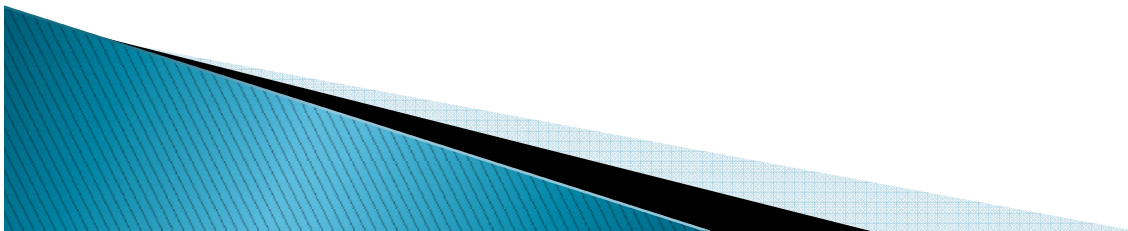


COST OF CONSTITUTIONAL AFFIRMATIVE ACTION FOR ELECTIVE POSITIONS IN COUNTY ASSEMBLIES IN KENYA.

A Presentation during the Kabarak University
5th Annual International Conference

BY

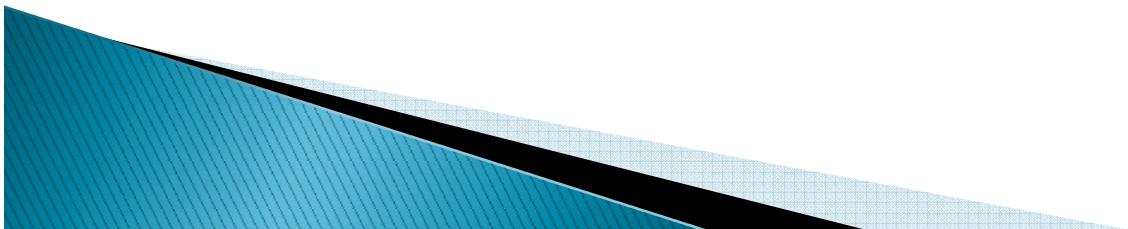
Richard Kigen Koech



Introduction

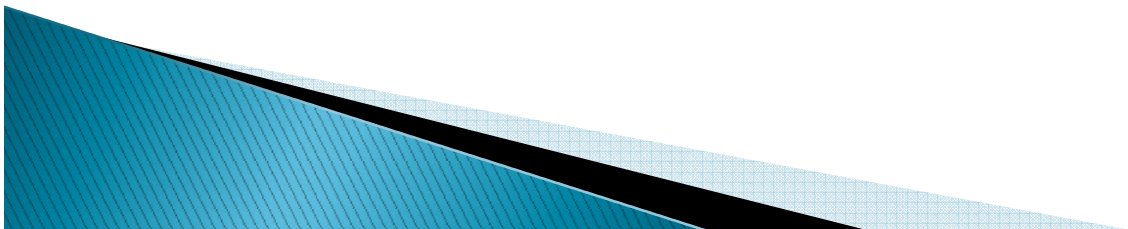
- ❖ The Constitution of Kenya, 2010 prescribed the process leading to the determination of membership of the various institutions and organs of governance.
- ❖ The numbers, especially for political representation represents an enormous leap from the previous constitutional order.

“Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender” (Article 197).



Introduction...Cont'

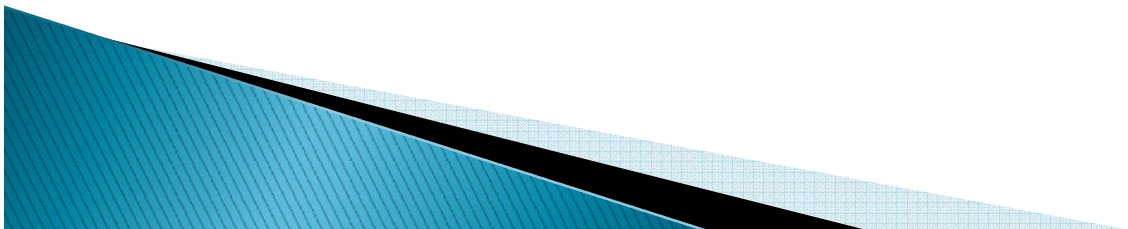
- ❖ This constitutional requirement may be interpreted as an affirmative action intended to address the lack of adequate representation of women in elective and governance positions in the past.
- ❖ This topic is put into perspective by carrying out a contextual analysis of affirmative requirements of the constitution in elective positions in Kenya.



Problem statement

- ▶ The constitutional provision led to additional 777 individuals nominated by political parties throughout the country as members of County Assembly (MCAs).
- ▶ 589 of the nominated MCAs were gender top-up (to attain one-third rule for one gender)
- ▶ 188 were nominated to represent the youth and the minority/marginalized groups.

This paper sought to establish the cost implication of affirmative action for county assemblies in Kenya.

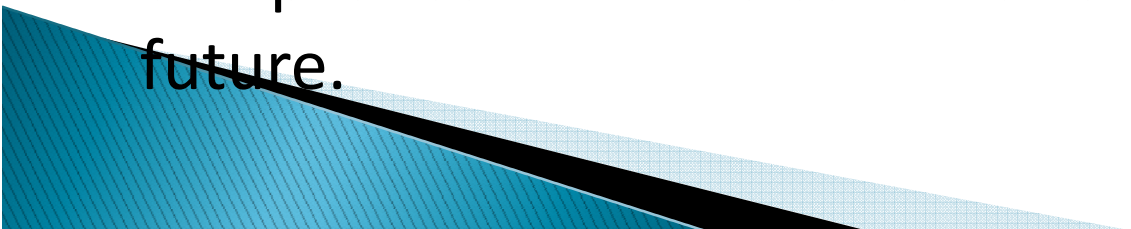


Objectives and Importance of the study

Objective: This paper seeks to establish the cost implication of the new constitutional order as far as affirmative action for County Assemblies is concerned.

Importance: It offers insight on the financial burden which comes with implementation of the affirmative action.

This study will be useful in political decision making. The results of this study will also inform fiscal planners on the resource requirements needed to ensure compliance with this constitutional provision in the future.

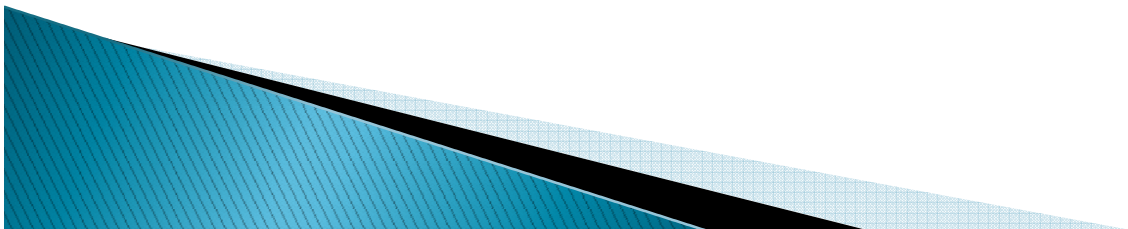


Contextual Analysis

Affirmative action and programmes permeates all institutions established by the CoK 2010 but prominence is given to elective positions and bodies:

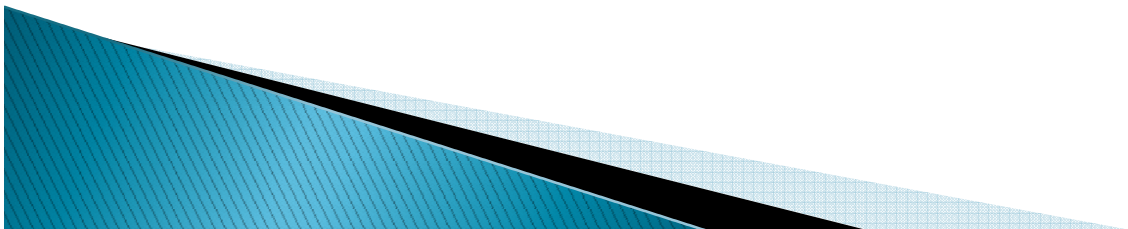
The National Assembly

- ▶ forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- ▶ sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected;



Contextual Analysis (Cont'd)

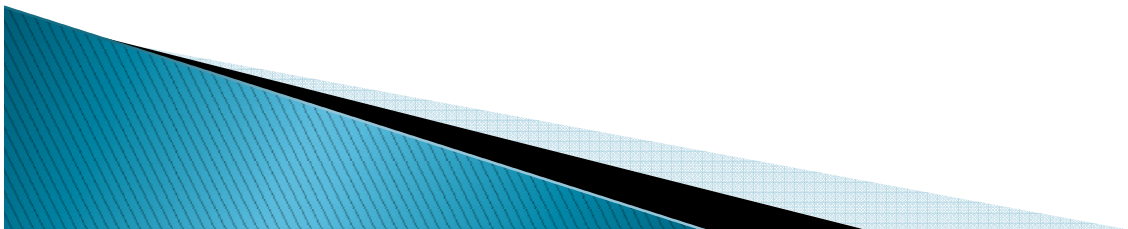
- ▶ 12 nominated by political parties in accordance to their proportion of members in the Assembly to represent special interests including the youth, persons with disabilities and workers is another constitutional affirmative requirement.
- ▶ The constitutional affirmative requirement, therefore, leads to an additional 59 members to the National Assembly.



Contextual Analysis

The Senate

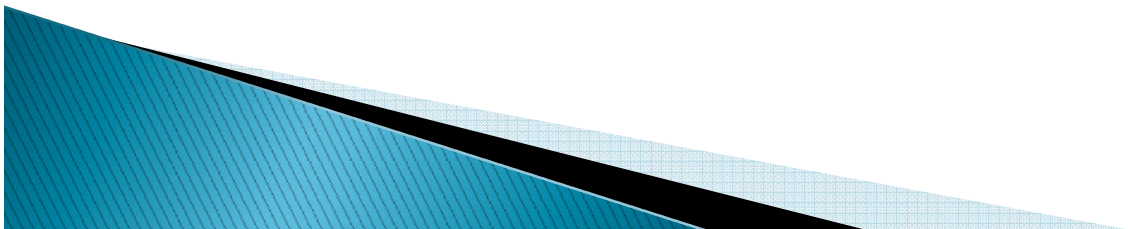
- ▶ 16 women members who shall be nominated by political parties according to their proportion of members of the Senate elected;
- ▶ 2 members, being one man and one woman, representing the youth; and
- ▶ 2 members, being one man and one woman, representing persons with disabilities
- ▶ This implies that the constitution provides an additional 20 members towards attainment of the affirmative threshold.



Contextual Analysis

County Assemblies

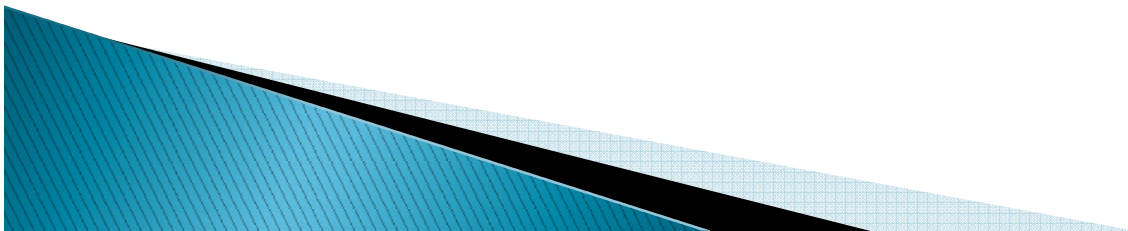
Kenya is divided into **one thousand four hundred and fifty (1,450)** electoral Wards. 1,368 are male while 82 are female(NGEC, 2014). The attainment of one-third-to-two-third constitutional provision requires at least 479 members of the county assemblies to be women. To attain this threshold implies that a total of 397 special women MCAs were necessary to ensure that no more than two-thirds of the membership of the assembly are not of same gender.



The concept of affirmative action

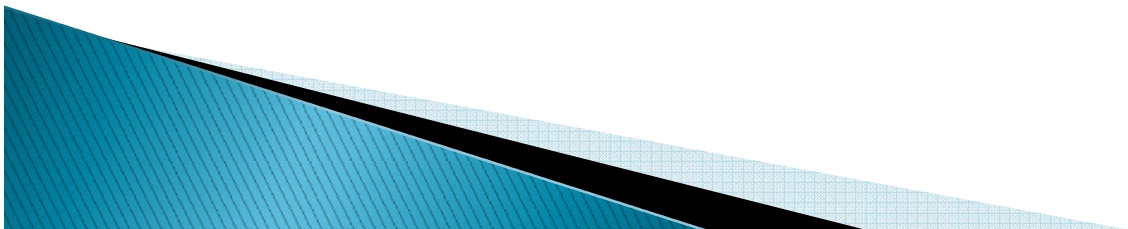
Affirmative action means a deliberate move to reforming or eliminating past and present discrimination using a set of public policies and initiatives designed to help on the basis of color, creed, geographical location, race, origin and gender among others.

It takes into account under-representation and insignificant occupation of positions by some minorities in the society. The underlying motive for affirmative action is the principle of equal opportunity.



Arguments for Affirmative Action

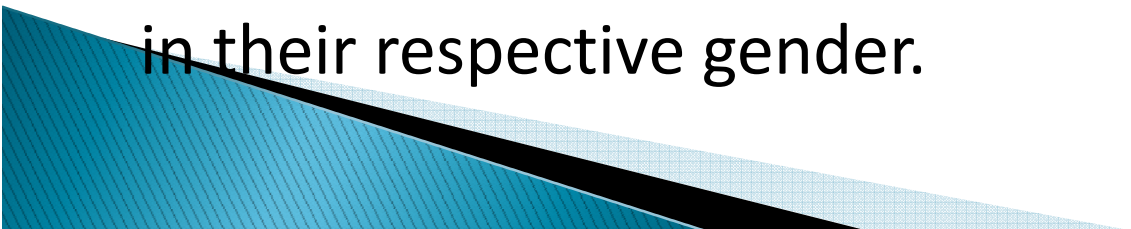
- ✓ It creates opportunities for women and other previously disadvantaged groups to showcase their talents, skills, and leadership qualities thereby compensating for their historical discrimination
- ✓ It provides role models
- ✓ It promotes diversity and encourages public welfare for common good by increasing opportunities for previously disadvantaged groups
- ✓ It creates organizational harmony



Women representation in Kenya

Women make up 52 percent of the population; however Women's representation in elective position has yet to reach any meaningful ratio vis-a-vis their proportion. Women's representation in Kenya has been dismal compared with her East African neighbors.

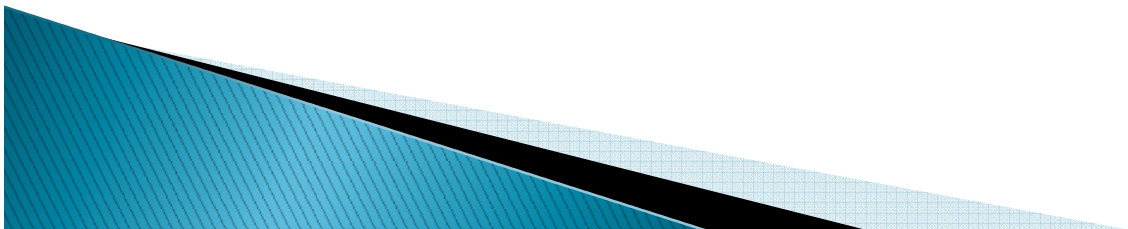
During the last general election, only a few members of the female gender were able to contest and win election as members of county assemblies of their respective counties. In most of the counties, not even a single member of the female gender won an election in their respective gender.



The cost of the constitutional affirmative action

Research conducted by the institute of economic affairs reveal that a single nominated position will cost Kenya taxpayer annually:

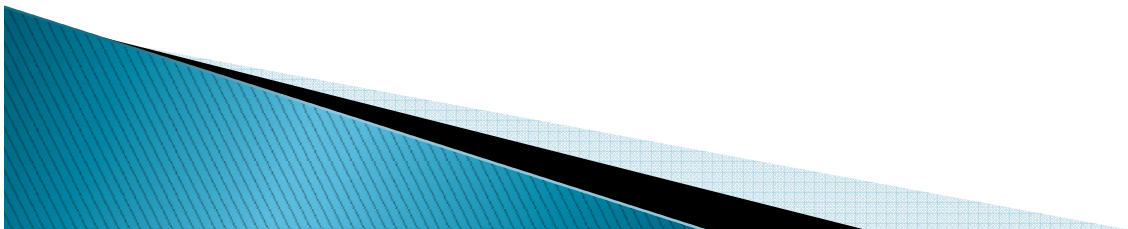
- ❖ Member of the Senate: Sh31.3 million
- ❖ Member of National Assembly: Sh21.1 million



Study results and Affirmative Action cost

Total of 777 individuals were nominated as MCAs by political parties throughout the country in fulfillment of the requirement for affirmative action after the last general election held in 4th March 2013. Nairobi, Kakamega, Kiambu and Kisii counties (in that order) had the largest number of nominations. Laikipia, Tharaka Nithi, Kirinyaga and Bomet counties had the number of least nominations.

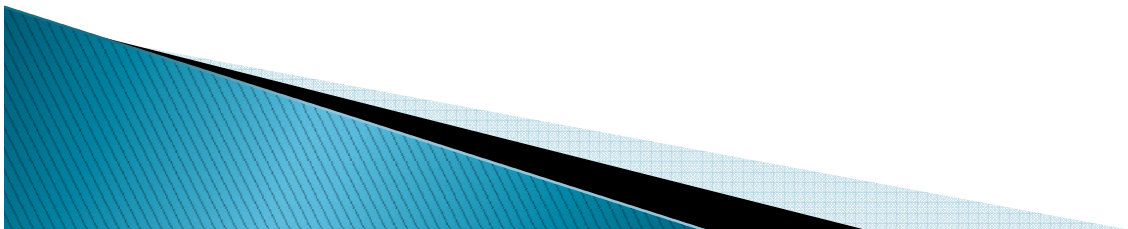
589 of the nominated MCAs were gender top-up (to attain one-third rule for women) whereas another 188 were nominated to represent the youth and the minority/marginalized groups.



Study results and Affirmative Action cost...Cont'

The Average annual cost for each MCA is **Kenya Shillings Five Million seven Hundred twenty seven Thousand seven Hundred and fifty five only (Ksh. 5,727,755).**

The total annual cost of the 777 nominated MCAs under the constitutional affirmative action is **Kenya Shillings Four Billion four Hundred fifty Million four Hundred sixty five Thousand five Hundred and ninety eight only (Ksh. 4,450,465,598).**

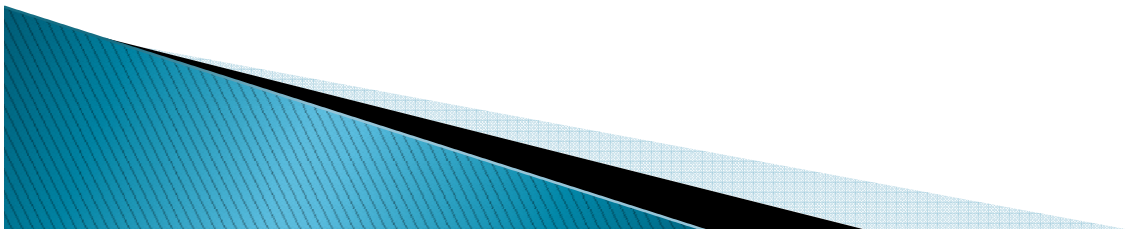


Alternative spending of the Nominated MCAs Allocation

Construction of standard eight-lane controlled-access highway

Construction of a kilometer of eight-lane controlled-access highway (like the Thika road Superhighway) costs an average of Kshs. 550m per kilometer. Kshs. 4.5 billion can build 8 km road of such standard annually.

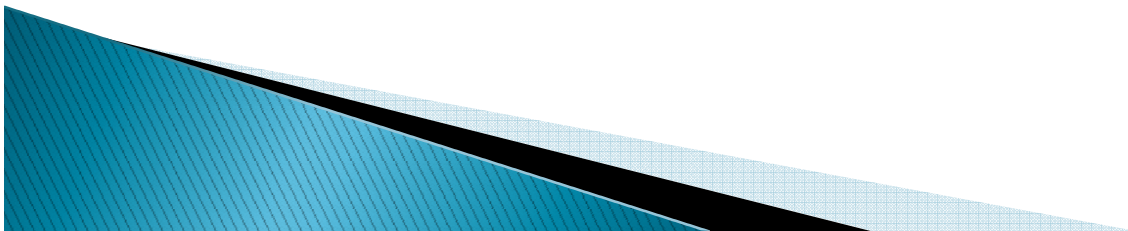
This will help ease congestion in cities and save on time and money; which will have direct impact on the output of the economy.



Alternative spending of the Nominated MCAs Allocation

County Budgets for 2015/16 Financial year

The total amount spent on nominated MCAs in one fiscal year is a close estimate of the allocation for counties like Baringo, Bomet, Busia, Kericho and Nyeri in the 2015/16 financial year. These allocations are adequate to pay over four thousand staff, meet all operation expenses and leave at least Ksh. 1.35 Billion for development projects.

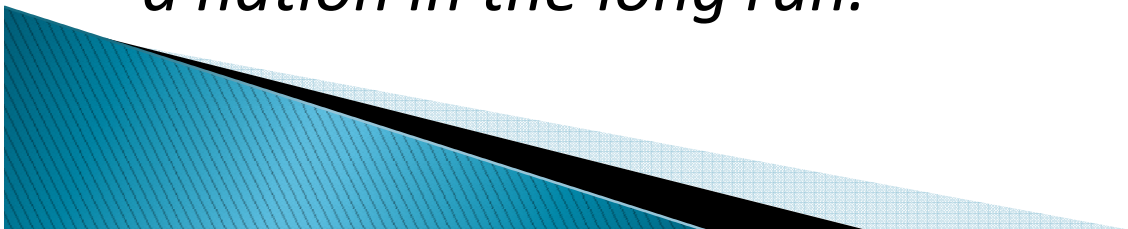


Alternative spending of the Nominated MCAs Allocation...Cont'

Construction of Classrooms for Free Primary Education

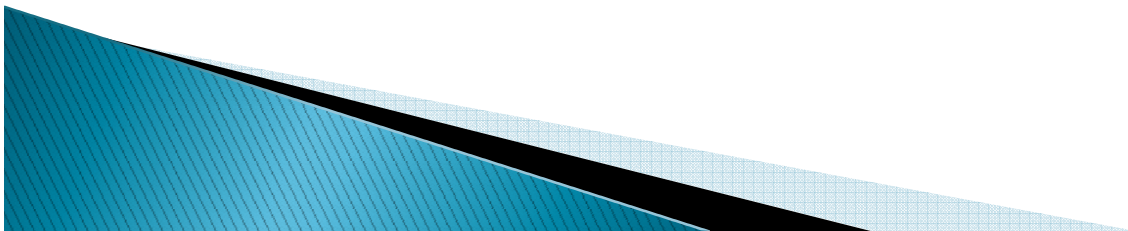
A standard cost of a stone/ block classroom is Kshs 1 million. Kshs 4.5 billion can build 4,500 classrooms (averagely 96 per county or 3 per ward) annually.

This will improve the standard of the learning facilities and will have a positive reflection on academic performance and general literacy level. This will translate to self-reliance and economic sustainability of a nation in the long run.



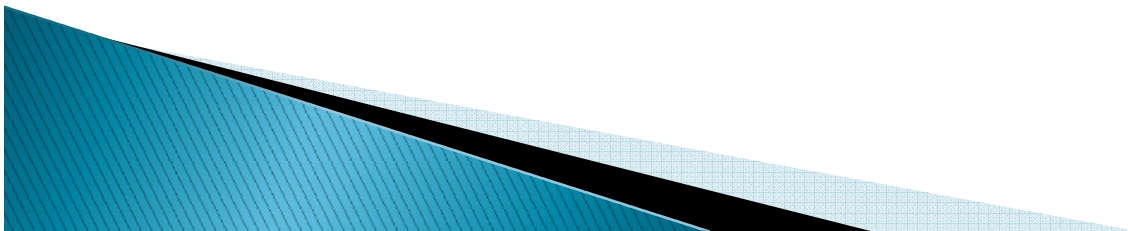
Conclusions

From the study findings, it is apparent that it cost Kenyan taxpayer Kshs 5,727, 755 more for any additional M.C.A to fill the gender rule gap, with a total of Kshs 4,450,465,598 as being the annual cost of affirmative action gender rule on county assembly. However this cost can be avoided if the gender rule can be met through election of requisite number of gender.



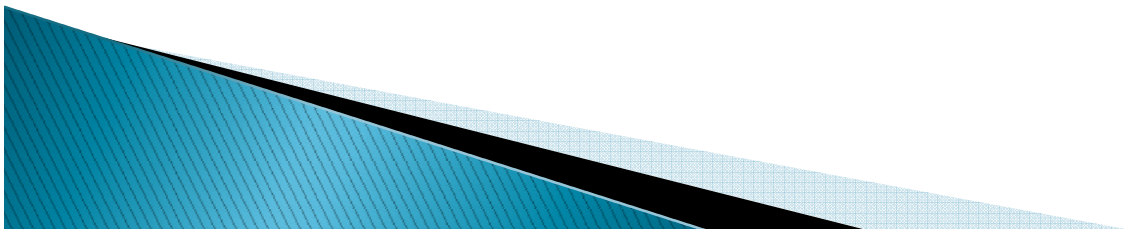
Recommendations

This study recommends that the government should develop programs to ensure that political, economic and socio-cultural factors that impede women participation in electoral process should be addressed in order to minimize the spending on nominated MCA. This can be addressed through Party policies on selection of candidates for nomination in the party's strongholds which should be made to deliberately target women.



Recommendations

- ▶ The gender principle may also be attained progressively through elections. If this is taken as an alternative, the time period for nomination of women to elective positions should be restricted to a specific time period (say 20 years) so that women can also be forced to strive for competitive election instead of making attainment of affirmative requirement a blank cheque to them.



Limitations of the study

The study investigated the cost implication of the two third gender rule in the county assemblies in Kenya. While it appreciates that the gender rule applies to other elective positions at the national and appointive positions both at the national and county assembly, the study only limits itself to the cost of affirmative action rule at the county assemblies of Kenya.

The study also did not consider that value for gender representation in elective position in County Assemblies. There is need, therefore, to carry out a study which seeks to present a cost-benefit analysis of gender representation in elective positions.

