms and their contributions to gender equality*, Bis, 1997, 3

<sup>49</sup> Wendell S, ‘A (Qualified) Defense of Liberal Feminism’, 66.

<sup>50</sup> Jaggar A, *Feminist Politics and Human Nature*, 175

<sup>51</sup> Jaggar A, *Feminist Politics and Human Nature*, 176

<sup>52</sup> Jaggar A, *Feminist Politics and Human Nature*, 181.

<sup>53</sup> Jaggar A, *Feminist Politics and Human Nature*, 181.

<sup>54</sup> Bryson V, *Feminist debates: issues of theory and political practice*, New York University Press, New York, 1999, 14.

some women saw this as a clear model for a female liberation that went far beyond liberal ideas of equal rights.<sup>55</sup> Radical feminists propose that ‘Patriarchal ideology exaggerates biological differences between men and women, making certain that men always have the dominant, or masculine roles and women always have the subordinate or feminine ones’.<sup>56</sup> This ideology has led to the abysmal representation of women in all positions let alone parliamentary positions. Kate Millet opines that this patriarchy is evidenced by ‘military, industry, technology, universities, science, political office, and finance- in short every avenue of power within society, including the coercive force of the police’ being held entirely by “male hands”.<sup>57</sup> With this in mind Kate Millet in her book, *Sexual Politics*, declares that ‘because male control of the public and private worlds maintains patriarchy, male control must be eliminated if women are to be liberated. But this is no easy task. To eliminate male control, men and women have to eliminate gender—specifically, sexual status, role, and temperament—as it has been constructed under patriarchy.’<sup>58</sup> The above quote illustrates one of the key tenets of radical feminism “cutting down men to size”.

Radical feminism declares that every society has two cultures; a visible, national, or male culture and the invisible, universal, female culture.<sup>59</sup> Jaggar observes that radical feminists believe that the dominant male culture or patriarchy promulgates a certain picture of social reality, a picture that is clearly coloured by male values:

“what appears as one national culture, due to male propaganda is in reality the male culture setting itself up as the national culture through the subordination of the female. The male army, the male government, the male religion, the male-run economy, the male-defined institution of the family, along with male culture in the “narrower” sense-i.e., the male arts, sciences, philosophy, and technology- are defined as the national culture when in fact they represent nothing but the male view and interests”.<sup>60</sup>

Radical feminism, however, has faced heavy criticism based on its emphasis on sex-based discrimination to the detriment of race discrimination and class discrimination. This critique also tends to note that radical feminists are often times unwilling to work with men

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<sup>55</sup>Bryson V, *Feminist Political Theory an Introduction*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire, 2003, 164.

<sup>56</sup>Tong R, *Feminist Thought: A More Comprehensive Introduction*, 52.

<sup>57</sup>Millet K, *Sexual Politics*, University of Illinois Press, Urbana, 2000, 25.

<sup>58</sup>Tong R, *Feminist Thought: A More Comprehensive Introduction*, 52

<sup>59</sup>Jaggar A, *Feminist Politics and Human Nature*, 249

<sup>60</sup>Jaggar A, *Feminist Politics and Human Nature*, 250.

to effect change through political channels. Hillyard Little M notes that radical feminism has remained ahistorical, apolitical and essentialist in its approach.<sup>61</sup>

## 2.5 Critical Mass Theory

The quest for equality in representation has led to the use of affirmative action laws to create a gender quota. The critical mass theory is one that has moved from ‘sociology to political science and into popular usage over the last 30 years.’<sup>62</sup> The theory itself is derived from nuclear physics where it refers to the amount of a substance needed in order to begin a chain reaction. Therefore, as relates to the field of gender and politics critical mass theory will refer to the number of women needed in order to ensure that their voice is effective in Parliament, indeed Grey notes that critical mass is based on the belief that the form of a public body will shape the processes and policies of that organisation.<sup>63</sup> As Melissa Williams states, “‘The representative who is capable of acting as an advocate for women’s interest must have some understanding of the ways in which the lives of her constituents are shaped by the privilege of men, and the most effective starting-point for that knowledge is the fact of her own experience of exclusion and subordination’”. Dahlerup postulates that men are unable to represent the voices of women and that only many women can accurately voice the diversity of women.<sup>64</sup> Two group types have emerged as the most important in critical mass debates—the skewed group, where the minority constituted a maximum of 15% and are “tokens”, and the tilted group, in which the minority has between 15% and 40% membership and is “becoming strong enough to begin to influence the culture of the group”.<sup>65</sup>

This theory determines that the messenger is just as important as the message being passed.<sup>66</sup> Grey further extrapolates that the concept of critical mass infers that the election of an adequate number of female politicians will result in governance that is more

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<sup>61</sup> Hillyard Little M, *Women's Sexuality: On the Socialist Feminist Road to Discovery, 1 Problematique* (1991), 101.

<sup>62</sup> Grey S, “Does Size Matter? Critical Mass and Women MPs in the New Zealand House of Representatives”, 51st Political Studies Association Conference, Manchester, United Kingdom, 10-12 April 2001, available online, 3.

<sup>63</sup> Grey S, “Does Size Matter? Critical Mass and Women MPs in the New Zealand House of Representatives”, 3.

<sup>64</sup> Dahlerup D, ‘Increasing Women’s Political Representation: New Trends in Gender Quotas’ in Ballington J and Azza K, *Women in Parliament: Beyond Numbers. A Revised Edition*, International IDEA, 2005, 144.

<sup>65</sup> Grey S, ‘Numbers and Beyond: The Relevance of Critical Mass in Gender Research’ 2 *Politics & Gender* (2006), 492.

<sup>66</sup> Grey S, ‘Numbers and Beyond: The Relevance of Critical Mass in Gender Research’, 493.

responsive to women.<sup>67</sup> Henig and Henig argue that without a critical mass female MPs cannot be expected to permeate through the age-old patriarchal conventions since in small numbers they would most likely conform to existing norms and the political culture for their own survival as politicians.<sup>68</sup>

Proponents of the critical mass theory argue that women are unlikely to have a major impact on legislative outcomes until they grow from a few token individuals into a considerable minority of all legislators,<sup>69</sup> an argument that Dahlerup notes and concurs with when she states, 'According to conventional wisdom, research has shown that it takes a certain minimum representation, for example, 30%, before the minority, here women, are able to make a substantial difference in politics'.<sup>70</sup>

However, the critical mass theory faces a number of critiques. The most prevalent being, 'Expecting an automatic change once women attain a certain proportion of seats is theoretically dubious and, perhaps even more seriously, undermines the case for women's increased presence if existing female politicians appear to be failing women as a group'.<sup>71</sup> Rather than approach the question of gender representation from a purely numerical perspective we should consider the substantive representation of women in parliament, as an increase in their number will not necessarily lead to an increase in women's issues, rights and problems being discussed and possibly resolved in the legislative making authority.

Further, this theory does not appear to attempt to explain the reason behind women experiencing inequality in terms of women representation, instead it appears to delegate that duty to the various feminist theories.

The critical mass theory promotes the increase the descriptive representation of women in parliament while ignoring that this will not necessarily lead to an overall increase in their substantive representation. Barasa V notes that descriptive representation is concerned with the representative's characteristics vis-à-vis those whom s/he represents thus representation is seen from the shared characteristics between the one representing and those being

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<sup>67</sup> Grey S, "Does Size Matter? Critical Mass and Women MPs in the New Zealand House of Representatives", 3.

<sup>68</sup> Henig R & Henig S, *Women and political power: Europe since 1945*, Routledge, London, 2001, 103.

<sup>69</sup> Childs S & Krooks M, 'Critical Mass Theory and Women's Political Representation' 56 *Political Studies* (2008), 725

<sup>70</sup> Dahlerup D, 'The Story of the Theory of Critical Mass', 511.

<sup>71</sup> Childs S & Krook M, 'Should Feminists Give Up on Critical Mass? A Contingent Yes?' 2 *Politics & Gender* (2006), 528

represented.<sup>72</sup> Dahlerup argues that, the concentration on the descriptive representation of women ignores an evaluation of their impact on politics and political process.<sup>73</sup> Dahlerup criticises the quota system arguing that, “the use of electoral quotas challenges our ideas and theories about the relationship between women’s political representation and their socio-economic positions, since quotas may lead to unprecedented historical leaps in women’s representation without simultaneous changes in women’s socio-economic position.”<sup>74</sup> The use of quota systems has the potential to limit the substantive representation of women if misused. Kabeer notes that “the way that quotas are applied makes a difference to whether the presence of women is ‘token’ or a legitimate form of representation”.<sup>75</sup>

Critics of the critical mass theory have also pointed out that the critical mass theory fails to account for differences in electoral systems and political cultures around the world.<sup>76</sup> Critics argue that the critical mass theory has no threshold number established that state what the critical point is before women parliamentarians influence policy. Beckwith and Cowell-Meyers point out that, ‘Research employing critical mass as a concept has not clarified the process by which sheer numbers of women might work to advance women’s substantive representation. It is not clear whether sheer numbers of women should have a proportional impact, a curvilinear impact or an absolute numbers impact on policy making around women’s interests.’<sup>77</sup> This critique is supported by Studlar and McAllister who declare that ‘the concept of the critical mass has a vague and shifting meaning as well as a surprising paucity of empirical support. Properly, it should refer to a threshold beyond which there is a change of behaviour through acceleration (‘chain reaction’), not just

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<sup>72</sup> Barasa V, *More Women in the Kenyan Parliament: Do Numbers Really Matter? Discussing Substantive Representation with Female MPs in Kenya*, Unpublished LLM Thesis, Joint European Masters Degree in Women’s and Gender Studies, August 2012, 7.

<sup>73</sup> Barasa V, *More Women in the Kenyan Parliament: Do Numbers Really Matter? Discussing Substantive Representation with Female MPs in Kenya*, Unpublished LLM Thesis, Joint European Masters Degree in Women’s and Gender Studies, August 2012, 28.

<sup>74</sup> Dahlerup D, *Women, Quotas and Politics*, Routledge, 2006, 4.

<sup>75</sup> Kabeer N, ‘Gender Equality and Women’s Empowerment: A Critical Analysis of the Third Millennium Development Goal’, *Gender and Development*, Vol. 13, No. 1 (2005), 21.

<sup>76</sup> Barasa V, *More Women in the Kenyan Parliament: Do Numbers Really Matter? Discussing Substantive Representation with Female MPs in Kenya*, Unpublished LLM Thesis, Joint European Masters Degree in Women’s and Gender Studies, August 2012, 29.

<sup>77</sup> Beckwith K & Collin-Meyers K, ‘Sheer Numbers: Critical Representation Thresholds and Women’s Political Representation’, *Perspectives on Politics*, 3 (2007), 553.

incrementalism. At some point, the characteristics of women become subject to a group dynamic that increases their influence on various political phenomena'.<sup>78</sup>

## 2.6 Conclusion

Liberal feminism echoes the sentiments of Baum B that women subordination has occurred as a result of customary and legal restraints that block women's entrance into the public sphere.<sup>79</sup> Cultural restrictions do tend to be more prevalent in African culture as a result of our largely patriarchal mindset.<sup>80</sup> This is an argument that radical feminists concur with liberal feminists that a largely patriarchal society has led to the marginalization of women, often leading them to state that women have been the group most marginalized for the longest time. Furthermore, I agree with the critical mass theory that we must increase the number of women voices in parliament in order to ensure that women issues are indeed heard in the House.

As discussed earlier, radical feminism attempts to explain the inequality between sexes by explaining that patriarchal ideologies have marginalized women in all societies,<sup>81</sup> however, it attempts to resolve this problem by stating that men should be cut down to size.<sup>82</sup> I believe that this opinion and suggested means is antiquated, rather than attacking men it is my belief that the issues resolving women as regards radical feminism should be resolved by raising the marginalized group rather than cutting down the advantaged sex.

Moving forward into the dissertation, while I have utilized all the above three theories, I have paid specific attention to the critical mass theory. I have endeavored to provide further analysis on the question based on the debate that rages amongst proponents of critical mass theory, that is, substantive representation versus descriptive representation. The critical mass theory has enabled me to perceive the veracity of the affirmative action laws in enabling substantive representation of women in the Kenyan context. Furthermore, by analyzing and utilising the effect of quota laws in other jurisdictions vis-à-vis their ability to ensure that there is substantive representation of women I have been able to justify whether or not the quota laws have been and will be effective in the Kenyan context.

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<sup>78</sup> Studlar D & McAllister I, 'Does a critical mass exist? A comparative analysis of women's legislative representation since 1950', *European Journal of Political Research* 41 (2002), 238.

<sup>79</sup> Baum B, *Feminist Politics of Recognition*, 1074

<sup>80</sup> Bauer G, 'Cows Will Lead the Herd into a Precipice': Where Are the Women MPs in Botswana?', 62.

<sup>81</sup> Tong R, *Feminist Thought: A More Comprehensive Introduction*, 52.

<sup>82</sup> Tong R, *Feminist Thought: A More Comprehensive Introduction*, 52

The feminist theories are effective in gaining an understanding of the history and development of the fight for equal representation in Parliament. The liberal and radical feminist theories have further supported me in explaining possible answers to problems facing affirmative action laws as relates to gender and equal representation in parliament.

## **3.0 Women's Political Participation in Kenya**

### **3.1 Introduction**

This Chapter is an in-depth analysis of the impact of the affirmative action laws on women's participation in parliamentary debate as well as in the different committees of Kenya's Parliament. The chapter begins with a brief history of the development of women participation in parliament in Kenya. The chapter then gives a descriptive representation of women parliamentarians in Kenya. The chapter then provides for women's participation in Committees in parliament and in legislation and debate.

The chapter will use the various theories that were postulated in my theoretical framework. Radical and liberal feminism provide a lens in which to view the historical injustices that women had to fight through. Furthermore, they also provide a lens in which to understand the struggle women parliamentarians are currently facing in parliament. The critical mass theory provides an explanation to the effectiveness or lack thereof of women in parliament and the policies that they hope to have implemented into law.

### **3.2 Historical Development of women participation in parliament in Kenya**

Women in post-colonial Kenya have experienced hardships attaining parliamentary positions, this limitation is often attributed to the "masculine construction of the state and how its dominant political actors understand and deploy state power to serve specific interests".<sup>83</sup>

It is no secret that women were core to the Kenyan struggle for independence, they were an integral cog in the Mau Mau machine and without their struggle it is difficult to imagine Kenya gaining independence as quickly as it happened, they fed and protected veterans in the fight for Uhuru.<sup>84</sup> With the large role they played in Kenya's struggle for independence there were high expectations for a just and more equitable society in Kenya.<sup>85</sup> Ms Phoebe Asiyo a pioneer woman parliamentarian in Kenya notes that, 'We were sure to be in Parliament and the Cabinet in greater numbers. Some of us put it at 50-50 then because our country needed both men and women to make decisions, design policies and pass

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<sup>83</sup> Nyokabi K, *Women and Political Leadership in Kenya Ten Case Studies*, Heinrich Böll Foundation, Nairobi, 2010, 10.

<sup>84</sup> Nyokabi K, *Women and Political Leadership in Kenya Ten Case Studies*, 12.

<sup>85</sup> African Woman and Child Features Service (AWC), 'Beyond Numbers: Narrating the Impact of Women's Leadership in Eastern Africa', 72

legislation that would shape the destiny of the young nation. We knew then, as we still know now, that politics is about numbers. And since women formed 51 per cent of the total population, we strategised and were satisfied that this was a formidable force that nobody could ignore. As is usual with women, we trusted and waited for the men to hand over those positions to us. So many years into our independence, we discuss issues about which the pioneering daughters of Kenya had clear visions but which none of them has seen come true'.<sup>86</sup> However, Kenya's first independent government consisted of no women in the cabinet and indeed it was the thought of key figures in Mzee Jomo Kenyatta's, Kenya's first President, government that women could never make good leaders.<sup>87</sup>

Following the death of Mzee Jomo Kenyatta, Daniel Arap Moi took over the Presidency. His tenure at the helm of Kenya was characterized by oppression and corruption reflecting that of Jomo Kenyatta's administration. In addition, his tenure witnessed the harassment and suppression of women who tried to campaign for women's rights or to run for public office.<sup>88</sup> The Jomo Kenyatta and the Daniel Arap Moi presidencies were a single party system which curtailed the ability of women to gain a place in the political arena. The single party, KANU, was the be all and end all of the Kenyan political system. Its operational formula was heavily informed and influenced by patriarchal leanings and thus privileged men in nomination exercises, party leadership positions and the ultimate allocation of political resources.<sup>89</sup> This made it incredibly difficult for women's voices to be heard in the government of the day.

Hon Beth Mugo tabled a motion in 2000 that sought to increase women's participation in leadership and decision making in parliament and local authorities to at least 33%. This motion was referred to the Constitution Review Commission of Kenya. The motion followed a similar one that was tabled in 1997 by Hon Phoebe Asiyo, however, Hon Asiyo's bill was "soundly defeated".<sup>90</sup> A further attempt at ensuring affirmative action laws were in place was through the Constitution of Kenya (Amendment) Bill 2007 on affirmative action, which aimed to create 50 automatic seats for women in the 10<sup>th</sup>

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<sup>86</sup> African Woman and Child Features Service (AWC), 'Beyond Numbers: Narrating the Impact of Women's Leadership in Eastern Africa', 72

<sup>87</sup> Nyokabi K, *Women and Political Leadership in Kenya Ten Case Studies*, 12.

<sup>88</sup> Oduol W & Kabira W, 'The Mother of Warriors and Her Daughters: The Women's Movement in Kenya', in B. G. Smith (ed), *Global Feminisms Since 1945*, Routledge, 2000, 191.

<sup>89</sup> African Woman and Child Features Service (AWC), 'Beyond Numbers: Narrating the Impact of Women's Leadership in Eastern Africa', 73

<sup>90</sup> Kaimenyi C, Kinya E & Samwel C, 'An Analysis of Affirmative Action: The Two-Thirds Gender Rule in Kenya' Vol. No 3 *International Journal of Business, Humanities and Technology* (2013), 92.

parliament together with creating an additional 40 seats for women. This was done with the aim of ensuring that women's representation was closer to their population size.<sup>91</sup> While women organisations, former MPs and women in civil society all lobbied for the bill, they faced stiff opposition from key male stakeholders such as the Central Organisation of Trade Unions (COTU) and the Law Society of Kenya (LSK), with the end result being the eventual failure of the bill.<sup>92</sup>

### **3.3 Women Parliamentarians in Kenya's 11<sup>th</sup> Parliament.**

The 11<sup>th</sup> Parliament of Kenya has witnessed the highest number of women in Kenyan history. However, the question remains as to how substantive this representation has been in ensuring that women and women's issues are heard in Parliament. The 11<sup>th</sup> parliament of Kenya has also provided historical landmarks for Kenyan politics. The National Assembly elected a woman (Dr. Joyce Laboso) as Deputy Speaker for the first time in the history of the House while in the Senate women were elected as majority chief whip (Senator Beatrice Elachi) and minority deputy chief whip (Senator Janet Ongera).

### **3.4 Committees**

Women parliamentarians in Kenya have further witnessed an increase in positions held in parliament. The National Assembly of the 11<sup>th</sup> parliament has 7 of its 28 committees chaired by Women parliamentarians,<sup>93</sup> which equates to 25% of the committees being chaired by women. Furthermore, the national assembly committees have 4 women as their vice chairs.<sup>94</sup> This is illustrated in Table 3.1.

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<sup>91</sup> Nzomo M, 'Impacts Of Women In Political Leadership In Kenya: Struggle For Participation In Governance Through Affirmative Action', Institute of Diplomacy & International Studies, University of Nairobi, 2.

<sup>92</sup> Nzomo M, 'Impacts Of Women In Political Leadership In Kenya: Struggle For Participation In Governance Through Affirmative Action', Institute of Diplomacy & International Studies, University of Nairobi, 2.

<sup>93</sup> Mzalendo Trust, 'Debunking Myths: Women Contributions in Kenya's 11<sup>th</sup> Parliament', 7.

<sup>94</sup> <http://www.parliament.go.ke/the-national-assembly/committees> on 12th December 2015.

**Table 3.1: Number of women in chair and vice chair positions in Committees of the National Assembly**

<b>Committee</b>	<b>Name</b>	<b>Position</b>	
Liasion Committee	Hon. Dr. Joyce Laboso	Chair	Elected
Committee on Implementation	Hon. Rosalinda Soipan	Chair	Women's representative
Committee on Regional Integration	Hon. Florence Kajuju	Chair	Women's representative
Departmental Committee on Education, Research & Technology	Hon. Sabina Chege	Chair	Women's representative
Departmental Committee on Environment and Natural Resources	Hon. Amina Abdalla	Chair	Nominated
Departmental Committee on Health	Hon. Dr. Rachel Nyamai	Chair	Elected
Catering and Health Club	Hon. Janet Wanyama	Chair	Women's representative
Departmental Committee on Labour & Social Welfare	Hon. Tiyah Galgalo	Vice-Chair	Women's representative
Departmental Committee on Justice & Legal Affairs	Hon. Priscilla Nyokabi	Vice Chair	Women's representative
Budget & Appropriations	Hon. Mary Emaase	Vice-Chair	Elected
Committee on Constituency Development Fund	Hon. Esther Gathogo	Vice Chair	Elected

It should be noted that of the 11 women who chair/vice chair the various committees in Kenya's 11<sup>th</sup> parliament six of them are held by women who are members of parliament as a result of the woman representative position established by Article 97(1)(b) of the Constitution of Kenya, 2010. Of these six, four of them chair their various committees while two of them hold vice chair positions. The fact that these women are in parliament courtesy of constitutional changes underscores the importance of making legislative changes to improve women's representation.

The Kenyan senate, however, has not witnessed the same growth in numbers, with only one woman holding a chair position out of eighteen possible committees. However, there is a substantial increase, when compared to the national assembly, in the number of women

senators who serve as vice chairs; they hold seven positions equating to 38.9%.<sup>95</sup> The committees in which women have Chair or Vice Chair positions are shown in Table 3.2.

**Table 3.2: Number of women holding Chair/Vice Chair Positions in Senate Committees**

Committee	Name	Position	
Joint Committee on Parliamentary Broadcasting & Library Services	Sen. Naisula Lesuuda	Chair	Nominated
Committee on devolved government	Sen. Naisula Lesuuda	Vice Chair	Nominated
Committee on delegated legislation	Sen. Sijeny Judith Achieng	Vice Chair	Nominated
Committee on Education	Sen. Abdille Halima	Vice Chair	Nominated
Committee on Health	Sen. Kittony Zipporah	Vice Chair	Nominated
Committee on Roads	Sen. Sijeny Judith Achieng	Vice Chair	Nominated
Committee on National Security & Foreign Relations	Sen. Adan Dollo Fatuma	Vice Chair	Nominated
Committee on Labour & Social Welfare	Sen. Martha Wangari	Vice Chair	Nominated

It should be noted that, unlike in the National Assembly, none of the women who hold any of the above positions in Senate were elected. They were all nominated under Article 98(1)(b) of the Constitution of Kenya, 2010. Hon Zipporah Kittony made note of this and expressed hope that come the next general election more women would be elected to the senate in order to ensure better development and prosperity of the country. She states, “I know that we have 16 women Senators. I was very concerned because it is only the men who were catching the eye of the Chair and I was wondering where the position of women is. I am even going to call upon the women of Kenya that come next elections, let them be elected to the Senate because we are going to be closer to the people for better development and prosperity of this country”.<sup>96</sup> Senator Beatrice Elachi has also expressed sentiments that echo those by Hon Zipporah Kittony: “We do not want again to go to the 2017 general elections with women expecting to be nominated. They should be elected. If

<sup>95</sup> <http://www.parliament.go.ke/the-senate/committees/committees> on 12th December 2015

<sup>96</sup> Senate, Debate, 12 November 2014, Morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-11-12>

she gives the facilitation that is needed without discrimination, I think those women will come out and stand firm”.<sup>97</sup>

Chairing of committees is critical to the increase in participation of women in parliament as the role requires the chairs and the vice-chairs to not only take charge of committee meetings but also to give reports to the House based on the committee’s decisions and findings. An example would be Hon. Priscilla Nyokabi who, as a result of her role as vice chair of the committee of justice and legal affairs moved the National assembly to adopt the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for Removal of two Commissioners of the Ethics and Anti-Corruption Commission.<sup>98</sup> Women Parliamentarians have noted the importance of the position of chair of the committee and have spoken up when they have felt that a woman deserved to have held the position of chair of a committee, for example, Hon Esther Murugi stated “Cecily Mbarire was removed from the PAC, I expected a woman to take her position. It is not that I doubt Hon. Kanini Kega, I believe that he can do the job but it is only fair that if we are talking about affirmative action and gender balance, we must replace a woman with a woman”.<sup>99</sup>

### 3.5 Legislation and Debate

In the period between March 2013 and June 2015 women sponsored 9 (8%) of the 110 Bills brought before the National Assembly. They further brought 9 of 49 bills before the Senate equating to 18% of the total bills in this period.<sup>100</sup> However, numbers themselves do not reveal whether or not women parliamentarians have increased the discussion on women issues. Thomas S notes that women are more likely to steer the legislation through the political process that addresses issues of women, children and the family.<sup>101</sup> Indeed, these are areas that she states will be of priority to women.<sup>102</sup> Interestingly, women parliamentarians in Kenya did not restrict themselves to the above mentioned issues, instead they covered a broad spectrum of issues, including security, water and agriculture, areas of legislation and policy that would traditionally be considered male areas of interest.

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<sup>97</sup> Senate, Debate, 2 April 2015, Morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2015-04-02>

<sup>98</sup> National Assembly, Debate, 22 April 2015, Afternoon Sitting available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-14-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-14-30-00) .

<sup>99</sup> National Assembly, Debate, 22 April 2015, afternoon sitting, available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-14-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-14-30-00) .

<sup>100</sup> Mzalendo Trust, ‘Debunking Myths: Women Contributions in Kenya’s 11<sup>th</sup> Parliament’, 9

<sup>101</sup> Thomas S, ‘The Impact of Women on State Legislative Policies’, 974

<sup>102</sup> Thomas S, ‘The Impact of Women on State Legislative Policies’, 961

However, women parliamentarians have also paid special attention to those areas considered women's issues areas. This includes the area of health, notably, one of the bills initiated by the women senators' concerned reproductive health care. The devolution of health services under the constitution<sup>103</sup> led to a series of heated debates and has been an area of controversy between the national government and the county governments.<sup>104</sup> Through all this political furor the women parliamentarians of Kenya's 11<sup>th</sup> Parliament, have brought before parliament-and the Kenyan public as a whole-the need for the government to 'to fully equip maternity wards in the counties, to set up more hospitals in order to prevent cases of women walking for kilometers to give birth, to establish ambulance services for the transportation of women to hospital and to staff hospitals with more medical practitioners.'<sup>105</sup> Reproductive health was a key area of concern for women MPs in Kenya for example the Reproductive Health Care Bill, 2014 (Sen. Bill No. 17) by Sen. Judith Sijeny. The Bill seeks to make provision for the actualization of reproductive rights. The right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself and the In-vitro Fertilization Bill, 2014 by Hon Millie Odhiambo. The principal object of this Bill is to anchor the existence and practice of in vitro-fertilization in statute law.

The women parliamentarians also pioneered a number of key laws that affected women, for example, Joyce Lay (a women's representative) highlighted the issue of welfare of mine workers especially women, calling for improved working conditions, in the Mining Bill.<sup>106</sup> Furthermore, Women Parliamentarians called for the creation of nursing homes and for the strengthening of the National Security Social Fund (NSSF) to cover the elderly, they called for an increase of funds to be given to Older Person Cash Transfer (OPCT) System as they are cognizant of the fact that women tend to bear the brunt of duty when it comes to caring for the older and younger generations.<sup>107</sup>

Women Parliamentarians were increasingly more vocal when topics of importance to women were before the House. The in-vitro fertilisation Bill, in particular, proved emotive with women MPs reported to have come out in numbers to recount personal tales of

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<sup>103</sup> Article 186(1), *Constitution of Kenya* (2010)

<sup>104</sup> Mwangi M, 'Cotu and doctors oppose devolution of health services', *Daily Nation*, <http://www.nation.co.ke/news/Cotu--doctors-oppose-devolution-of-health-services/-/1056/2849736/-/lkui3o/-/index.html> on 3rd December 2015

<sup>105</sup> Mzalendo Trust, 'Debunking Myths: Women Contributions in Kenya's 11<sup>th</sup> Parliament'

<sup>106</sup> Mzalendo Trust, 'Debunking Myths: Women Contributions in Kenya's 11<sup>th</sup> Parliament', 16

<sup>107</sup> Mzalendo Trust, 'Debunking Myths: Women Contributions in Kenya's 11<sup>th</sup> Parliament', 16

women in and around the country and even amongst themselves, attempting to persuade their male counterparts on the importance of such a law to the common woman.<sup>108</sup> Hon Mary Wambui Munene pointed out that the in-vitro fertilisation Bill was of importance to women as they tended to suffer more in instances when a couple were unable to bear children. She further noted that, ‘The Government should also make it cheaper for the village woman, who cannot get children to get access to in-vitro fertilisation services. It will be good for this country to start thinking beyond our cultures’.<sup>109</sup> Hon Roselinda Soipan Tuya supported the Bill noting, ‘Childlessness, or the inability of a woman to have children, has been a very common source of domestic violence within our communities. These women are ostracised’.<sup>110</sup> Matters of education were also of importance to the women parliamentarians, who were equally as vocal during the second reading of the Kenya National Examinations Council (amendment) Bill. Hon Christine Oduor Ombaka advocated for the abolishment of the examination fee as the cost was too high for many families. She was supported by Hon Janet Marania Teyiee who stated “pupils cannot make it for that examination because their parents cannot sustain paying their school fees” she also urged the executive branch to reduce school fees to ensure that all children were able to attain their right to education.<sup>111</sup> Furthermore, Hon Christine Oduor Ombaka noted that the abysmal nature of schools around the country ought to be changed. She pointed out that “although we are in the 21<sup>st</sup> Century, some schools look like they are in the 1950s, when schools had been established. They are still not established to this day, yet parents continue to pay a lot of money”.<sup>112</sup>

Women parliamentarians in Senate have been vocal on issues relating to income for families living in rural areas. Senator Elizabeth Ongoro, for example, advocated for government support of coconut farmers noting the economic and health benefits that the plant would provide Kenya.<sup>113</sup> Senator Margaret Nabwala Toili further supported this cause stating that the government should “create the institutional and legal mechanisms to

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<sup>108</sup> Njagi J, ‘MPs quest for motherhood takes centrestage in IVF debate’ *Daily Nation*, <http://www.nation.co.ke/lifestyle/women/MPs-tearfully-debate-IVF-bill/-/1950830/2686634/-/gv3ddoz/-/index.html> on 20 December 2015

<sup>109</sup> National Assembly, Debate, 22 April 2015, Morning Sitting available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-09-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-09-30-00)

<sup>110</sup> National Assembly, Debate, 22 April 2015, Morning Sitting available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-09-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-09-30-00)

<sup>111</sup> National Assembly, Debate, 22 April 2015, Morning Sitting available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-09-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-09-30-00)

<sup>112</sup> National Assembly, Debate, 22 April 2015, Morning Sitting available on [http://info.mzalendo.com/hansard/sitting/national\\_assembly/2015-04-22-09-30-00](http://info.mzalendo.com/hansard/sitting/national_assembly/2015-04-22-09-30-00)

<sup>113</sup> Senate, Debate, 2 July 2014, morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-07-02>

ensure effective services to farmers, especially women”.<sup>114</sup> On the matter of restructuring and expanding the mandate of Kenya Urban Roads Authority (KURA), women senators were the most vocal on the debate that took place on 2 July 2014, with Senators Beth Mugo, Daisy Nyongesa Kanainza and Liza Chelule driving the debate for most of the day, regardless of the fact that this is an area that might be considered more masculine as it does not touch directly on areas that are considered feminine.<sup>115</sup> Women senators have also been vocal on matters of insecurity in the country. With senators Agnes Zani and Janet Ongera expressing interest on the matter of security and its various effects on the economy of the country and the coast region in particular.<sup>116</sup> They have further considered security questions with a “gendered lens” Senator Janet Ongera, specifically spoke on the plight of women following the atrocities that occurred in Kapedo. She stated, “as I speak right now, women who are pregnant have actually miscarried because of these atrocious acts of the military. My heart goes to the woman whose shop was destroyed and yet she had just taken a loan. I urge lady Senators to raise money for that lady so that we restitute her to where she was”.<sup>117</sup>

Kenyan women parliamentarians have also formed a caucus known as the Kenya Women Parliamentary Association (KEWOPA). This caucus currently has 86 members who are drawn from the National Assembly and the Senate.<sup>118</sup> KEWOPA has four main roles; a legislative function – enhance the individual and collective legislation function of MP’s, a representative function- to boost the individual and collective representative functions of MP’s, a political party function –to advance the members participation in political party activities and institutional strengthening– to enhance its institutional capacity of the secretariat to promote and facilitate the members in their legislative, political and representative functions.<sup>119</sup> Members of KEWOPA have initiated a number of bills in both houses of parliament that will directly impact women and women’s lives in Kenya. These include the Marriage Act (No. 4 of 2014), Matrimonial Property Act (No 49 of 2013), Victim Protection Act (No. 17 of 2014) and Protection Against Domestic Violence (No 2

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<sup>114</sup> Senate, Debate, 2 July 2014, morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-07-02>

<sup>115</sup> Senate, Debate, 2 July 2014, morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-07-02>

<sup>116</sup> Senate, Debate, 12 November 2014, morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-11-12>

<sup>117</sup> Senate, Debate, 12 November 2014, morning sitting available on <http://info.mzalendo.com/hansard/sitting/senate/2014-11-12>

<sup>118</sup> [http://www.kewopa.org/?page\\_id=7](http://www.kewopa.org/?page_id=7) on 20 December 2015

<sup>119</sup> [http://www.kewopa.org/?page\\_id=7](http://www.kewopa.org/?page_id=7) on 20 December 2015

of 2015).<sup>120</sup> This illustrates that Kenyan women parliamentarians are currently and actively initiating legislation that directly concerns women and women's issues. The fact that the Acts are being assented could also illustrate that women parliamentarians are becoming more able to ensure that women's problems are adequately handled. The caucus members of the 11<sup>th</sup> parliament have also had more Acts of Parliament assented than they did in the 10<sup>th</sup> parliament, with six Acts in the current parliament to the five that were in the 10<sup>th</sup> parliament.

The Courts have illustrated the effect that this law will have on women. A prime example would be the case of UMM v IMM<sup>121</sup> where the court held that "U made a non-monetary contribution to the development of plots [particulars withheld]-[particulars withheld]. Of significance is that one of them (Plot [particulars withheld]) houses the matrimonial home in which she resides. The offer made by I is that Plot No.[particulars withheld] would be sufficient to settle this matter. On my part, I have no doubt that U's contribution towards the improvement of plots [particulars withheld]-[particulars withheld] deserves acknowledgement". This illustrates that the legislature that women parliamentarians in the 11<sup>th</sup> parliament have successfully passed are indeed having an impact on the everyday lives of women.

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<sup>120</sup> [http://www.kewopa.org/?page\\_id=535](http://www.kewopa.org/?page_id=535) on 20 December 2015

<sup>121</sup> U M M v I M M [2014] eKLR

## 4.0 Comparative Analysis of Women's Representation and Participation

### 4.1 Introduction

This chapter reviews the effect of gender quotas on women representation and participation in the parliaments of Rwanda and Argentina. This is done with the aim of presenting a comparative analysis of the effect of gender quotas in parliaments around the world vis-à-vis in Kenya.

There has been a notable increase in the use of gender quotas internationally to cement the place of women in parliaments. This is an increase from the five countries that had implemented such quotas prior to the 1970s to the more than hundred countries that currently employ gender quotas.<sup>122</sup>

### 4.2 Rwanda

Rwanda has become world-renown for its high percentage of women in parliament.<sup>123</sup> In September 2003 Rwanda elected 39 women to sit in its 80 member Chamber of Deputies, effectively replacing Sweden as the country with the highest percentage of women in its legislature.<sup>124</sup> Rwanda is party to the CEDAW convention and was the first African party to ratify the convention on 2 March 1981.<sup>125</sup> One of the reasons Rwanda has managed to be so successful in ensuring that women are represented in parliament is as a result of having gender quota laws in both its constitution and electoral laws, non-compliance of which results in sanctions being imposed,<sup>126</sup> furthermore, it should be noted that these laws do not relate only to their parliament but also concern themselves with all decision-making bodies.<sup>127</sup> Article 9(4) of the Constitution of Rwanda requires that women hold at least thirty per cent of positions in all decision-making organs.<sup>128</sup> Article 82 states that the

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<sup>122</sup> Bush S, *International Politics and the Spread of Quotas for Women in Legislatures*, *International Organization*, Vol. 65, No. 1 (2011), 103.

<sup>123</sup> Powley E, 'Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families', *The State Of The World's Children 2007 Background Paper*, (2006), 2.

<sup>124</sup> Burnet J, 'Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda', *African Affairs*, Vol. 107, No. 428 (2008), 362.

<sup>125</sup> Thabane T & Buthelezi M, 'Bridging the gap between de jure and de facto parliamentary representation of women in Africa', *The Comparative and International Law Journal of Southern Africa*, Vol. 41, No. 2 (2008), 195.

<sup>126</sup> Thabane T & Buthelezi M, 'Bridging the gap between de jure and de facto parliamentary representation of women in Africa', 195.

<sup>127</sup> Thabane T & Buthelezi M, 'Bridging the gap between de jure and de facto parliamentary representation of women in Africa', 195.

<sup>128</sup> Article 9(4), *Constitution of Rwanda* (2003).

Senate shall be composed of twenty-six members of whom thirty per cent shall be women,<sup>129</sup> while article 54 enjoins political parties to promote gender equality in their recruitment.<sup>130</sup> In an effort to ensure that there is compliance of these gender laws Rwanda has established a Gender Observatory Office whose primary role is to monitor compliance with quota laws at all levels.<sup>131</sup> In 1996, the women parliamentarians of Rwanda formed a cross-party caucus, the Forum of Women Parliamentarians. All female parliamentarians from both houses are members of the caucus. The caucus works across party lines on issues that are deemed important to women. Elizabeth Powley notes that “Women parliamentarians in Rwanda face a double burden, particularly those that were elected on the “women’s ballot” and through the quota system. They must fulfill the same obligations as their male colleagues – participate in the same committee meetings, review the same legislation, and attend the same sessions of Parliament – but they also feel the pressure to examine everything with a “gender lens” as well’.<sup>132</sup>

Devlin C and Elgie R note that given that the Rwandan women deputies seem to form such a unified group in regard to gender issues, some of the more experienced parliamentarians reported that since 2003, they spent less time working on gender issues, which could be attributed to the fact that they no longer felt the need to put in as much individual effort as there were so many other women parliamentarians.<sup>133</sup>

Furthermore, it is noted that Rwanda’s women parliamentarians had a huge role in advocating for women’s right to inherit property, especially following the horrific Rwandan genocide which destroyed families. Consequently, women’s right to inherit land was critical not only to women but to the recovery of Rwanda as a whole.<sup>134</sup> Women parliamentarians have also led to women’s issues being raised more easily and more often with the gender agenda now perceived to be ‘guaranteed’ by the presence of more women.<sup>135</sup>

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<sup>129</sup> Article 82, *Constitution of Rwanda* (2003).

<sup>130</sup> Article 54, *Constitution of Rwanda* (2003).

<sup>131</sup> Article 185, *Constitution of Rwanda* (2003).

<sup>132</sup> Powley E, ‘Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families’, 9.

<sup>133</sup> Devlin C & Elgie R, ‘The Effect of Increased Women’s Representation in Parliament: The Case of Rwanda’, *Parliamentary Affairs* Vol. 61 No. 2 (2008), 247.

<sup>134</sup> Powley E, ‘Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families’, 12.

<sup>135</sup> Devlin C & Elgie R, ‘The Effect of Increased Women’s Representation in Parliament: The Case of Rwanda’, 251.

It is important to note that the women parliamentarians of Rwanda also face a number of challenges. The parliament of Rwanda's ability to draft legislation is limited. A vast majority of the bills are brought to parliament by the executive branch rather than being initiated by Parliament itself.<sup>136</sup> This to an extent has worked to limit the ability of the women parliamentarians to pass legislation that concern women rights in Rwanda. Furthermore, women in Rwanda experience illiteracy and gender based violence which could influence the women who would otherwise utilise the quotas.<sup>137</sup>

There is also need to effectively implement gender laws and policies and to provide capacity building for women who are already in positions of power.

### 4.3 Argentina

Argentina became the first country to pass gender quotas in 1991. As a result of this legacy, Argentina provides an interesting case study on the impact of an increase in the descriptive representation of women on the substantive representation of women. The introduction of the gender quota laws led to an increase in descriptive representation of women in the chamber of deputies from 5% to 14% before reaching 27% in 1995 when the quotas full effects were realised. The gender quota laws were applied to the Senate of Argentina in 2005 and they witnessed an increase from 5.7% to 37.1%. This illustrates that gender quota laws have increased the descriptive representation of women in Argentina. Indeed, Gray notes that the national gender quota may also have a contagion effect on the election of representatives in other governmental and non-governmental institutions.<sup>138</sup> There is hope that growing number of women active in Argentine politics will result in increased pressure from coalitions of women around gender issues. Franceschet and Piscopo observe that the gender quotas of Argentina have had a contradictory effect. They note that while the quotas did give the female legislators a mandate to develop policy they also generated a perception that "quota women" needed special treatment.<sup>139</sup>

However, the *ley de cupo* states that a party contesting two seats must have a female candidate in either their first or second options. This resulted in only two women heading

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<sup>136</sup> Powley E, 'Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families', 10

<sup>137</sup> Thabane T & Buthelezi M, 'Bridging the gap between de jure and de facto parliamentary representation of women in Africa', 198.

<sup>138</sup> Gray T, 'Electoral Gender Quotas: Lessons from Argentina and Chile', *Bulletin of Latin American Research*, Vol. 22, No. 1 (2003), 62.

<sup>139</sup> Franceschet S & Piscopo J, 'Gender Quotas and Women's Substantive Representation: Lessons from Argentina', *Politics & Gender*, 4 (2008), 403.

their parties candidate list in the 2004-2005 legislative session, the remaining 25 held the second position. Piscopo J notes that, 'female senate candidates are generally ranked second also means that women from the second-place party do not win seats; the minority parties do not have female representatives in the Argentine Senate'.<sup>140</sup>

The women legislators have however had a profound impact on the issues affecting women in Argentina. Research suggests that female legislators introduced 79 percent of gender quota bills. Furthermore, women introduced 69 percent of the total violence-against-women bills.<sup>141</sup> Franceschet and Piscopo observe that "the proportion of women within each party introducing women's interests bills is fairly consistent with the proportion of total women introducing bills. In all cases, female party members are more likely to introduce women's rights bills than are their male colleagues, regardless of party membership".<sup>142</sup> They also note that the frequency of women's initiatives has risen with the continued application of quotas, particularly once quotas began to apply to Senate elections.<sup>143</sup>

Critics, however, are quick to point out that the women who enter through the quota can be non/anti-feminist and may vote against feminist initiatives. Critics also point out that the majority of candidates do not have a gender perspective and very few are committed to combating discrimination against women. Gray T notes that while Argentina is an exemplary model of establishing effective gender quota laws, the subsequent impact on public policy requires further study.<sup>144</sup> Franceschet and Piscopo concur with Gray's assessment stating that the evidence reveals that elected women are successfully gendering the legislative agenda but not successfully gendering legislative outcomes.<sup>145</sup> Furthermore, Piscopo J notes that women parliamentarians in Argentina are more likely to advance their political careers if they have un patron- a more prestigious, powerful authority within the party who more often than not tends to be a male figure, 'Women with mentors advance within the party; women not chosen by *un patrón* do not advance'.<sup>146</sup> The favour of the

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<sup>140</sup> Piscopo J, "Engineering Quotas in Latin America", *CILAS Working Papers* (2006) Working-Paper-23, 30.

<sup>141</sup> Franceschet S & Piscopo J, 'Gender Quotas and Women's Substantive Representation: Lessons from Argentina', 410.

<sup>142</sup> Franceschet S & Piscopo J, 'Gender Quotas and Women's Substantive Representation: Lessons from Argentina', 410.

<sup>143</sup> Franceschet S & Piscopo J, 'Gender Quotas and Women's Substantive Representation: Lessons from Argentina', 411.

<sup>144</sup> Gray T, 'Electoral Gender Quotas: Lessons from Argentina and Chile', 63.

<sup>145</sup> Franceschet S & Piscopo J, 'Gender Quotas and Women's Substantive Representation: Lessons from Argentina',

<sup>146</sup> Piscopo J, "Engineering Quotas in Latin America", *CILAS Working Papers* (2006) Working-Paper-23, 39

patron can only be gotten from the female politicians unwavering loyalty and tireless dedication to the party's success (by campaigning, by volunteering, by going block-by-block in cities and towns to organize votes).<sup>147</sup>

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<sup>147</sup> Piscopo J, "Engineering Quotas in Latin America", *CILAS Working Papers* (2006) Working-Paper-23, 39

## 5.0 Discussion

The increased representation of women in Parliament has led to an increase in the proportion of women in the committees of parliament. It has been noted that the 10<sup>th</sup> parliament witnessed an underrepresentation of women in the House Committees with some having no women at all. An injustice that could not be allowed to continue as it is notable that these committees are crucial in determining the House business as well as having oversight to ensure a gender sensitive and responsive Parliament and Government at large.<sup>148</sup> It is no doubt that the pertinent needs of women in areas such as health, education and labour are more likely to be addressed effectively by women MPs at the Committee stage. This differs from the 11<sup>th</sup> parliament where not only have the number of women in each committee increased but has also seen a large percentage of women MPs being elected to chair the various House Committees. This suggests that my hypothesis that the affirmative action laws were intended to increase women's participation in parliament is supported.

However, we cannot take the fact that women are holding chair positions at face value. We must consider the committees they belong to or chair and their possible impact on women policies and issues. As noted earlier, Thomas S suggests that women are more likely to addresses issues of women, children and the family, suggesting that these topics are women's issues topics.<sup>149</sup> Of the committees chaired by women in the 11<sup>th</sup> parliament the majority are concerned with or have the ability to concern these issues as they chair the departmental committees on health, education, research and technology, while being vice-chairs on the departmental committees on labour and social welfare, justice and legal affairs and budget and appropriations. It is hoped that these positions will enable them to steer legislation and policy in a manner that will be beneficial to the women of Kenya. Furthermore, the fact that six of the women who hold elective positions in the National Assembly were elected to the role of Women's Representative is crucial to this study. One of the intended effects of the gender quota laws as established by Article 97(1)(b) of the Constitution was to remedy the fact that there was a lack of visibility of women in the committee stage. It is notable that women parliamentarians are now prominent in the committee stage which is an indication of the increased participation and power of women in parliament. This could be attributed to the fact that women are nearing a critical mass

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<sup>148</sup> Federation of Women Lawyers (FIDA)-Kenya, *A Gender Audit Study of the 10<sup>th</sup> Parliament*, 18.

<sup>149</sup> Thomas S, 'The Impact of Women on State Legislative Policies', 974.

point in parliament and this has enabled them to make a substantive difference in the politics of the country as Dahlerup posited would happen.<sup>150</sup>

However, the National Assembly still evidences that women are not being provided opportunities to chair and oversee committees that are often times considered the more “powerful”/“important”. An example of this would be the Public Investment Committee (PIC), the Public Accounts Committee (PAC)-which provide an oversight and whistleblower role against misappropriation of government funds- and the security committee. An explanation of why this is can be provided by radical feminism as posited by Kate Millet. She notes that as a result of our patriarchy the areas of military, industry and finance are held entirely in male hands.<sup>151</sup>

Kenyan women parliamentarians have not been shy to provide personal experience and testimonies on matters that are important to women in Kenya. Hon Priscilla Nyokabi and Hon Joyce Lay provided testimony on the difficulties that they faced when trying to conceive. Such input and insight would not have been provided by their male counterparts and further reinforces the need for women in parliament as their contribution proved substantive to the debate surrounding the bill.

The effectiveness of women parliamentarians in Rwanda has been enhanced by the powerful cross party caucus– the Forum of Women Parliamentarians. This caucus ensures that women issues are handled regardless of party lines. The same effect is witnessed in Argentina where women legislators vote regardless of political party lines. The same effect can be seen in Kenya where women MPs have come together through their caucus KEWOPA, to ensure that women’s issues are successfully legislated on by Government.

No woman was elected to the senate by the electorate instead the sixteen women Senators were nominated under Article 98(1)(b) of the Constitution of Kenya. Although the Article ensured that there was descriptive representation of women in the Senate, this still leaves the question as to why no women were elected. Liberal feminism posits that this underrepresentation of women stems from a lack of equal opportunities to enter and rise in public affairs.<sup>152</sup> Scrutiny must be undertaken of political parties in order to understand whether or not they provided adequate opportunities for women to contest in the Senate electoral races. Indeed, part of the reason Rwanda has been so successful in attaining high

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<sup>150</sup> Dahlerup D, ‘The Story of the Theory of Critical Mass’, 511.

<sup>151</sup> Millet K, *Sexual Politics*, 25.

<sup>152</sup> Jaggar A, *Feminist Politics and Human Nature*, 181.

representation of women in parliament can be attributed in part to the fact that its Constitution mandates political parties to promote gender equality in their recruitment.<sup>153</sup> However, Geissel and Hust postulate that quota laws have four main outcomes: (a) they encourage women to begin a political career, (b) they enable women to acquire political skills, (c) they facilitate in developing sustained political ambitions and (d) they support non-elite women to join politics.<sup>154</sup> In light of this, the impact of the quota laws can be evaluated at the next general election when we shall assess whether the laws have further encouraged more women to run for various political offices such as Senate. Certainly, the gender quotas will serve to educate the general public that women are able to be effective leaders, and liberal feminists posit that this education will in turn ensure equality between the genders.<sup>155</sup> Women Senators, however, are cognizant of their role in parliament, Senator Martha Wangari points out that she represents two constituencies that of the “young people of the country who constitute over 70 percent of the population and the young women of the country”. The women senators are striving to ensure that their “constituents” are well represented in the Senate. They have ensured that all matters brought before the senate are given a gender outlook by the Senate by recognizing their “constituency”.

Regardless, women in the Senate have to a large extent been more active in debate in the Senate and this can be attributed to the smaller composition of the Senate as compared to the National Assembly.<sup>156</sup> The smaller composition of the Senate means that they have achieved 26% representation in the senate regardless of the fact that they were all nominated rather than elected. This means that they have attained the critical mass point that was hypothesized by Dahlerup to be around 30% and are thus now able to provide a substantial difference in Senate politics.<sup>157</sup>

The 10<sup>th</sup> parliament of Kenya addressed gender inequality in the country by providing several legislation that touch on gender, including the Marriage Bill 2007, the Matrimonial Property Bill 2007, the Family Protection Bill 2007, the Equal Opportunities Bill 2007 and the Affirmative Action Bill 2000.<sup>158</sup> The 11<sup>th</sup> parliament of Kenya has followed by ensuring that these issues and others are legislated by the House. However, while there has

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<sup>153</sup> Article 54, *Constitution of Rwanda* (2003)

<sup>154</sup> Geissel B & Hust E, ‘Democratic Mobilisation through Quotas: Experiences in India and Germany’, *Commonwealth & Comparative Politics*, Vol.43, No.2 (2005), 231.

<sup>155</sup> Tong R, *Feminist Thought: A Comprehensive Introduction*, 2.

<sup>156</sup> Mzalendo Trust, ‘Debunking Myths: Women Contributions in Kenya’s 11<sup>th</sup> Parliament’, 30.

<sup>157</sup> Dahlerup D, ‘The Story of the Theory of Critical Mass’, 511.

<sup>158</sup> Federation of Women Lawyers (FIDA)-Kenya, *A Gender Audit Study of the 10<sup>th</sup> Parliament*, 18.

been an increase in the number of bills that are pro-female most of the bills have not yet been passed by parliament or assented to by the President. The true impact of the bills and policies will only be felt by women in Kenya once they become part of the laws of Kenya. However, we should note that the 11<sup>th</sup> parliament still has two more years left in which these bills can be assented to by the president.

The Argentine women parliamentarians provide a contrast from Kenyan women parliamentarians. Critics of Argentina's quota system are quick to point out that few of the candidates in the Argentine system are committed to combating discrimination against women.<sup>159</sup> This does not appear to be the case in the Kenyan context. It is notable that "Women Parliamentarians in the 11th House worked towards ensuring the interests represented by special groups i.e. women, children and people with disabilities were well articulated and put into consideration during debates and legislation formulation."<sup>160</sup> On the other hand, the Argentine model illustrates that there is still much our women parliamentarians can do in order to keep promoting women's issues in parliament. The Argentine female legislators introduced 79% of gender quota bills and 69% of total violence-against-women bills. These findings illustrate that Kenyan Women parliamentarians need to improve in comparison to their international counterparts.

Nzomo notes that women's access to formal political leadership has been hindered by "i) deeply embedded patriarchal socio-cultural values; ii) undemocratic institutions and policy frameworks; and iii) low levels of civic and gender awareness".<sup>161</sup> It is my opinion that Article 97(1)(b) and Article 98(1)(b) of the Constitution have begun to tackle these problems.

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<sup>159</sup> Gray T, 'Electoral Gender Quotas: Lessons from Argentina and Chile', 63.

<sup>160</sup> Mzalendo Trust, 'Debunking Myths: Women Contributions in Kenya's 11<sup>th</sup> Parliament', 31.

<sup>161</sup> Nzomo M, 'Impacts Of Women In Political Leadership In Kenya: Struggle For Participation In Governance Through Affirmative Action', Institute of Diplomacy & International Studies, University of Nairobi, 1.

## **6.0 Summary, Conclusion and Recommendations**

### **6.1 Summary**

Article 97(1)(b) and article 98(1)(b) of the Constitution of Kenya resulted in an increase of the descriptive representation of women in the country. It further resulted in an increase in the substantive representation of women and women's issues in parliament. It accomplished this by the increase in the number of women who held the positions of chair and vice-chair in the various committees of both Houses of parliament, which enabled them to drive the debate of the house and provide analysis of bills and their effect on the women of Kenya. The Articles were important to this result, since 6 of the 11 women chairs and vice-chairs of the committees in the national assembly were elected as a result of Article 97(1)(b) of the Constitution of Kenya, while all the women chairs and vice chairs of the Senate committees were in parliament as a result of the provision of Article 98(1)(b) of the Constitution of Kenya.

The women parliamentarians further provided an increase in the number of gender sensitive laws in Kenya, and an increase in pro-female policies and legislation being discussed in parliament. This was particularly apparent in Senate where women senators noted the lack of elected women senators in Kenya and advocated for an increased presence of women in the senate races across the country come the next general election.

The women parliamentarians have also been engaged in discussions in areas that would be traditionally considered male areas of interest. They have provided a gender perspective in matters such as security and farming, insisting that the perspectives of women are heard in these areas.

### **6.2 Conclusion**

Article 97(1)(b) and Article 98(1)(b) of the Constitution of Kenya have undeniably increased the descriptive representation of women in Parliament. The effect on the substantive representation, however, is still very much debatable.

However, we must also note that these articles by themselves will not be sufficient to change the patriarchal mindset that liberal and radical feminists postulate cause the lack of equal and fair women's representation. We must consider the Rwandan example and entrench the principles of women's equality in all aspects of public office and public life. It is not enough to have laws that only govern national parliamentary representation; we must

effectuate laws that enable an increase in both descriptive and substantive representation of women in all levels of government ranging from government offices, county governments to the national government.

Women Parliamentarians have ensured that they have actively participated in areas that concern children and women. They have been extremely vocal in Parliament and have ensured that MPs are aware of the position of women around the country when it comes to these matters. Providing personal testimonies and experiences is one way in which they have differentiated themselves from their male counterparts.

### **6.3 Recommendations**

We must not restrict women to the “role of the kitchen”. We must advocate and allow women to participate in the decision making of more than just the “kitchen” matters. In addition, we must do away with the patriarchal ideologies that have plagued the government and Kenyan society and we must allow the women to be involved in diverse fields such as finance, defence and technology. I note that women are beginning to become more involved in other male dominated fields. An example of this would be the Cabinet Secretary of Defence being a woman, Ms Rachael Omamo. It would be interesting if the women parliamentarians were provided such an opportunity and they headed committees which concerned areas that were traditionally dominated by men.

The laws that concern affirmative action must concern all aspects of the public service and not just parliament. Both Rwanda and Argentina have laws that ensure that women are provided adequate representation in all aspects of public service. Rwanda has gone as far as implementing this in its Constitution. The Kenyan parliament should be cognizant of this and should create laws that ensure that the representation of women is felt everywhere and not just in parliament.

Women cannot simply rely on the affirmative actions articles provided in the Constitution to get their voices heard in parliament. More work should be undertaken by the national government and the various political parties to ensure that more women are visible in the ballot in order to provide a chance for the electorate to vote these women into future parliaments of Kenya.

The issue of the two thirds gender rule is one that has been widely discussed by politicians. The merits of having more women in parliament are evident and politicians should strive to ensure that the critical mass point of 30% is met in the next general election to ensure

that women are able to drive and effectuate policy and legislation that will directly affect the lives of all Kenyan women.

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