

Policy Brief



CONSOLIDATING GAINS AND CONFRONTING CHALLENGES: NOMINATED WOMEN'S EXPERIENCES IN PARLIAMENT AND COUNTY ASSEMBLIES



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We trust that you will find this Policy Brief a useful resource.



Elsy Sainna
Ag. Executive Director



I. BACKGROUND: WOMEN'S REPRESENTATION

Although the population of Kenyan women has always been high in comparison to men's and remains so to date,¹ women have not participated meaningfully in elective politics. It is because of Kenya's patriarchal system that is supported by tradition; cultural beliefs; religious beliefs which hold that leadership positions are to be held by men; and traditional gender roles wherein boys are groomed to be leaders and girls to be homemakers therefore the expectation is that women would not be both homemakers and politicians.² Women aspirants in Kenya face numerous barriers during political parties' nominations and at polls in general and by-elections.

These barriers include intimidation and acts of violence directed at women aspirants and their supporters, ignorance of electoral laws, lack of resources that is requisite to run successful campaigns in order to clinch positions in legislatures, sexism, political patronage in favour of male candidates, and misogyny as women aspirants are perceived as intruding into 'male designated spaces.' Notwithstanding these barriers Kenyan women have participated in elective politics 1969 but their representation in legislatures has always remained at less than 10% hence dismally low within the Eastern Africa region.³

II. PURPOSE OF NOMINATION

One of the tools inbuilt into the Constitution for ensuring political gender equality is the provision of nomination by political parties in the National Assembly, the Senate and County Assembly. At the National Assemblies, Article 97(1) (c) of the Constitution provides for twelve (12) members to represent special interests. At the Senate, Article 98(1) (1)(b) provides for sixteen (16) women members nominated by political parties according to their proportion of members.

At the County Assemblies, Article 177(1) (b) provides for special seat members necessary to ensure that no more than two-thirds of its members are of the same gender. In a strong step towards political gender equality, Article 81(b) of the Constitution stipulates, 'the electoral system shall comply with the principle of not more than two-third of the members of elective public bodies shall be of the same gender.'

The Constitution goes on further to mandate the State to establish and implement affirmative action that would ensure compliance with this principle.⁴

The Constitutional provision for **nominations** is informed by the fact that: numerous **barriers** hinder women's meaningful participation in politics and as such, women have always been underrepresented **yet** they constitute the majority in the population; and Kenyan society has been and remains greatly disadvantaged and underdeveloped because it has not optimised the women's skills, knowledge and experiences. The Constitutional provision for nominations takes cognisance that this unjustifiable historical and current injustice needs to be addressed through the affirmative action gender principle, aimed at **ensuring equitable** representation of women on equal footing with men, **promoting realisation** of women's political potential, and **securing benefits** of women political representation and participation in public office and for the society.

¹ <http://countrymeters.info/en/Kenya> accessed on 3rd January 2017.

² Effie Owuor, Women and Political Inclusion in Kenya: A Historical Overview, 1963-2016, *Kenyan Section of International Commission of Jurist, Gender and Political Processes in Kenya* (2016) p.17-20

³ *ibid.* p.14.

⁴ Articles 27(6) and 27(8).

III. NOMINATIONS: PARLIAMENT AND COUNTY ASSEMBLIES

On 4th March 2013 Kenya conducted its first general elections under the Constitution of Kenya 2010. The elections garnered significantly low number of women, below the Constitutional minimum threshold, in Parliament (the Senate and the National Assembly) and County Assemblies.

All Senate's 47 seats were won by men translating to 0% of elected women, out of National Assembly's 349 seats only 63 women were elected translating to 19%, and out of County Assemblies' 1450 seats only 84 women were elected translating to 5.7%. To address this shortcoming and in line with the Constitution of Kenya⁵, 18 women were nominated into the Senate, 5 women were nominated into the National Assembly and 680 women were nominated into the County Assemblies.

Albeit these nominations the numbers of women in Parliament still does not meet the Constitutional threshold of 'not more than two-third of same gender' as the women legislators stand at 19.8% and 26.9% in the Senate and the National Assembly, respectively. However, various County Assemblies have met the constitutional threshold because of the unequivocal provision of Article 177(1) (b). For example women membership of Kisii and Kisumu County Assemblies stands at 35% and 39% respectively, and the national percentile of women Member of County Assemblies (MCAs) stands at 34.2%.⁶ Women legislators in Parliament and County Assemblies comprise those who were elected by the electorate (hereinafter referred to as elected women legislators) and as well the ones who were nominated by political parties as per political party-list submitted to the Independent Electoral Boundaries Commission, by 21st January 2013.⁷ (hereinafter referred to as nominated women legislators).

IV. WHO GETS NOMINATED?

Nominated women legislators have rich professional profiles. A cursory glance individual profiles illuminate in-depth expertise in matters of public interest such as human rights, health, law, education, peace-building and community work.⁸ It is because of the expertise and active participation in the political parties, particularly community mobilisation, that nominated women legislators secured nomination through their political parties. Also, nominated women legislators are often candidates who either ceded their interests to run for elective positions or upon their political parties' requests to do so in favour of another candidate within the parties. Therefore, it stands to reason that nominated women legislators have the same political mettle, clout and competences as their elected counterparts.

V. NOMINATED WOMEN LEGISLATORS' WORK

An introspection into Hansard of the 11th Parliament (the National Assembly and the Senate) and those of Kisumu and Kisii County Assemblies reveal that nominated women legislators directed their significant efforts **to address socio-economic challenges** among key population and vulnerable persons⁹ such as children, the elderly, and persons with disabilities, youth, marginalised communities and women in the following ways:-

⁵ Article 27(8).

⁶ Kenya National Bureau of Statistics, Economic Survey 2016 p.68.

⁷ www.iebc.or.ke also see http://www.standardmedia.co.ke/?articleID=2000075271&story_title=iebc-pushes-party-list-submission-deadline [accessed on 25th February 2017].

⁸ Heinrich Boll Stiftung East and Horn of Africa, *86 and Counting: Women Leaders in Kenya's 11th Parliament*(March 2015). <https://ke.boell.org> [accessed on 20th January 2017]. Also see, Association of Women Media in Kenya, *Women on the Move*; Members of County Assembly Kisumu 2013-2017[2014] <http://amwik.org> [accessed on 20th January 2017].

⁹ Definition of vulnerable groups as stipulated in Article 21(3) of the Constitution of Kenya 2010.

1. Sponsored legislations: to improve people's livelihood; enhance access to quality education and library facilities; boost access to healthcare including reproductive healthcare; ensure equitable sharing of benefits from natural resources; safeguard probity in public finance management and combat corruption; guarantee better working conditions for persons in employment, self-employed persons, and for small scale and artisanal miners; confront food insecurity; combat drug abuse; holistically protect the rights of persons with disabilities; and enhance access to clean water for all.¹⁰ In the Senate nominated women legislators introduced fifteen (15) bills which are in various stages of reading.¹¹ Notable bills in this regard that have been passed by the Senate and referred to the National Assembly are:-

- The Reproductive Health Care Bill sponsored by Senator Judith Sijeny;
- The Food Security Bill, and The National Youth Service(Amendment) Bill sponsored by Senator Beatrice Elachi;
- The University(Amendment) Bill sponsored by Senator Halima Abdille;
- The Natural Resource (Benefit Sharing) Bill sponsored by Senator Agnes Zani;
- The Employment(Amendment) Bill sponsored by Senator Martha Wangari; and
- The County Library Service Bill sponsored by Senator Joy Gwendo.

Also, Senator Martha Wangari sponsored The County Governments(Amendment) Act that was passed by both the Senate and the National Assembly into law.

In Kisumu County Assembly, the Kisumu County Persons with Disability Bill, 2016 sponsored by nominated woman MCA Hon. Caroline Agwanda was enacted into law.

2. Introduced motions to improve people's livelihood, promote good governance and human rights protection in Kenya. In Parliament, nominated women legislators introduced motions for: safeguard of security particularly among the pastoralists communities; increased access to clean water; better maternal and neonatal healthcare, and better healthcare service-delivery at counties; enhanced efforts to eliminate harmful practices such as female genital mutilation and child marriage; holistic advancement of rights of persons with disabilities; improvement of physical infrastructure such as roads; and increased economic opportunities for youth and women.¹²

In the County Assemblies, the nominated women MCAs in Kisumu and Kisii County Assemblies tabled motions that sought to: enhance access to healthcare by vulnerable groups; secure economic empowerment for women; establish gender-based violence rescue centres; improve waste-disposal and conservation of environment; reduce illiteracy and unemployment; and combat teenage pregnancies.

3. Exercised oversight role alongside their elected counterparts. In Parliament, the nominated women legislators were active in nomination and vetting of candidates into Constitutional Commission such as Judiciary Service Commission and Teachers Service Commission.¹³

In Kisumu County Assembly nominated women MCA were on the forefront to ensure that its County Public Service Board membership included marginalised groups, and that the budget of the Kisumu County Assembly complied with the law.

4. Advocated for adequate budgetary allocation towards healthcare, access to justice, education, access to water, and conducive working conditions. Notably, in the National Assembly Hon Amina Abdalla advocated for increased budgetary allocation for the Judiciary of Kenya; and in Kisumu County Assembly the nominated women MCA successfully advocated for free education for children in early childhood development centres within Kisumu County.

5. Infused Gender perspectives in policy formulation, law making procedures, and budgetary processes and called for gender friendly working conditions for legislators. Senator Martha Wangari successfully advocated for the establishment of crèche (nursery for nursing mothers) in Parliament. The nominated women legislators in Parliament as part of Kenya Women Parliamentary Association (KEWOPA) developed a gender responsive budgeting guidelines for Parliament, and built capacity of women legislators in the County Assemblies on gender-responsive budgeting.¹⁴ Also the nominated women legislators utilised the Guidelines as benchmark during budget-making processes.

¹⁰ See <http://www.kewopa.org> [accessed on 6th January 2016.

¹¹ Republic of Kenya, 11th Parliament Senate Bill Tracker as at 20.02.2017 <http://www.parliament.go.ke/the-senate/house-business/bills-tracker> [accessed on 25th February 2017.

¹² <http://www.parliament.go.ke/the-senate/house-business/motions-tracker/item/2166-motions-tracker-2015>

accessed on 23rd December 2016.

¹³ Mzalendo, Debunking Myths: Women's Contributions in Kenya's 11th Parliament (2015)p.15.

¹⁴ See <http://www.kewopa.org> [accessed on 6th January 2016.

6. **Tabled petitions**, in Parliament and County Assemblies as presented to them by members of the public in line with Article 118 of the Constitution. These petitions primarily centered on calls for environmental protection; enforcement of conducive working environment in fisheries, sugarcane plantations and transport sectors; and actions to be taken to address mismanagement of statutory women finance groups.
7. Employed **participatory, collaborative and conflict-resolution approaches** in their work – across party hence advancing desirable democratic and governance ideals of society. Notable examples are wherein, in 2016 nominated women legislators in Parliament supported twenty-six (26) Bills that were enacted into law. Generally, it is worth-mentioning nominated women legislators made **strong contributions** during debate on both public and privately sponsored Bills aimed at enhancing access to justice for key population and the vulnerable persons. These Bills that have now been enacted into law include the Victim Protection Act, Protection against Domestic Violence Act, Access to Information Act, Small Claims Courts Act and Legal Aid Act, the Marriage Act, the Matrimonial Property Act .
8. **Demonstrated strong imagery** of women in leadership, which has encouraged women to seek political leadership, hence increase in number of women aspirants and candidates. So far, organisations that work with women aspirants indicate there is increase in number of women political aspirants for the 2017 general elections.

Albeit their core competences and milestones achieved, nominated women legislators still have to contend with considerable challenges that impact on their ability to effectively and efficiently discharge their functions.

VI. CHALLENGES

1. No Voting Rights for Nominated Senators

The Kenyan Constitution does not create a distinction between the functions of nominated legislators and their elected counter-parts in the National Assembly and the County Assemblies thus placing them on an **equal footing**. Rightfully so because the qualifications requirements, stipulated in the Constitution and relevant legislation,¹⁵ for both nominative and elective seats are the same. However, the Senate is an exception. According to Article 123 of the Constitution the nominated legislators voting is restricted as voting in the Senate is steered by the leader of delegation who is defined as an elected Senator under Article 98(1) (a) of the Constitution. As a result of this, nominated senators (both men and women) have **no voting rights**, including ironically on the Bills they sponsor in the Senate.

Recommendation:

Parliament ought to amend the Constitution of Kenya 2010 so that nominated Senators have equal voting rights as their elected counterparts.

2. Perceptions: Friends or Foes of Elected Legislators?

Because political parties' nomination processes into Parliament and County Assemblies is different across the parties, not well-defined and unpublicised, nominated women legislators are often viewed as having been merely rewarded by their political 'god-fathers' with the nominations seats. Further, their elected legislators perceive nominated women legislators as a **'rank' below** them and in worse case scenarios as 'flower-girls' because they 'did not invest resources and fight it out' at the polls to get into the legislatures. This notion is reinforced by the fact that political parties' party-list of nominated candidates submitted to the Independent Electoral Boundaries Commission (IEBC) has often been contested by political parties' members and the nominated women legislators' competitors who aver they had have been unfairly left out of the party-list.¹⁶

¹⁵ Section 25(1) of Elections Act 2011

¹⁶ <http://www.standardmedia.co.ke/article/2000149229/tna-suffers-blow-as-court-nullifies-nomination-of-15-mcas> accessed on 9th January 2017.

During their tenure, nominated women legislators sharpen their expertise, learn the rules of engagement as lawmakers and highlight their **profiles**. Thus a significant number of nominated women legislators have often successful run for elective positions in subsequent elections.¹⁷ Against this fact, nominated women legislators are seen by their elected counterparts as potential strong **competitors** in future elections. This perception is true when it is considered that 60% of nominated women legislators that participated in ICJ-Kenya's research indicated they would be seeking an elective position in the 2017 general elections. Hence, it is not uncommon for the elected legislators to 'suppress' the nominated women legislators which in turn significantly impairs the latter's ability to discharge their functions effectively.

- National Gender and Equality Commission working in conjunction with political parties, relevant government agencies and pertinent organisations should conduct media and public awareness advocacy to raise the profiles and mandate of nominated women legislators so as to combat poor public perception on their roles. They should also conduct awareness on how citizens can effectively engage nominated women legislators to provide transformative leadership in line with chapter six (6) of the Constitution. These public and media advocacy efforts should be heavily directed at grassroots levels.

Recommendations:

- Enactment of the Elections (Political Party Nominations) Regulations 2017. The Chairperson of the IEBC should expedite the process of enacting the Elections (Political Party Nominations) Regulations 2017 as mandated by Section 109 of the Elections Act 2011. This would ensure parity, clarity and fairness of nomination processes in the party-list; and advance fulfilment of Article 73(2)(a) of the Constitution of Kenya that provides one of the guiding principles of leadership and integrity is selection on the basis of personal integrity, competence and suitability. Cumulatively, the Regulations will significantly confront the negative perceptions towards nominated women legislators.
- Political Parties should establish and strengthen their internal mechanisms of nominating persons on the party lists submitted to IEBC so that it is in line with the Elections Act 2011, the Elections (Political Party Nominations) Regulations 2017 once enacted into law, and the Constitution of Kenya 2010. In particular, these mechanisms should be clear, reasonable, procedurally fair and effective.
- Also, the composition of relevant decision-making bodies in political parties with the mandate of nominating persons into the party lists should have gender-parity- not have more than two-third of same gender in the bodies.

3. Restriction Accessing Constituents

By virtue of their position, it is taken that nominated women legislators represent women as an interest group, although their constituency includes the key population. In order to provide transformative and servant leadership to their constituents, nominated women legislators ought to and must meet with elected counterparts in order to participate with their constituents to note the constituents' political and socio-economic needs, challenges and expectations.

This in turn enables the nominated women legislators and elected representatives to adopt policies and enact laws that are responsive to their constituents' day- to- day lives, and steer debates and motions that accurately represents constituents' interests.

However, nominated women legislators face **restrictions** in accessing their constituents. The elected legislators hold the view that because the nominated women legislators were not elected they lack 'legitimate' mandate of representation.

Hence the elected legislators are very **territorial** and demand prior consultation from nominated women legislators before accessing their women constituents, who are universal. Any attempt to access ward, constituency and county without prior consultation and permission has incurred dire consequences including violence meted on the nominated women legislators.

¹⁷ For example Hon. Millie Odhiambo the MP for Mbita Constituency and Hon. Racheal Shebesh the Nairobi City County Women Representative.

Recommendations

- Relevant Organisations should support nominated women to raise their profile through online platforms; audio-visual media; community media such as vernacular newsletters, radio and television stations; and informal fora at grassroots levels so as to enhance their chances of, and actual interaction with their constituents.
- Support to Develop and Implement Strategic Plans: Pertinent organisations should support nominated women to develop and implement strategic plans. These plans ought to include information on; innovative tactics for accessing and engaging the electorate; profile enhancement; how to earmark priority areas of focus; and provide strategic and transformative leadership.
- Support for collaboration: Pertinent organisations should support informal and formal collaboration between nominated and elected women legislators through existing structures in Parliament and at County Assemblies.

4. Inadequate Resources and Infrastructure

Legislators need adequate resources and infrastructure that includes office space and equipment, technical, research and support staff, and administrative support to discharge their functions effectively and efficiently. Although nominated women legislators have tabled bills, motions and petitions during their tenure, they strongly suggested that with adequate resources they could do much more. The effect of inadequate resources was evident in the quality of draft laws developed by County Assemblies that in some instances were in violation of, or inconsistent with the national laws. Unlike their elected legislators, nominated women legislators in County Assemblies have had to execute their functions while heavily under-resourced and with minimum administrative and technical support.

Majority of nominated women MCAs have not been allocated designated working spaces like their counterparts and as such have had to work from alternative working spaces, restaurants or even their cars. For example, in Kisii County Assembly, nominated women legislators were allocated office spaces and handed their offices keys which were subsequently **snatched** from them, and so they had to look for alternative office spaces. Further, nominated women MCAs have neither been allocated requisite administrative support staff nor resources to secure such staff that include drivers and personal assistants. Aggregately, this

has not only imposed immense pressure, **low morale** and frustrations on the nominated women legislators but also fuel public perception that their office is merely **ceremonial** and that the legislators do not wedge power in the legislature.

The Parliamentary Service Commission(PSC) and Salaries and Remuneration Commission(SRC) have put in place **varying** payment of mileage structure for the nominated and elected legislators. Accordingly, nominated women legislators in Parliament are only allocated offices spaces in Nairobi and only given mileage allowance based on where they were registered as voters. The implication of this is that often the legislators are mainly accessible in Nairobi which limits their interaction with the electorate they represent.

Paradoxically, the electorate still seek out the nominated women legislators to advance their pressing issues in the House, since they are easily accessible, and based on the notion that the legislators are honest and more receptive than their male counterparts. Nominated women legislators, like their elected counterparts employ their own personal assistants, although only a few of the legislators employ professional ones. In the Senate there was noticeable **good practice** wherein women Senators employed personal assistants who doubled up as researchers and thus supported the Senators optimally in their work.

Recommendations

- Parliamentary Service Commission and Salaries and Remuneration Commission should put in place a framework that ensures equality between nominated and elected members' access to resources including mileage. County Assemblies should be encouraged to put in place similar framework and implement them.
- National Gender and Equality Commission working in conjunction with relevant government agencies and non-state actors should monitor Parliament and County Assemblies' fidelity to the Constitutional provision on equality and non-discrimination in so far as access to resources and infrastructure by nominated and elected legislators is concerned.
- Political parties should encourage their members nominated into legislatures to employ professionals support staff.

- County Assemblies need to establish and strengthen mechanisms of giving technical and infrastructural support to nominated women legislators. Such support should include tailor-made induction for personal assistants and researchers to the legislators.
- Pertinent organisations should provide technical support to nominated women legislators in the County Assemblies where the need is dire. This support could take the form of embedded researchers and consultants, office spaces, model legislations, and information materials.
- County Assemblies should take advantage of the Senate's venerable experience and camaraderie the Senate has towards County Assemblies, so as to glean best practices from the Senate. In particular, County Assemblies should utilise the resources and facilities of the Senate's County Liaison Desk in the Office of the Speaker, and hold periodic forums between the Senate and County Assemblies to share best practices. Additionally, County Assemblies should also take advantage of the vast experience and expertise in the Office of the Clerk of the National Assembly to learn best practices on how to discharge their legislative functions effectively, and as well to hold periodic learning forums.
- Pertinent organisations should support the County Assemblies to hold such learning forums with the Senate and the National Assembly.

5. Marginalisation in Leadership and Decision Making Processes

Both elected and nominated legislators strive and lobby aggressively to be in influential House committees and as well to **secure** position of chairperson or vice-chairperson in the Committees. Although all nominated women legislators in Parliament are members of its Committees they seldom lead the Committees. In the National Assembly, only one (1) nominated woman is the chairperson of its thirty (30) committees thus only **3%**. In the Senate only three (3) and seven (7) nominated women legislators are chairpersons (thus **13.6%**) and vice-chairpersons (thus **31.8%**) respectively, of its 22 committees (including the joint committee of the Senate and the National Assembly). Although it is worth-mentioning that Senator Beatrice Elachi nominated woman legislator in the Senate is the majority chief whip. In the Senate there was gender **equity** in the composition of House Committees thus in compliance with 'not more than two-third of same gender principle' in each of the Committees.

Nominated MCAs were sworn-in after their elected counterparts had been sworn-in as MCAs and constituted the County Assemblies' House Committees. As such, the nominated women MCAs had to advocate aggressively to be included in the already constituted House Committees.

In Kisumu County Assembly, nominated women legislators are vice-chairpersons of its eleven (11) out of twenty-eight (28)¹⁸ thus culminating to **39.2%**. It is also worth mentioning that in Kisumu County Assembly the speaker, deputy speaker and the deputy whip are women.

In Kisii County Assembly, nominated women legislators are vice-chairpersons in its three (3) out of sixteen (16) committees¹⁹ thus culminating to **18.8%**. While it is commendable that nominated women legislators have leadership positions as vice-chairpersons, it has the effect of reinforcing the **perception** that nominated women legislators rank below their elected counterparts.

Nominated women legislators at County Assemblies intimated that they are excluded from management of development funds by their elected counterparts, particularly the County Bursary Funds and Ward Development Funds. According to the legislators, the elected MCAs undertake the process of beneficiary identification and fund allocation without their participation. By the same token, nominated women legislators in National Assembly are **excluded** from the management of National Government Constituency Development Fund and the Affirmative Action Development Funds. Similarly, Senators (both elected and nominated) do not have designated development funds.

Nominated women legislators' limited participation in the House Committees, in Parliament and County Assembly is compounded by the fact that most of them are first timers in Parliament and County Assemblies. The legislators also have to balance their political parties' interests in legislatures, which they opine has the effect of curtailing their participation; this is a **difficult balancing** act as often their political parties' neither induct nor communicate clearly to the nominated women legislators what is expected of them by the parties. Nominated women legislators have to quickly learn on the job which, may take approximately 1-2 years before their presence is felt in the House and publicly, particularly in terms of lawmaking and exercising oversight.

¹⁸ <http://www.kisumuassembly.go.ke> [accessed on 9th January 2017].

¹⁹ See <http://www.kisii.go.ke> [accessed on 9th January 2017].

Even then, the process of acclimatising the Houses' rules of engagement is **challenging** as the nominated women legislators have to do this with limited resources and infrastructure.

Nonetheless, it is worth-mentioning that a few nominated women legislators have been fortunate to receive mentorship from their elected counterparts. Also, nominated women legislators in Parliament underwent an induction course although it was not tailor-made for them as the induction was a single one for all Parliamentarians that ended up being 'meet and greet' for former Parliamentarians that made it back into the House. Ruefully, nominated women MCAs did not have any form of induction or orientation.

Recommendations:

- Parliamentary Service Commission ought to conduct tailor-made induction and continuous capacity building sessions for nominated women legislators, and their professional and support staff.
- County Assemblies should also conduct tailor-made induction and continuous capacity building sessions for nominated women legislators, and their professional and support staff.
- County Assemblies should ensure that composition of their House Committees reflect constitutional requirements of 'not more than two-third of same gender' in the House Committees.
- Nominated women legislators should form and strengthen their caucuses to enable them to effectively engage with their elected counterparts in the House. Such efforts could include forming strategic alliances-across party lines, advocacy and resource mobilisation to secure their significant participation in House Committees.
- Political parties should build capacity of its nominated members with a view to ensure that they meaningfully engage in the House. In particular, political parties should leverage on its elected legislators who are either leader of majority or leader of minority in the House to ensure nominated women legislators are proportionately represented in the House Committees. This will ultimately raise the profiles of the political parties.

6. Gender-based Violence

Gender-based violence²⁰ is one of the factors that impede realisation of women's political rights as envisaged in Article 38 of the Constitution. Although women legislators, both elected and nominated, **'break the glass ceiling'** of sexism and male chauvinism to get into the House, they still have to contend with these, and gender-based violence in the House. However, nominated women legislators bear a huge brunt of these, often manifest in being addressed pejoratively, name-calling, such as 'bonga points' (top-up), physical and verbal assault, public humiliation, not being listened to while on the floor of the House, being **sidelined** and their positions being usurped. A classic example of usurpation is in Kisii County Assembly wherein elected male legislators took up nine (9) vice-chairpersons positions in House Committees that had been earmarked for the nominated women legislators.

In a forlorn turn of events, there have been noted incidents of nominated women legislators being publicly **humiliated** by their male colleagues (also staff), whose cumulative effect is to erode the dignity of Parliament and County Assemblies. For example, a male MCA of Kisii County Assembly retorted in a public event to a nominated woman legislator that she should keep quiet in his presence because she has not undergone female circumcision.

A nominated woman MCA of Kisumu County Assembly was **physically assaulted** by a male colleague in the House. These are just but a few examples.

Unfortunately, Parliament and County Assemblies do not have cogent mechanisms to curb and address these kinds of sexism, male chauvinism and gender-based violence. The overall effect of these is **unconducive** working environment for women legislators that ultimately affects their performance, yet they are subjected to intense scrutiny by the public, which is discriminatory as male legislators are not subject to similar scrutiny.

The Standing Orders of the Parliament (the Senate and the National Assembly) and as well of Kisumu and Kisii County Assemblies **prohibit** use of unsavoury language or exceptional language and require members of the Assemblies to apologise for using such words. The Standing Orders also prohibit threat, use of violence, conducts that are detrimental to the dignity and/or orderly procedure

²⁰ As defined in Section 3 of the Protection against Domestic Violence, No. 2 of 2015 Laws of Kenya. Includes verbal, physical, sexual harassment, physiological, emotional violence.

of the House, creation of disorder or acts that are **disorderly**. Failure to adhere to these provisions in the Standing Orders merits sanctions imposed by the Speaker or the Chairperson of Committee.

Given gender-based violence has not been emphatically prohibited in the Standing Orders, it is imperative that the Speakers of the Parliament and the County Assemblies **enforce** the standing orders as an immediate remedy to curb incidents of chauvinism, sexism and gender-based violence meted on women legislators, particularly the nominated ones. In similar regard, the chairpersons of House Committees in Parliament and County Assemblies should enforce Standing Orders. It cannot be overemphasised that exhibition of sexism, male chauvinism and gender-based violence flagrantly violate the provisions of chapter six(6) of Constitution of Kenya, and the Public Officers Ethics Act, which legislators are bound to uphold.

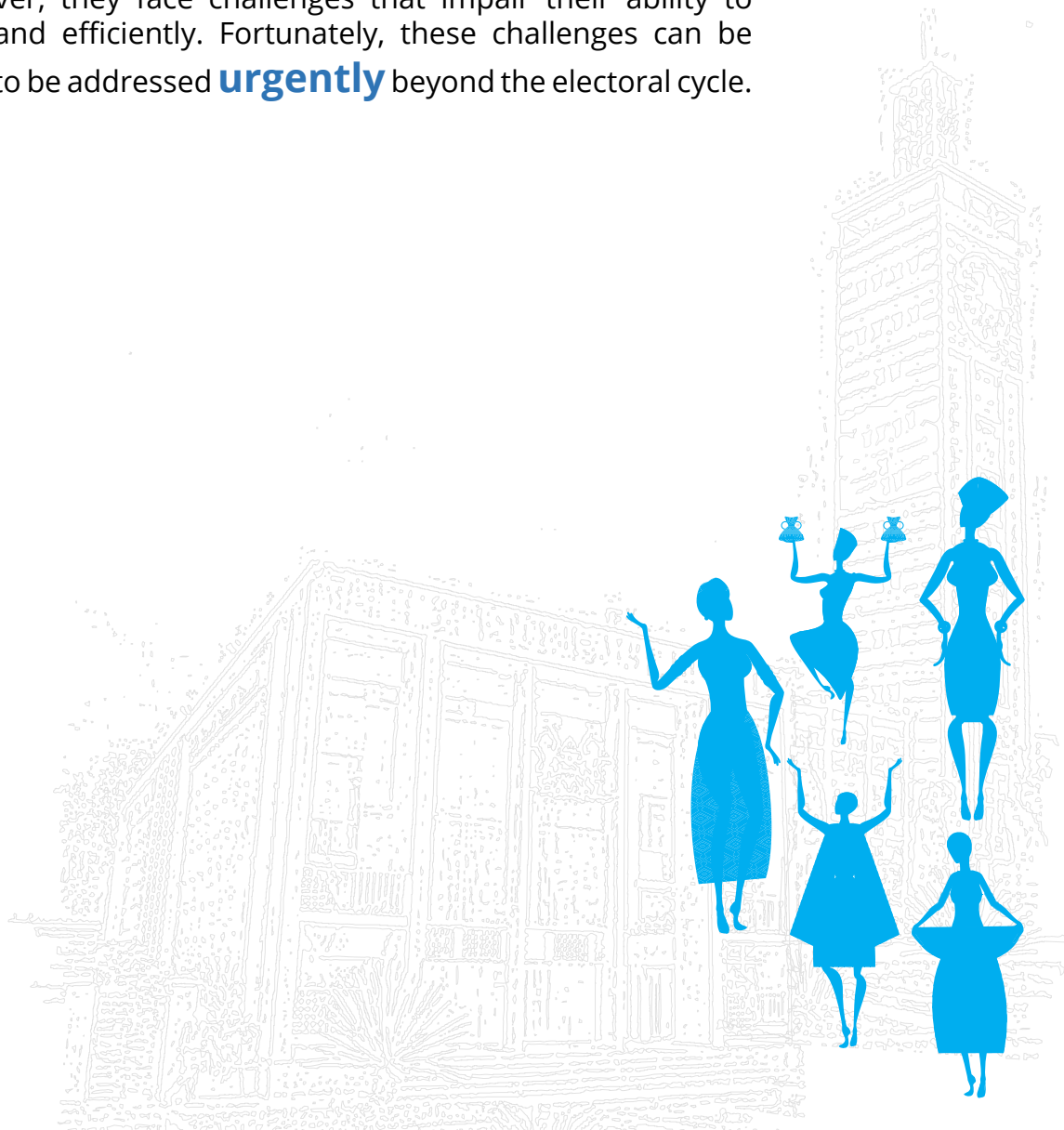
Given sexism and male chauvinism are an **unwarranted** common experiences, the elected and nominated women legislators have joined forces, in the form of caucuses²¹, to **combat** these vices, and as well advocate for issues that significantly affect women such as reproductive health, gender-based violence, and small and medium enterprises. Such caucuses are, KEWOPA, Kenya Women Association of Senate and Kisumu County Assembly Women Caucus for its Assembly, and a fledging national caucus for nominated women MCA.

Recommendations:

- Speakers and Chairpersons of Parliament and County Assemblies should enforce Standing Orders to combat and curb incidents of chauvinism, sexism, and gender-based violence.
- Parliament and County Assemblies working in conjunction with the National Gender and Equality Commission, and relevant government agencies ought to develop and implement gender policy, and code of conduct on gender relations. Once developed the code of conduct should be included as part of contract of public service in Parliament and County Assemblies.
- Women MCAs in Kisii County Assembly should be encouraged to form a women caucus.
- Pertinent organisations should give technical support to Kisii and Kisumu County Women Caucuses. This support could take the form of; developing and implementing strategic plans, researchers and relevant professional staff , capacity-building, office space and equipment.
- Women Caucuses in Parliament and County Assemblies ought to advocate for establishment and strengthening of their Houses redress mechanisms to address sexism, chauvinism and gender-based violence. Such mechanism should reinforce Constitutional requirements on Chapter Six (6) on Leadership and Integrity and as well the Public Officers Ethics Act that require State Officers (includes Parliamentarians and MCAs) to conduct themselves in manner that does not bring disrepute to their offices. The mechanisms should also augment and effect the gender policy and the code of conduct on gender relations once developed.
- National Gender and Equality Commission working in conjunction with relevant government agencies, the Parliamentary Service Commission and County Assemblies ought to monitor and advocate for conducive working environment for women legislators including through: capacity building; support women's caucuses to form strategic alliances with friendly gender-sensitive male legislators to combat sexism, chauvinism and gender-based violence; and litigation (if necessary).
- Pertinent Organisations ought to work in conjunction with the media and academia to create and raise visibility of nominated women legislators' work; and make strong case on why nominated women legislators should be afforded maximum support for a conducive work environment free from gender-based violence. The organisations should also monitor proceedings in the Parliament and the County Assemblies with a view to name and shame incidents of sexism directed towards women legislators; and as well steer public discourse that de-normalise gender-based violence directed at women legislators.

Conclusion

Nominated women legislators have core competencies to discharge their mandates. They bring on board expertise, skills and knowledge which contribute to Kenya's overarching quest for political, economic and social development. However, they face challenges that impair their ability to function effectively and efficiently. Fortunately, these challenges can be addressed and need to be addressed **urgently** beyond the electoral cycle.



ABOUT ICJ KENYA

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is an autonomous national section of the International Commission of Jurists, based in Geneva, Switzerland. ICJ Kenya is a not for profit, non-partisan, membership organization with a membership constituting members from the Bench and Bar.

ICJ Kenya's mission is to promote the justice, human rights and democracy in Kenya and around Africa through the application of legal expertise and international best practices.

As part of promoting good governance in electoral process, ICJ Kenya has worked closely with Parliament (Senate and the National Assembly), County Legislatures, the Parliamentary Initiatives Network, Kenya Women Parliamentary Association (KEWOPA) and other partners to promote electoral reforms that are responsive to the concerns of women in Kenya.

ICJ-Kenya's work with County Assemblies involves providing technical support in achieving their constitutional legal mandates. ICJ Kenya has previously worked with National Assembly and Senate to analyse the implementation of affirmative action provisions under the Constitution as well as revision of the Standing Orders.

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