




FIDA-KENYA
**IT IS TIME TO
IMPLEMENT THE
TWO THIRDS GENDER RULE**

LEGAL & POLICY GAP ANALYSIS ON WOMEN'S POLITICAL PARTICIPATION IN KENYA

Vision

A society that respects and upholds women's rights.

Mission

The promotion of women's individual and collective power to claim their rights in all spheres of life.

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Abbreviations

ACHPR	African Charter on Human and Peoples' Rights on the Rights of Women in Africa
CECs	County Executive Committees
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CIC	Constitution Implementation Commission
COVAW-K	Coalition of Violence Against Women (COVAW) - Kenya
COVID- 19	Corona Virus Disease
CRAWN Trust	Community Advocacy and Awareness Trust
CREAW	Centre for Rights Education and Awareness
CSO	Civil Society Organization
FGDs	Focus Group Discussion
FIDA-Kenya	Federation of Women Lawyers-Kenya
GBM	Green Belt Movement
GBV	Gender Based Violence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICPD	International Conference on Population and Development
IEBC	Independent Electoral and Boundaries Commission
KEWOPA	Kenya Women Parliamentary Association
KWPC	Kenya Women's Political Caucus
LKWV	League of Kenya Women Voters
MCA	Member of County Assembly
MCAs	Member of County Assembly
MP	Member of Parliament
NCSW	National Commission on the Status of Women
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organisation
ORPP	Office of the Registrar of Political Parties
PPF	Political Parties' Fund
PWD	Person with Disability
SDGEA	AU Solemn Declaration on Gender Equality in Africa
UDHR	The Universal Declaration of Human Rights

FIDA-Kenya conducted this study with the objective of mapping out legal and policy gaps as well as barriers that impede women's political participation in Kenya. This study reviewed the legal, institutional and social contexts in which women vie for election and serve in office, at both the national and county levels. It highlighted the challenges faced by women in seeking political office and those they face to while in office. The report also reviewed the role of key stakeholders in promoting women's political participation and made recommendations on how these institutions could be more effective.

The analysis was conducted at the national level and at the county level in eight counties: Bungoma, Elgeyo Marakwet, Garissa, Homa-Bay, Kirinyaga, Kitui, Kilifi and Samburu counties.

Key Findings

- All respondents interviewed highlighted the persistence of violence, threats of violence and verbal abuse as barriers that deter women from running for office and undermine the effectiveness of those serving in political positions.
- The legal framework governing women's participation and representation in politics is robust. However, widespread failure to comply with the spirit and letter of the law limits women's presence and influence in government.
- Within most county legislatures the Gender Principle has been met through the nomination of additional members (top up). A comparable mechanism for the National Assembly and Senate is not in place, with parliament remaining non-compliant.
- Respondents cited the financial costs of running a campaign as a major barrier. This affects women disproportionately as they do not have equal access to financial resources as male candidates.
- Those occupying nominated seats within national and county legislatures are not entitled to the same benefits, privileges and development funds as those who are elected. The ability to fund and spearhead development projects is one of the main ways in which constituents judge their representatives' effectiveness. As cited by one of the nominated MCAs from Kirinyaga County, without the same resources as men, they were perceived as having less power and authority compared to their elected male colleagues.
- Widespread confusion exists about the respective roles and responsibilities of different office bearers, particularly Women Representatives and nominated MCAs. The creation of the Women Representative position has contributed to the perception that women have 'their' seat and so should not be put forward by parties for other elected positions.
- Training of women aspirants should start early in the electoral cycle, not right before the election.



INTRODUCTION



1.1 Background

This report presents the findings and recommendations for the Policy Gap Analysis In Relation To Women's Political Participation In Kenya by the Federation of Women Lawyers In Kenya (FIDA). The goal of the analysis was to map out legal and policy gaps as well as barriers that impede women's political participation. It provides recommendations and lessons learnt that can enhance women's participation in politics and governance. This analysis was conducted at the national level and at the county level in eight counties: Bungoma, Elgeyo Marakwet, Garissa, Homa-Bay, Kirinyaga, Kitui, Kilifi and Samburu counties. Further, the analysis identified the barriers and enablers to women's access to political decision-making roles, and their ability to influence policies and legislation once in these roles.

The findings summarized in this report will contribute to a contextualized understanding of the power dynamics that can enable women to not only strengthen their quantitative representation—the numeric presence of women in leadership roles—but also to exert more substantive influence when reaching these decision-making positions. It is worth noting that this study has taken place 10 years since the enactment of the 2010 Constitution.

This analysis sought to explore the policy and legal gaps that hinder the full participation of women in politics. It sought to make recommendations to bridge the implementation gap that exists between the laws for equitable gender representation and the reality that exists in Kenya today. It explored the election phase, which included insight into the legal framework on elections and political parties as well as the role of political parties and their machinery in promoting or hindering women's participation. It also explored the In-office period, measuring the qualitative impact of women in political office, through holding key offices and substantive policy input.

1.2 Methodology and Approach

The goal of this policy and legal analysis was to map out legal and policy gaps as well as barriers that impede women's political participation. It also sought to provide recommendations and lessons learnt that can enhance women's participation in politics and governance. This analysis was being conducted at the national level and at the county level in seven counties: Bungoma, Elgeyo Marakwet, Garissa, Homa-Bay, Kirinyaga, Kitui, Kilifi and Samburu counties.

The specific objectives of this assignment were:

- 1.To assess the existing legal and policy framework on women's political participation and governance.
- 2.To identify gaps present in the legal and policy framework on women's engagement in governance.
- 3.To determine existing legal and policy barriers hindering women from meaningful political participation and engagement in governance.
- 4.To evaluate the implementation and impact of the existing laws and policies on women's political participation and governance.
- 5.To develop a set of recommendations based on findings and lessons learnt that can enhance women's political participation and governance at the national level and in the seven counties.

This study adopted a mixed method approach using both quantitative and qualitative approaches and both data primary and secondary data were collected. Primary data collection included in-depth interviews, key informant interviews and focus group discussions (FGDs) with relevant stakeholders. A wide variety of key stakeholders were consulted, who were aware of the local context and could provide unpublished information. These stakeholders included local academic institutions, think tanks, CSOs, government officials at national and sub-national levels, Gender Development Partners Group and program beneficiaries. Secondary data was collected through a comprehensive desk review.

Focus groups: Five focus groups were carried out from July 2021 to September 4, 2021. Participants were largely elected and nominated Members of County Assemblies from Elgeyo Marakwet, Homabay, Kitui, Kilifi and Samburu Counties.

Individual interviews: Interviews were carried out from June 2021 to September 2021 with representatives of various CSOs, international organizations, government agencies and political parties. All interviews were conducted virtually.

Desk research: These methods were supplemented by in-depth desk research, including a detailed review of previous election reports, gender analysis reports and Kenya's legal framework.

1.3 Limitations

Over the course of conducting the research, a range of methodological challenges were experienced. The research took place in the advent of the COVID-19 pandemic, and as such with the containment measure put in place, the consultant was not able to visit the various counties. However, interviews were conducted online. Another challenge faced was the non-responsiveness from respondents identified. Researchers also encountered difficulties in getting confirmations and responses from female politicians in the National Assembly as well as Governors. Most significantly, the team was unable to conduct interviews with the Cabinet Secretary for Youth and Gender Affairs as well as women with leadership role in political parties except for one party.

These methodological challenges shaped the type of data the research team was able to gather and the conclusions drawn. In order to address these limitations, the team redirected focus on understanding the dynamics of women's political leadership at the county level, as the team was able to access respondents and secure interviews with key individuals at this level. It also became clear that the effects of devolution, distinctions between nominated versus elected seats in the County Assemblies, and the process of vying in competitive elections at the county level varies substantially across counties. .

1.4 Context of Women in Politics

Women make up more than 50% of the world's population, yet they are consistently underrepresented as voters, political leaders and elected officials. This is despite global consensus that gender equality is one of the ultimate development goals, and a major driver of human development. Equitable political participation of women is crucial in its intrinsic value as well as to secure democratic gains and to widen the range of perspectives considered in policy and decision-making

The inclusion of gender quotas in legal frameworks has had a marked impact on women's political participation. Countries with reserved seats or legislated quotas, Kenya being one of them, have slightly higher representation (11.8%) than those without. This mechanism however seems more effective in preventing backsliding as women's political participation does not grow, but plateaus after their implementation.[2] This phenomenon tallies with the Kenyan experience where between the 2013 and 2017 elections, the number of women in parliament increased marginally by 15%, while that in county assemblies remained static.

The safeguarding role filled by affirmative action is critical with the national dialogue that arose around the Building Bridges Initiative Constitutional Amendment Bill. The Bill sought to alter the current provisions on reserved seats, from preservation of seats in parliament to political parties proffering a list of candidates that complies with the two thirds gender rule.



The Bill also provided for 2 senators to be elected for each county, one man and one woman. While the Bill and the entire BBI process was declared unconstitutional, its inclusion of measures to address the two-thirds gender principle in the 2010 Constitution evidences the place of affirmative action in enhancing the representation and participation of women in the political and governance processes. Despite being a signatory to international conventions and agreements which persistently stress on the role of women's equal participation in political leadership, Kenyan women continue to be marginalized in the sphere of leadership and decision making. .

The Kenyan Vision 2030, the country's development blueprint that aims at developing Kenya into a newly industrialized country by the year 2030, also pointed out that sustainable development cannot be achieved without the participation of both men and women in decision-making. Further in 2010 the country adopted a constitution which sought to reverse centuries of marginalization against women and ensure their equal treatment and involvement in all spheres of societal affairs from the social, economic to the political

Article 81(b) of the Constitution provides that not more than two thirds of the members of elective public bodies shall be of the same gender. What the constitution does not provide for is the methodology to be used to ensure implementation, although it created women representative positions. Consequently, Kenya is still grappling with the strategies of implementing the gender rule. This has further been exacerbated by cultural, and socioeconomic variables as constituting the context of women representation, with electoral systems, political parties and quotas directly influencing gender equity in elections. Other variables include female literacy rate, gender role values and religion.

These among other socioeconomic factors are all key in affecting women's capacity to participate in politics, especially when these factors are juxtaposed to the patriarchal nature of the society, where economic and other resources are predominantly controlled by men. Political factors include the structure of the state; the structure of the national legislature; the party system; conditions of candidacy (monetary deposit and campaign costs); and voter turnout.



2021 WOMEN LEADERSHIP CONFERENCE

DATE: AUGUST 26 -

VENUE: NAIROBI, MOMBASA, KISUMU, MERU, BUNGOMA

WAKATI NI SASA, KAULI MBILI:
VOTE A DADA

1.4.1 Women and Politics in Kenya

Women have played a significant role in shaping Kenya's political landscape from the colonial period through the post-independent era. During the colonial era, women sung protest songs, to publicly shame the colonial rulers, and often staged work stoppages or labor strikes to demand better working conditions. During the struggle for independence, women risked their lives by engaging in peaceful protests and in armed resistance against the British.

With the advent of multiparty politics in 1992 and the 1992 National Women's Convention marked new efforts by women to organize to access political power. With these changes, women leaders fought for increased democratic space and the normalization of women in politics. Following the 1992 elections, various organizations related to women's political participation and advocacy emerged including The League of Kenya Women Voters (LKWV) formed in 1992, along with the National Commission on the Status of Women (NCSW); the Coalition on Violence against Women –Kenya (COVAW-K), and the Green Belt Movement (GBM). In 1997, Hon. Phoebe Asiyo moved a motion in parliament to put forth the first affirmative action motion to Parliament in 1997.

The motion sought to increase the number of women in Parliament up to a minimum of 18 and encouraged political parties to nominate one-third of women candidates to vie for political posts both at the national and ward level. However, the motion was defeated. Following this defeat, the Kenya Women's Political Caucus (KWPC) was formed and KWPC helped organize women's organizations to support a women's political manifesto before the 2002 elections, laying out women activists' common concerns. In 2000, Hon. Beth Mugo (MP for Dagoretti, Nairobi) introduced another motion with the support from women's organizations and the Committee on Affirmative Action. These motions formed the basis for women's engagement and advocacy around the gender principle during the subsequent constitutional process. Much of women's mobilization in the first decade of the 2000s focused on efforts to get women's rights embedded in the constitution which was eventually passed in 2010. The Passage of the 2010 constitution was a watershed moment for Kenya, particularly since it dramatically increased the presence of women, especially in governmental and county assembly positions.

Table 1: Women Movements in Kenya

1952:	Establishment of Maendeleo ya Wanawake
1964:	Establishment of National Council of Women in Kenya (NCWK)
1985:	Nairobi's hosts the 3rd World Conference On Women
1985:	Federation of Women Lawyers of Kenya (FIDA) established
1992:	National Women's Convention organized by NCWK and Africa's Women Development and Communication Network
1992:	The League of Kenya Women Voters (LKWV) formed in 1992
1992:	Mothers of Political Prisoners protest
1997:	The Kenya Women's Political Caucus formed
2001:	Kenya Women Parliamentary Association (KEWOPA) established
<i>Sources (Nzomo 2014; Kihui 2010; Kamau 2013)</i>	

The discernible trend for elective positions at both the national and county levels is that compliance is realized through nomination rather than election of women. While the 2017 elections yielded the country's highest proportion of women in government in history via both elected and appointed positions, many political entities still fell short of the two-thirds gender rule, leaving them in noncompliance with the constitution. The 2017 elections reveal a tension: while devolution raised the stakes of local elections and the quota has improved women's political inclusion, these reforms have not fundamentally changed the power of political parties, the way campaigns are financed, cultural ideas about women's leadership, and the pervasiveness of violence in Kenyan elections. A key outcome of the 2017 elections was the inaugural election of three female Governors and Senators. This represents significant progress, and it is critical for this research to consider the contexts and experiences of these political leaders. This was a strong factor in considering the countries that are party to this investigation.

This is critical as the country edges closer to the 2022 general elections without resolving the issues of compliance with the two-thirds gender principle in all elective and appointive offices. While in some quarters, most notably the Judiciary huge progress has been realized as exemplified by the recent appointment of Justice Martha Koome as the first female Chief Justice of the Republic of Kenya with her Deputy and the Chief Registrar of the Judiciary also being female and with good number of female judges and magistrates, in other arms of Government notably the legislature and the executive the progress is still not as fast.

Scholarship abounds as to the multitude of complex factors that impede women's equitable political participation in Kenya. They include lack of an implementation framework for the two-thirds gender rule, gender stereotypes, patriarchal cultural practices, economic constraints linked to discriminative access to means of production and the institutional exclusion of women from the political sphere including through political violence and propaganda.

1.4.2 Women in Political Leadership in Kenya and the Region

In comparison with other neighboring countries, Kenya has performed dismally with respect to women's representation within the political and public realm. This is despite having vibrant women's movements and arguably one the most competitive systems of multi-party democracy in the region. Kenya's poor performance in comparison with her neighbors is variously a result of a lack of compliance with the national legal framework, lack of political goodwill at the national leadership level and an inability to hold the government accountable to the Constitution.

	Constitutional provision	Percentage of women in parliament	Compliance
Burundi	Yes	37.8	Yes
Ethiopia	Yes	37.2	Yes
Kenya	Yes	20.8	No
Rwanda	Yes	63.8	Yes
Somalia	Yes	13.8	No
South Sudan	Yes	26.6	Yes
Tanzania	Yes	36.6	Yes
Uganda	Yes	33.5	Yes

Source: www.quotaproject.com

Table 2: Women Representation in Parliament in East Africa

Mechanisms & Women's
Ability to Participate
and Influence Governance
Structures at National and
County levels in Marsabit,
Kajiado, Busia
Tana River



**LEGAL, POLICY AND INSTITUTIONAL
FRAMEWORK FOR WOMEN'S
POLITICAL PARTICIPATION IN KENYA**

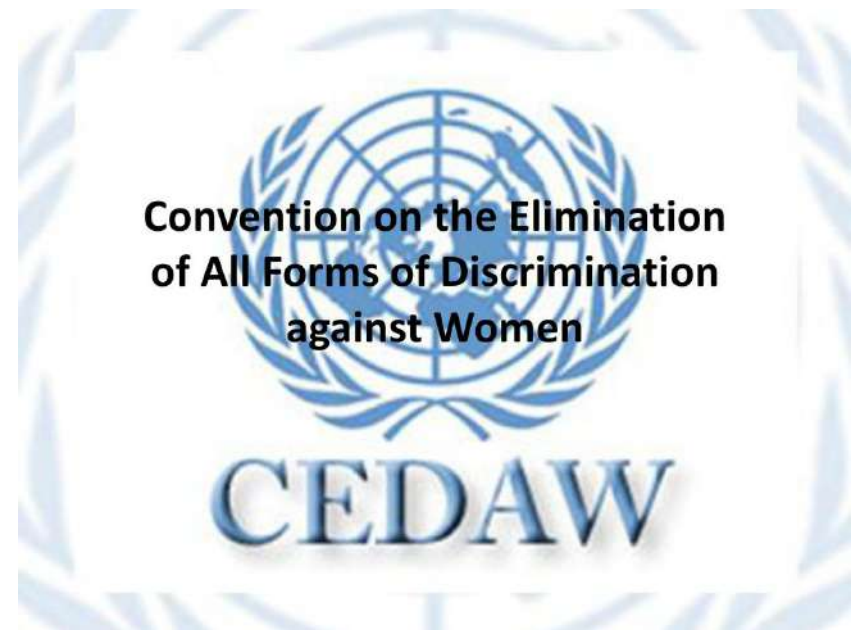
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2.1 Overview

While major barriers to women's full and active involvement in public and political life still exist, efforts have been made at the international and regional levels to ensure that legal human rights procedures exist to facilitate women's participation in this arena. Indeed, equality for women in public and political life is a requirement for all regimes, as well as a prerequisite for democratic regimes' legitimacy, accountability, and obligation. This section of the report looks into the key laws that define and regulate electoral politics in Kenya, which include: The Constitution of Kenya (2010), the Political Parties Act 2011, the Elections Act 2011 and the Election Offences Act.

2.2 International Legal Framework

The principles of equality and prohibition of discrimination are the fundamental basis of women's access and engagement to public and political life and are enshrined in the United Nations Charter. The Universal Declaration of Human Rights (UDHR), which shapes the basis of all rights of many constitutions including the Kenyan Constitution, also enshrines the entitlement of all persons to non-discrimination including on the basis of sex. Two instruments emerged from the UDHR, the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic Social and Cultural Rights, 1966 (ICESCR), which have provided more specific agreements on the right to equality between men and women in public and political life.



The General Comments of these respective treaty-monitoring organs have actively promoted women's participation in public and political life. This International Bill of Rights (the UDHR, ICCPR and ICESCR) guarantees equal protection before the law to all and serves as the basis for international human rights law around the protection of the right to participation in public and political life. Other instruments include, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which is the leading instrument to address women's human rights, with most states having signed or ratified it and participating in the reporting process. CEDAW, adopted in 1979 by the UN General Assembly, specifies the right for the political participation of women even more clearly in Article 7.

The Beijing Plan of Action calls on governments to take actions to ensure balanced representation of men and women in public office. Subsequent revisions of Beijing +5, +10, +15 and +20 have made advances by introducing measures that incorporate public policies with gender equality to increase the participation of women in politics

These instruments also resonate in Africa with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa - ACHPR (Maputo Protocol), a binding legal framework, adopted in 2003. Among other things, the Protocol specifically includes combating all forms of discrimination against women and specifically requires states to "ensure increased and effective representation and participation of women at all levels of decision-making" (Article. 9[2]). The AU Solemn Declaration on Gender Equality in Africa (SDGEA), which was adopted by the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in July 2004, also contributes to strengthening African ownership of the gender equality agenda. The African Union Women's Decade, 2010 - 2020, offers a means of holding national mechanisms accountable.

In addition to the specific international legal framework on women's political rights, we also need to take into account the international commitments affecting the rights of girls and women, which should also serve as a normative source, including International Convention on the Elimination of All Forms of Racial Discrimination, 1965 and The International Conference on Population and Development (ICPD), 1994.



2.3 The Constitution of Kenya, 2010

The Constitution of Kenya 2010 has been a key instrument in pushing forward the political participation of women in Kenya. It exclusively sets out political gender inclusivity as a key issue, which it proposes to address through affirmative action programmes and the creation of key positions such as the women representative post in each county.

The Constitution articulates the two thirds gender rule in Article 27(8) wherein it provides that the State shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender provides for equality in electoral and appointive positions between men and women through the two-thirds gender rule. This is reiterated in Article 81, which lists general principles for the electoral system. Article 81(2) provides that Kenya's electoral system shall be guided by the principle that not more than two-thirds of the members of elective public bodies shall be of the same gender. More than ten years since the Constitution's promulgation, the government is yet to comply with this directive.

This has led to a series of court cases particularly between 2012 and 2017, initiated by women's rights organizations, including the Federation of Women Lawyers-Kenya, and the Katiba Institute, to use the Judiciary to advance political rights..

These engagements led to several court decisions For instance, through FIDA Kenya & Others Vs Attorney General and another 2011, FIDA challenged the gender composition of the Supreme Court albeit unsuccessfully. In the Advisory No. 2 of 2012 by the Supreme Court, the Court indicated that the two thirds principle was to be progressively realized. The only concession they gave was for the legislation to be enacted by 27 August 2015 to provide a mechanism for Article 81(b) to ensure not more than two thirds of the national legislature were not of the same gender.

FIDA played a key role in this advisory as it was enjoined as an interested party advocating for immediate application of the two thirds gender principle. FIDA was also enjoined as an interested party in Nairobi Petition No. 147 of 2013 National Gender Equality Commission vs. IEBC, FIDA Kenya where the case was allowed and more women were nominated to the County Assemblies to achieve the two-third gender principle. FIDA was also an interested party in Petition 371 of 2016 CREAM & Another vs Speaker of the National Assembly and three others which successfully challenged Parliament's implementation of their mandate to legislate the two thirds gender rule. The court found that National Assembly and the Senate had failed in their joint and separate constitutional obligations to enact legislation necessary effecting the gender rule in the August House. The court further instructed Parliament and the Attorney General to effect such legislation within 60 days, which it has failed to do to date. These court decisions have contributed to the clarifying and giving meaning to the legal framework on the gender principle, with the judiciary consistently upholding women's equality and right to participate in leadership as provided under Article 27.

Other cases include CREAM v Attorney General & the Constitution Implementation Commission (CIC), Petition No 182 of 2015 Filed May,2015^[1] at the Constitutional Court with KEWOPA(Kenya Women Parliamentary Association, Centre for Multiparty Development as being interested parties. CREAM was seeking the declaration that the Attorney General and CIC has failed do develop and present affirmative action legislation ahead of the August 2015 deadline. In her ruling, Lady Justice Mumbi Ngugi ordered the Attorney General, the Commission on Implementation of the Constitution and Parliament to draft and table the necessary legislation within 40 days of the ruling.

Centre for Rights Education and Awareness (CREAW) and Community Advocacy and Awareness Trust (CRAWN Trust) and Kenya National Human Rights Commission vs the Speaker of the National Assembly, Speaker of Senate and Attorney General, filed petition 371 of 2016 on September 5, 2016, with Kenya Human Rights Commission and FIDA as being interested parties and the National Gender and Equality Commission and Law Society of Kenya as Amicus Curiae.^[1] The petition sought a determination of whether Parliament had failed to fulfil its obligation as imposed by the Constitution by passing legislation that gave effect to the two thirds gender rule.



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IMPLEMENT THE
TWO THIRDS GENDER RULE**

**SAFE DELIVERY
IS
A HUMAN RIGHT
FIDA-SHRI**

**ALL MOTHERS
HAVE THE RIGHT TO
SAFE DELIVERY**

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The court made declarations that the National Assembly and Senate had failed in their joint and separate constitutional obligations to enact legislation necessary to give effect to the principle that not more than two-thirds of the members of the National Assembly and Senate shall be of the same gender and that such failure amounted to a breach of the rights of women to equality and freedom from discrimination as well as violation of the Constitution. The court ordered Parliament to take steps to ensure that the required legislation is enacted within a period of 60 days from the date of the order.

Other litigations on the two thirds gender rule following the August 2017 elections were Petition 397 of 2017 filed by Centre for Rights Education and Awareness (CREAW) and Community Advocacy and Awareness Trust (Crawn Trust) as co-petitioners against Parliament and Petition 401 of 2017 filed by FIDA-K against both Houses of Parliament and IEBC. In both cases, NGEK was joined as amicus curie and interested parties respectively. Petition 397 sought to compel Parliament to pass the necessary legislation on two-thirds gender principle as its first order of business, while petition 401 sought to compel IEBC to present a list of nominees necessary to ensure that 12th Parliament meets gender parity.

Other clauses in the Constitution on affirmative action include party list system instituted to effect the two thirds gender rule. It is primarily set out in Article 90 which provides that elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under Article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists. The Independent Electoral and Boundaries Commission is granted oversight for the conduct and supervision for the elections of these seats, which are to be allocated to political parties in proportion to the seats won by candidates of a political party in a general election.

The party list system has been fully implemented at the county level, with the result being that a large majority of county assemblies are compliant with the two thirds majority rule. Challenges however abound for those elected through party lists such as exclusion from membership of house committees as well as holding leadership positions at the County Assembly. In some counties, nominated women are strategically excluded from the determination of house matters. This is explored in detail in the County Overview. The National Legislature, on its part, constituted by the National Assembly and the Senate are however non-compliant with the two thirds gender rule, due to lack of a legislative framework.

The Women Representative Position is provided for under Article 97(b) which provides that the National Assembly shall include forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency, meaning that each county has a single representative to the National Assembly. The efficacy of the inclusion of women who represent whole counties in an assembly of persons representing constituencies has been questioned, particularly with respect to funding where women representatives receive equal funding to MPs, despite representing the much larger county.

Article 177 makes provision for increasing women and other historically marginalized groups of County decision making structures, including County Assemblies, Executive committees and Public Service Boards.

2.4 The Political Parties Act 2011

Political parties play a key role in the promotion of women's political participation in Kenya. Consequently, Section 4(2) of the Political Parties Act provides that a political party can only be registered if it meets key requirements such as gender equality and equity, respect for the rights of all persons to participate in political processes and other human rights and fundamental freedoms. This is to ensure that women and all other marginalized groups can participate in politics both as voters and as candidates as set out in Article 91 of the Constitution.

Section 7 (2) goes further to state that full registration of a political party is contingent on representation of gender balance and of minorities and marginalized groups among its members and governing body. A political party's governing body is also subject to the two thirds gender rule, with funding made contingent on compliance with this rule under Section 25 (2) (b).

Parties are also obligated to set aside 30% of the political party funds to promote representation of women, persons living with disability, youth, ethnic and other minority and marginalized groups.

Section 26 (1) also provides that finances allocated to a political party from the fund shall be used for purposes compatible with democracy including (a) promoting the representation in parliament and county assemblies of women, persons with disability, youth, ethnic and other minority and marginalized communities.

2.5 Elections Act 2011

The Act governs the conduct of elections at all levels by the Independent and Electoral Boundary Commission (IEBC). It has several provisions supporting the participation of women in elections. Sections 34, 35, and 36 of the Act provide for the nomination of members via party lists as provided for in the Constitution. It makes provision for proportional representation using mixed member party lists. Section 63 (1) additionally outlaws the use of force or violence during the electioneering period.

The elections code of conduct in the second schedule affirms that the object of the code is to promote an environment that is conducive to the conduct of free and fair elections.

2.6 The Election Offences Act

One of the greatest obstacles to women's political participation is violence. The extent to which violence is punished is consequently a key determination of the involvement of women in politics. In 2016, Parliament enacted the Election Offences Act to provide for the punishment of offences during elections. This was intended to ensure that competition for political office is on the basis of a level playing field. Article 81 of the Constitution is clear that a free and fair election is one that is free from violence, intimidation, improper influence or corruption. The Election Offences Act seeks to ensure that this constitutional guarantee is delivered.

Section 11 of the Act deals with the use of force or violence and thus addresses the unfair practices that political players adopt to gain an advantage over their opponents by employing the use of violence.

This Act and the amended Election Petitions Act placed the exclusive jurisdiction of election offences in the province of criminal courts, with the Magistrates' Court having original jurisdiction. In the 2017 elections, more than 200 election offences cases were filed in the Magistrates' Court. Less than 20 accused persons were actually convicted of their crimes, constituting a disproportionate percentage of the filed matters. This illustrates increased institutional commitment to prosecute cases of election violence, but may point to weaknesses in the prosecution of these cases. The improvement on the prosecution of cases of election offences is particularly important to curb the offences that get prohibit women from competing for elective politics such as violence.

2.7 County Laws and Policies

There is limited progress in the creation of a legal framework to support women's political participation at the county level. While some counties are in the process of drafting a gender policy, others are yet to embark on the legislative process. There are currently no laws to promote women's political participation at the county level. This can be attributed to a general lack of support of women's concerns which was noted in the study of the 8 counties herein. While all studied counties had met the two thirds threshold, voting was still largely divided along the lines of gender, with women having the disadvantage due to low numbers.

Table 3: Status of County Gender Policies and Gender Laws

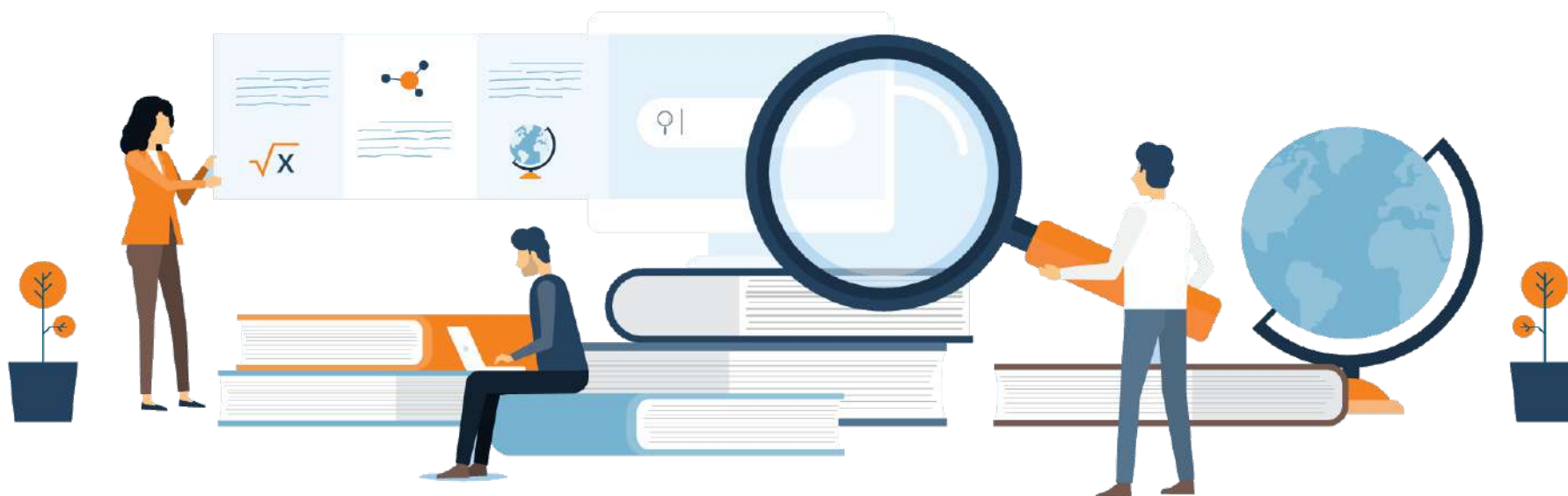
No .	County	Gender Policy	Gender Laws
1.	Bungoma	Draft Gender Policy	N/A
2.	Elgeyo Marakwet	Draft Gender Mainstreaming Policy Draft Sexual and Gender Based Violence Policy	County Youth, Women and Persons with Disabilities Revolving Fund Act, 2020
3.	Garissa	Draft Gender Policy pending approval at County Executive	N/A
4.	Homa Bay	N/A	N/A
5.	Kirinyaga	Currently being drafted by County Executive	N/A
6.	Kilifi	Currently being drafted by County Executive	N/A
7.	Kitui	Currently being drafted by County Executive	N/A
8.	Samburu	N/A	N/A

2.8 Institutional Framework

The National Commission on Gender and Development was established in 2004 with core functions to: support gender mainstreaming in all government ministries, advise on the impact of all government policies on women, monitor the situation of women, help formulate policies and implement strategies to eliminate gender-based discrimination. Following the enactment of the Constitution in 2010 the National Gender and Equality Commission (NGEC) was established in 2011. This is an independent Constitutional Commission with full powers as conferred under Chapter 15 of the Constitution.

NGEC has also made key contributions towards gender equality through prosecuting cases before the court and through advocacy. For instance, in *National Gender and Equality Commission v Independent Electoral and Boundaries Commission & another* [2013] e KLR, NGEC sued IEBC for failing in its constitutional responsibility of supervising and conducting party elections for purposes of electing members whose names appear on the party lists as required by Article 90. The Court found that IEBC failed to meet its obligation to conduct and supervise the conduct of the election for special seats under Article 90 by failing to publicize the party lists submitted to under regulation 54 the Election (General) Regulations, 2012. It also failed to issue sufficient guidelines that consistent with its obligation to observe, respect, protect, promote and fulfil the rights of persons identified as vulnerable and marginalized to participate in the political process.

NGEC also sought to be enjoined as an interested party in the Advisory Opinion No.2 of 2012. In 2014, NGEC chaired the Technical Working Group (TWG) formed by the Attorney General to coordinate the process of developing enabling mechanisms for the attainment of the two-thirds gender rule within 90 days effective from February 11, 2014. Through the TWG with support of FIDA-K, NGEC lobbied for the support of the Duale Bill through developing a ten point lobby message that was then printed and posted onto every Member of Parliament mailbox. In recent years though, NGEC's advocacy on increased women's political participation has not been as vocal as it was in the run up to the 2017 elections, pointing to the question of leadership and institutional commitment continuously on women's agenda.



RESEARCH FINDINGS

3.1 National Laws and Policies

3.1.1 Efficacy of the Two Thirds Gender Rule

The Respondents to this study expressed an understanding of the two thirds gender rule, as a principle of equality, requiring the adoption of affirmative action programs to address the historical marginalization of women in the political sphere.

While some of the interviewees felt that this principle had been effective, others were skeptical as to its progress. It was generally agreed that it has enhanced women's political participation through the creation of special seats for women as well as through the establishment of the women representative position. It has particularly been well implemented at the county level due to the clarity in the language of Article 177, which is prescriptive. This principle has also resulted in more women in appointive positions, at both the county and national levels. Overall, the key advantage of the two thirds gender rule has been increased numbers of women in elective and appointive positions in Kenya. A corollary effect of this has been the assimilation of the inclusion discourse in all spheres, including the judiciary and the private sector.

It was however felt that the progress has been limited, particularly at the national level i.e. the National assembly, Senate and appointive positions in the Executive. This was attributed to lack of a legislative framework which is prescriptive. Beyond the numbers, respondents also raised concerns with the quality of the women leaders who have been nominated.

3.1.2 Obstacles to the Full Implementation of the Two Thirds Gender Rule

The Respondents identified several obstacles to the full implementation of the two thirds gender rule, chief among them being a lack of political good will from the President in his appointive capacity as well as from the National assembly in its failure to legislate how the two thirds principle should be instituted. It was suggested that the lack of support by the President could be due to a lack of a prescriptive clause in Article 132 of the Constitution. On the part of the National Assembly, their ambivalence was attributed to patriarchal notions held by legislators as well as selfish ambition in safeguarding individual political interests. A paucity of male champions or political change agents was also noted. The lack of a prescribed consequence to the neglect of implementing the two thirds gender rule has resulted in the President and Legislature acting with impunity and disregarding the law.

Another obstacle has been what Respondents termed 'affirmative action backlash'. The creation of the women representative position has been working against the integration of women in the political arena. Women have experienced backlash in seeking elective positions where they compete against men, as it is insisted that the women's representative position is the office for which they should vie, leaving the other mainstream seats to men. Institutional incompetence was also identified as an obstacle, wherein institutions such as political parties and the IEBC, which have a mandate to safeguard the institution of the two thirds rule, have neglected to fulfill their legislative roles. Another obstacle was the challenges that women face in political participation which has resulted in low numbers of women seeking elective office. These challenges include lack of resources and inadequate preparation before seeking election.

3.1.3 Gaps in the Legal and Policy Framework

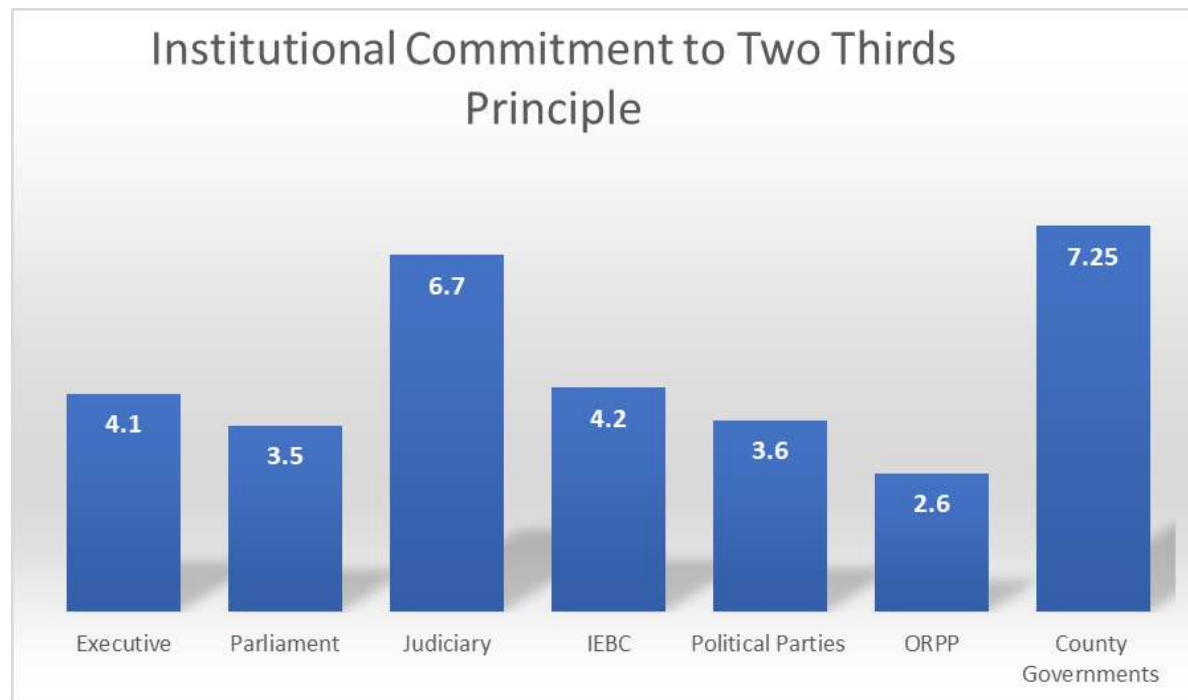
- Respondents identified several gaps in the law including:
- While Article 81 (b) and Section 4(2) of the Political Parties Act provide that political parties ought to comply with the two thirds gender rule, there is need for a mechanism to guide these bodies on implementation.
- Article 100 of the Constitution sets out Parliament's mandate in enacting legislation to promote the representation of marginalized groups including women. This law has however not been legislated nor implemented.
- The lack of implementation of the Campaign Finance Act, since it was enacted in 2013. Lack of transparency in political finances thus has persisted.
- Rampant disregard of Section 26(1) of the Political Parties Act which prescribes that at least 30% of monies allocated to parties from the Political Parties Fund should be used to promoted the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.
- The law does not adequately provide mechanisms to address hate speech and verbal abuse against women leaders, particularly on social media platforms.

3.2 Institutional Support Towards Women's Political Participation

3.2.1 Overall Findings

Several Respondents indicated that the prime reason for the lack of full implementation of the two thirds principle is due to gaps and failures in the institutional framework. They were of the view that while the law had sufficiently provided for the inclusion of women in the political sphere, the implementing institutions were failing in their mandate. There is thus an urgent need to hold these institutions accountable.

The Respondents thus considered the performance and commitment of the poignant institutions which are central to the implementation of the two thirds rule in Kenya. They rated their commitment to implementing the rule on a scale of 1 to 10 with one being not committed and 10 being very committed. On average, the Respondents considered the Judiciary to be the most committed institution to promoting women's political participation. It was closely followed by county governments in general which have been able to achieve the minimum gender threshold. The Executive and IEBC had an equal rating followed by Parliament, Political Parties and lastly, the Office of the Registrar of Political Parties.



3.2.2 Executive

The Executive received a rating of 4.1 out of 10. Respondents were of the view that there has been progress in the President's role in appointment of persons. This has been seen in the appointment of women to head key dockets such as ministries of education, foreign affairs and defense. However, the number of women in Parliament still falls below the one third threshold. Respondents felt that this indicated lack of good will from the Head of the Executive, who should be spearheading the initiative and setting the pace for the rest of government. Respondents also noted that senior state positions such as the Presidency, Deputy Presidency and the Office of the Attorney General remain dominated by men. While Respondents appreciated the benefits of having a Ministry of gender, they noted that the budgets available for gender work have been marginal and should thus be increased.

3.2.3 County Governments

With a rating of 7.3, Respondents appreciated that most county governments had attained the two thirds principle in the county assemblies. Some had even gone a step further in ensuring that appointments do not just meet the minimum threshold but supersede it, with equal representation of both men and women in the county executive and parastatals for example in Kilifi County, of the 10 Departments, 6 are headed by women, including the County Attorney. Respondents pointed out that some county governments were yet to create a ministry of gender for example in Elgeyo Marakwet County, where the gender division is under the directorate of social services.

County	Number of Female CECs
Bungoma	3
Elgeyo Marakwet	3
Garissa	2
Homabay	3
Kilifi	5
Kirinyaga	3
Kitui	3
Samburu	2

3.2.4 Parliament

Parliament had a dismal rating of 3.5 and was considered by several Respondents to be the weakest link in the implementation of gender equity. This was largely due to their failure to pass the laws required for the implementation of the two thirds gender rule. Respondents noted that the National Assembly itself was not compliant with the rule, as it needs 22 women MPs to meet the statutory minimum. They further noted that while women were represented in committees and even chaired key committees on budget and the law, they did not hold leadership positions in parliament.

3.2.5 Judiciary

The Judiciary had a rating of 6.7 out of 10. Respondents were of the view that the Judiciary has shown consistent commitment to the two thirds principle through its judgements and opinions. This includes the advisory by former Chief Justice David Maraga to dissolve parliament for failing to implement the two thirds principle. It was also appreciated that the institution itself reflected gender equity, with women accounting for about 48% of the judicial body.

There was however criticism with respect to the lack of implementation of the court's decisions which were rarely implemented and executed. Further, the Respondents pointed to the detrimental effect of the Supreme Court's opinion in Advisory Opinion 2 of 2012 in which it indicated that the attainment of the two thirds gender rule would be progressive realized. This allowed elections to be held without the mandatory requirement that the two thirds principle be attained. It was felt that this ruling severely slowed the progress in actualizing the Constitutional principle. Lastly, the Respondents opined that the Judiciary should do more to deal with Gender Based Violence (GBV) cases, in the implementation of the Sexual Offences Act and in the implementation of laws that deal with gender matters.

3.2.6 The Independent Electoral and Boundaries Commission (IEBC)

IEBC got a rating of 4.2 from the interviewees. The Respondents felt that though the IEBC is a pivotal body in the enforcement of the two thirds gender rule, there seems to be confusion on its role. Concerns were raised about the level of independence of the body, which was not considered to be upholding the spirit of the Constitution. It was however appreciated that they upheld their role in ensuring party lists complied with the law and that in 2013, they offered clarification that only women can vie for the seat of women representative as there were attempts by men to run for this office.

3.2.7 Political Parties

Political parties received a low rating of 3.6 and was considered the other institution that was the weakest link in promoting women's political participation. It was appreciated that the larger political parties have observed the two thirds principles in their membership and governing structures. Some parties also had a gender policy. Small parties on the other hand, do not have the mechanisms to ensure compliance with the gender rule. It was reported that this has bred a hostile environment for women, including a prevalence of sexual harassment. Regardless of the size of political parties, Respondents submitted that the political culture in the parties are still male dominated.

Respondents stated that these parties operated without accountability, with monetary interests often outweighing the question of inclusion. Respondents noted that there is a lack of mechanisms for dispute resolution during party primaries, which is a factor that drives violence at this stage of political contestation. There are also weak accountability mechanisms when it comes to utilization of political parties' fund.

Women political caucuses play an important role in articulating the women's agenda and interests within the political party. During the research though, the strength of these causes was uneven amongst the parties. There is also the danger that unless the party mainstreams women's issues and leadership within its structures, the women caucuses on their own can end of ghettoizing women's participation in political parties

3.2.8 The Office of the Registrar of Political Parties (ORPP)

Respondents accorded the ORPP the lowest rating of 2.6 out of 10. They were of the view that as the ORPP is the regulator of political parties, they ought to ensure that political parties meet the two thirds gender requirement and the inclusion of all persons. They however do not uphold this mandate, which includes ensuring that political parties' governing bodies also meet the two thirds requirement. Rather than seeking to be politically correct, the ORPP should ensure equitable organization of political parties.

3.3 Adequacy of Programs

3.3.1 Programs by State Actors

Respondents identified the 'Common Women Agenda' as a state program that was bent on affirming and implementing a common agenda which includes the role of women in contributing to the development of the country; safeguarding the gains achieved under the Constitution of Kenya 2010; rejection of the narrative that women are overrepresented contributing to a high wage bill; ensuring that women's participation remain central and informs every program in this county and remains central to every national conversation; greater investment in the social economic services to offer relief to women as the basic social protection of the nation from the increasing burdens that are caused by challenges in healthcare, in food security in access to water and sanitation among others; urgent action by all actors to end Gender Based Violence, including Sexual Gender Based Violence, political and electoral violence Femicide, Defilement, among others, and guaranteed security for all vulnerable members of society including women, girls and persons with disability (PWDs).

Several Respondents were of the view that the National Gender and Equality Commission (NGEC) was not fulfilling its mandate, as it ought to be spearheading the movement for legislative change to promote women's political participation. It was however NGEC's institutional position that it is not a service provider, and thereby has no direct programmes. Its mandate was with respect to monitoring compliance with the two thirds rule through conducting gender audits, and promotion of the rule.

Respondents stated that the State had fallen short of its role in developing policies, laws and implementing programs. The Attorney General's office had not been supportive, and the police had not offered effective security during the election period leaving women aspirants vulnerable to political violence. State commissions have also not offered any interventions.

Respondents were also of the view that State institutions were behaving like non-governmental organisations (NGO), in the State Department of Gender having to lobby the President for financial support to implement their programs. Running of programs is additionally separate from their mandate of ensuring policy and legislation are followed through by all state organs. The Respondents also stated that the state institutions only paid political lip service as the reports they published were drafted by civil society organisations and did not contain genuine undertakings by the state.

3.3.2 Programs by Non-State Actors

Respondents identified a number of programs by non-state actors including UN Women, OSLO Centre, FIDA-Kenya, the Centre of Multiparty Democracy Kenya and Women Economic Empowerment among others. These programs are often based on building the capacity of women aspirants, with emphasis on imparting knowledge and developing skills to navigate the electoral process, and on women and media. Some programs also address the challenges that women face, for example, one programme provided an interface between women leaders and police so as to address the challenge of violence during elections. Other programs provide monetary support for women candidates.

It was however indicated that programming is usually not strategic and that there is a lot of fragmentation competition in how women organisations implement programs. This results in a lack of political consequences. Further, such programs are often started when elections are approaching, giving little time to cultivate women and polish them for the upcoming elections. There is consequently a need to overhaul how non-state actors do the programming. It was suggested that these programs ought to be long term and continuous, going beyond the electoral cycle.

Innovative solutions to programming that were made include funding the use of community radio stations for women to campaign; the use of women solidarity funding as seen in Nigeria, where industrial magnates were given a business case for funding women's political campaigns and thereafter invested in the Women Solidarity Fund; joint campaigns by NGOs and ministries to ensure that women are nominated in political parties; campaigns to overhaul male dominated political party leadership and campaign organizing to including organizing for security and training the security detail in advance.

One respondent also addressed the challenges around how we tend to do civic education. They were of the view that there has not been adequate investment by both state and non-state actors, and that there is need to consider the uniqueness of each geographic region rather than having identical programs run across the country.

As we move towards the 2022 elections, it was suggested that there needs to be developed a master game plan, which should contain an audit of what was done previously, what are the gaps and how we intend to address, mapping of women candidates and how to bring them together, how a support mechanism will be provided and how will monitoring and evaluation of the plan be done. It was also suggested that a working group approach be adopted, with membership from various key players. It was suggested that the working group be put together by NGEK as they have a constitutional mandate.

Despite the role that community leadership structures play in politics, it was noted that there were no programs implemented by either state or non-state organizations to gain their support towards female candidates.

3.4 County Laws, Policies, Programs And Institutions

3.4.1 Context of the 8 Counties Studied

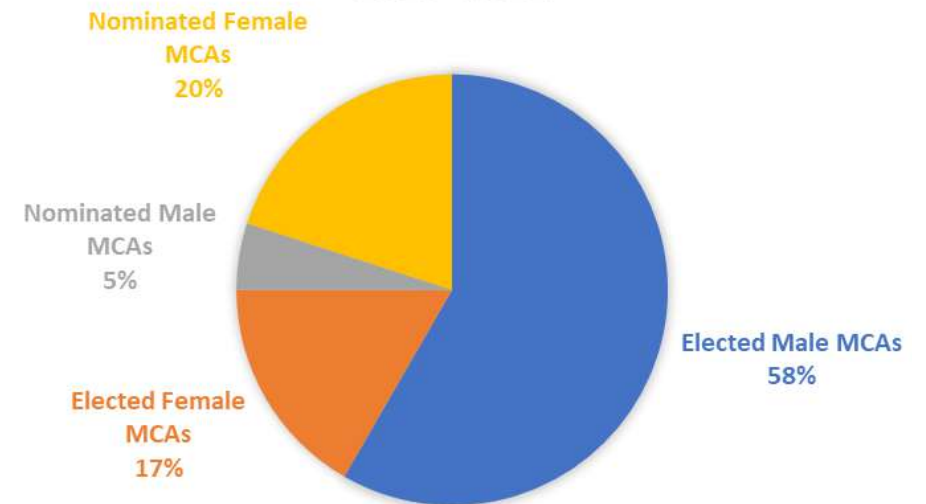
3.4.1.1 Bungoma

Bungoma County covers an area of 3032.4 km² and is located to the West of the country. According to the 2019, Kenya Population and Housing Census, this county has a population of about 1,670,570 persons, almost evenly distributed between the genders, with women numbering slightly more than men (812,146 male, 858,389 female and 35 intersex).[1]

Since independence, no female Member of Parliament has ever been elected to represent this region. However, in 2017, 11 women were elected to the County Assembly. This made history as the highest number of women to be elected to one county assembly since the promulgation of the 2010 Constitution. Hon. Catherine Wambilianga was elected the Women's Representative in 2017. No female MP, Senator or Governor was elected, and gubernatorial candidates also neglected to select female running mates.

In the 2017 elections, out of the 45 elected MCAs, 35 were male while 10 were female. Of the 15 nominated MCAs, 3 were men and 12 were female. Out of 9 CECs in the County Executive, 3 are women.

**COMPOSITION: BUNGOMA COUNTY ASSEMBLY
2017-2022**



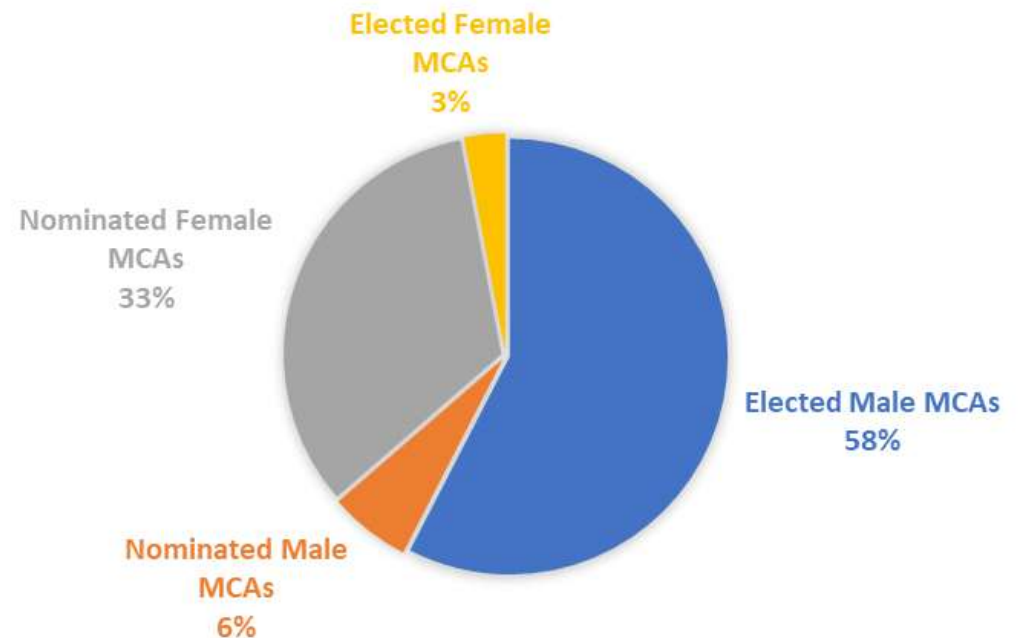
3.4.1.2 Elgeyo Marakwet

Elgeyo Marakwet County covers an area of 3029.6km² and is found in the Rift Valley region of the State. As at 2019, this county has 454,480 persons, evenly distributed between the genders (227,317 males, 227,151 females and 12 intersex).

Elgeyo Marakwet Hon. Linah Jebii Kilimo was the first woman to be elected into parliament in 2002 as MP of Marakwet East Constituency, a seat which she retained in the 2007 elections. She served as an Assistant Cabinet Minister in former Pres. Mwai Kibaki's government and is regarded as a key regional leader who helped broker the Marakwet-Pokot peace agreement, known as the Kolowa Declaration. She has also been a key voice in the Anti- Female Genital Mutilation campaign. Hon. Jane Jepkorir Kiptoo Chebaibai was elected as the Women's Representative in the 2017 elections.

In the 2017 election, all of the 20 elected MCAs in Elgeyo Marakwet were male. Following the death of one MCA in 2020, one woman was elected in the by-election. Out of the 13 Nominated MCAs, 11 are women. At the County Executive, 3 out of the 7 CECs are women while 5 out of the 12 County Officers are women. They are also picked through regional balancing, with each ward getting either a CEC or a CO.

COMPOSITION: ELGEYO MARAKWET COUNTY ASSEMBLY 2017-2020



3.4.1.3 Garissa

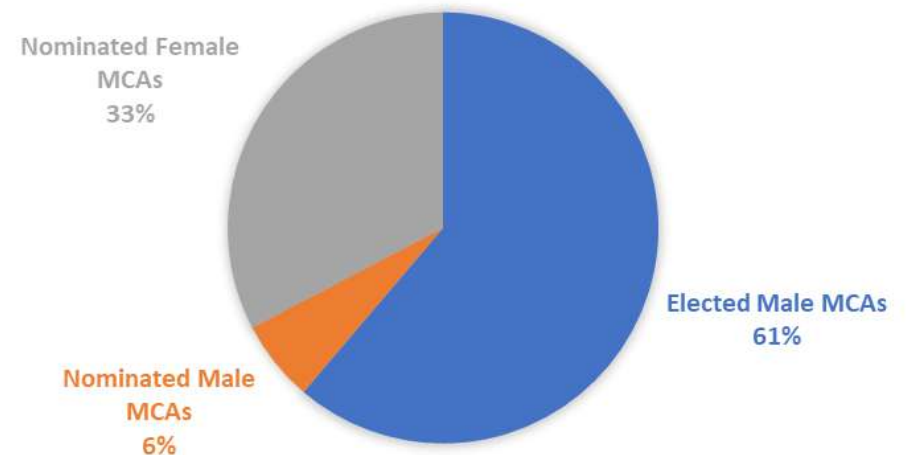
Garissa County covers a vast area of 44,736km² and is located in Kenya's North Eastern Region. It has a population of about 841,353 persons with the men numbering more than women (458,975 males, 382,344 females and 34 intersex.)

In the 2017 elections, Hon. Sophia Abdi was historically elected MP of Ijara Constituency, as she was the first woman to be elected from the North Eastern region of Kenya.

Through her political career, she has advocated for the rights of marginalized women through gender equality campaigns. Prior to politics, she spent several years as a Chief Executive Director of a local NGO.

In the 2017 Elections, all the 30 MCAs who were elected were men. 19 MCAs were nominated, 3 being male and 16 being female. The County Executive is compliant with the two thirds principle with 3 out of the 10 County Executive Committee members being female and among the Chief Officers, 4 out of 11 are female.

COMPOSITION: GARISSA COUNTY ASSEMBLY 2017-2022



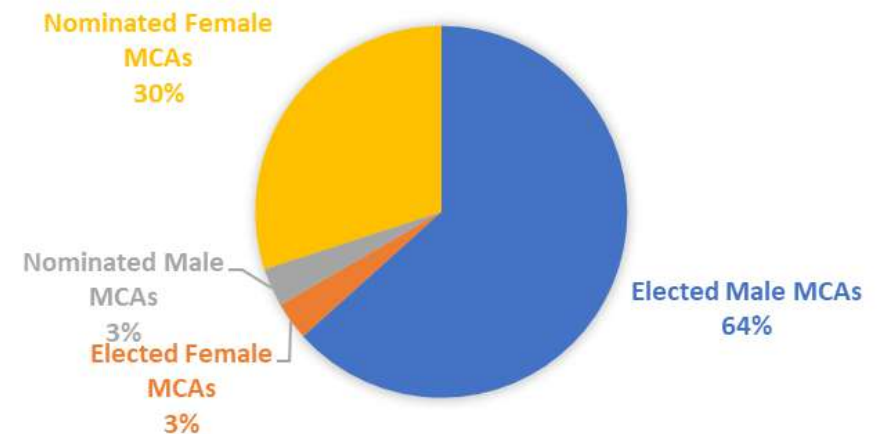
3.4.1.4 Homa-Bay

Homa Bay County occupies an area of 3,152.5km² and is found in the former Nyanza Province, along the shores of Lake Victoria. It has a population of about 1,131,950 persons with women numbering more than men (539,560 males, 592,367 females and 23 intersex).

While few women were elected to the County Assembly (2 out of 40) in the 2017 elections, Homa Bay County was able to elect 3 female MPs for its 8 constituencies, accounting for 37.5%. These are Hon. Millie Odhiambo Mabona who is MP for Mbita Constituency (she was first nominated in 2008 and elected in 2013), Dr. Lillian Gogo MP for Rangwe Constituency and Dr. Eve Obara who is the MP of Kabondo Kasipul. Hon. Gladys Wanga was also elected as the Women's Representative of Homa Bay County.

Out of the 40 elected MCAs in Homa Bay County, only 2 were women. 20 MCAs were thereafter nominated, 18 of whom are women.

COMPOSITION: HOMA BAY COUNTY ASSEMBLY 2017-2020



3.4.1.5 Kilifi

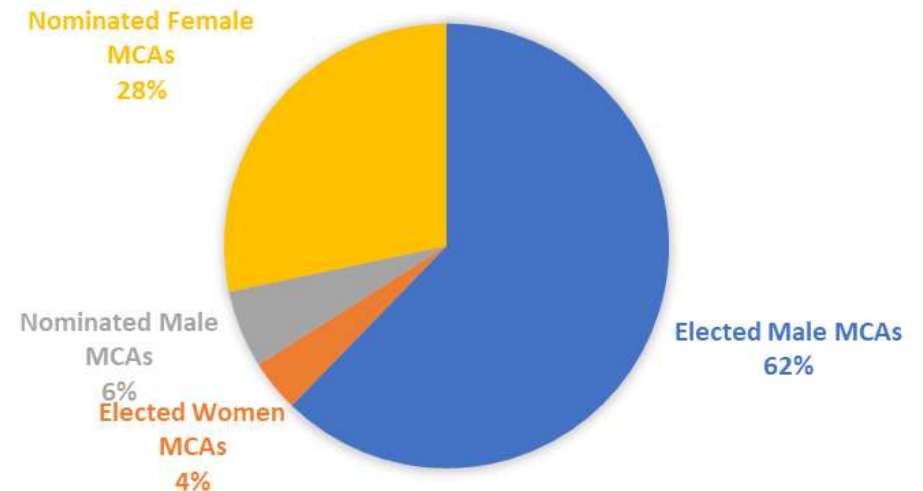
Kilifi County occupies an area of 12,539.7km² and is located at the Coast of the Indian Ocean. It has a population of about 1,453,787 persons, almost evenly distributed between the sexes (740,089 males, 749,673 females and 25 intersex).

Hon. Aisha Katana Jumwa was elected in 2017 as MP for Malindi Constituency. This followed her term in office as Women's Representative for Kilifi County, which position she held since 2013. Hon. Jumwa's political career dates back to 1997 when she was elected as Councilor for Takaungu Ward in the Kilifi Town Council. She was re-elected in 2002 and in 2007, served as the Chairperson to the Kilifi Town Council. Hon. Gertrude Mbeyu Mwanyanje was elected as the Women's Representative in the 2017 elections.

Out of the 35 elected MCAs, only two women were elected. 18 MCAs were thereafter elected, with women accounting for 15 of these positions. As is the pattern most County Assemblies, most of the women were nominated rather than elected.

At the Kilifi County Executive, 50% of the County Executive Committee Members are female, while among Chief Officers, women account for one third of these positions. The composition of the Kilifi County Public Service also has one third of its positions held by women.

COMPOSITION: KILIFI COUNTY ASSEMBLY 2017-2022



3.4.1.3 Kirinyaga

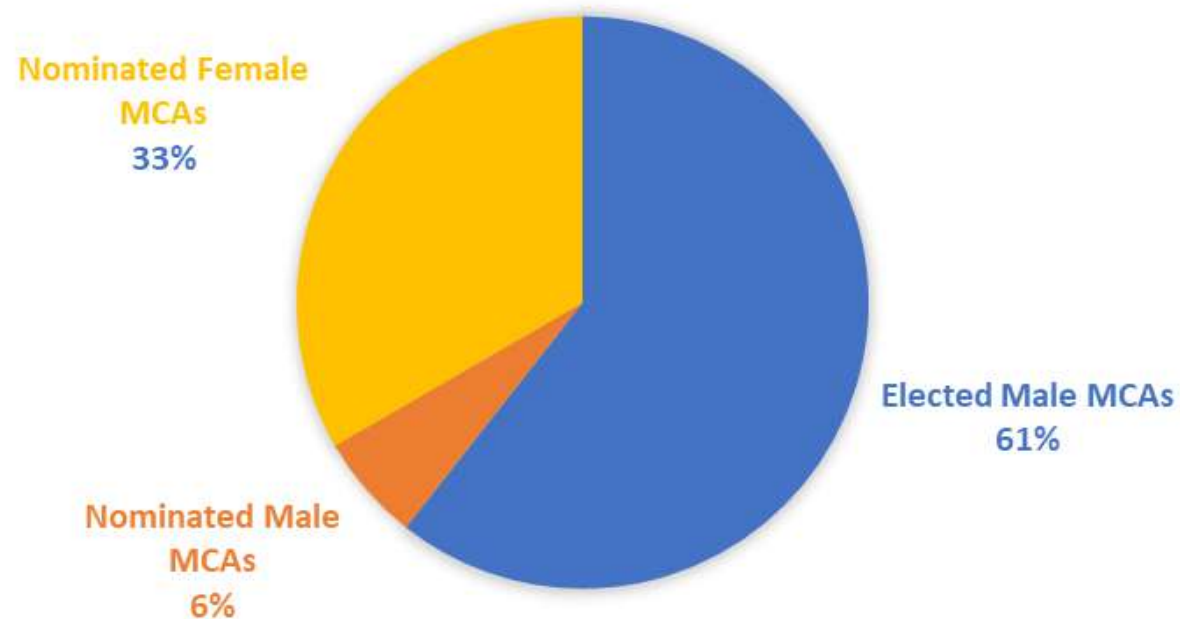
Kirinyaga County occupies an area of 1,478.3km² and whose topography includes Mt. Kenya and the indigenous forest located on the slopes of the mountain. It has a population of about 610,411 persons, which is almost equally distributed between the sexes (302,011 males, 308,369 females and 31 intersex).

Kirinyaga was another county which made history in 2017 in electing its first female Governor Hon. Anne Waiguru. Hon. Waiguru won the seat in a heated contest against veteran female politician, Hon. Martha Karua. Following a professional career at the National Treasury, Hon. Waiguru was nominated by the President to serve as Cabinet Secretary in the Ministry of Devolution and Planning before successfully vying for election as Governor in 2017.

Hon. Martha Karua has a rich political history including being part of the opposition political movements that agitated for multi-party democracy in Kenya in the early 1990s. In 1992, she made history as the first woman MP to be competitively elected. She served as MP for Gichungu constituency and was re-elected in 1997. She thereafter served as the Minister of Water Resources Management & Development and the Minister of Justice, National Cohesion & Constitutional Affairs, which position she resigned from in 2009. Hon. Karua contested for presidency unsuccessfully in 2013 before going against Hon. Waiguru for the Kirinyaga Governor seat. She remains the party leader for NARC Kenya and a pivotal political leader. Hon. Purity Ngirici was elected as the Women's Representative in 2017.

Kirinyaga County has 20 wards. Out of the 20 elected MCAs, no woman was elected. 13 MPs were thereafter nominated, with 11 being female. In the Kirinyaga County Executive, 4 out of the 9 CECs are women with all departments having implemented the two thirds gender rule.

COMPOSITION: KIRINYAGA COUNTY ASSEMBLY 2017-2022



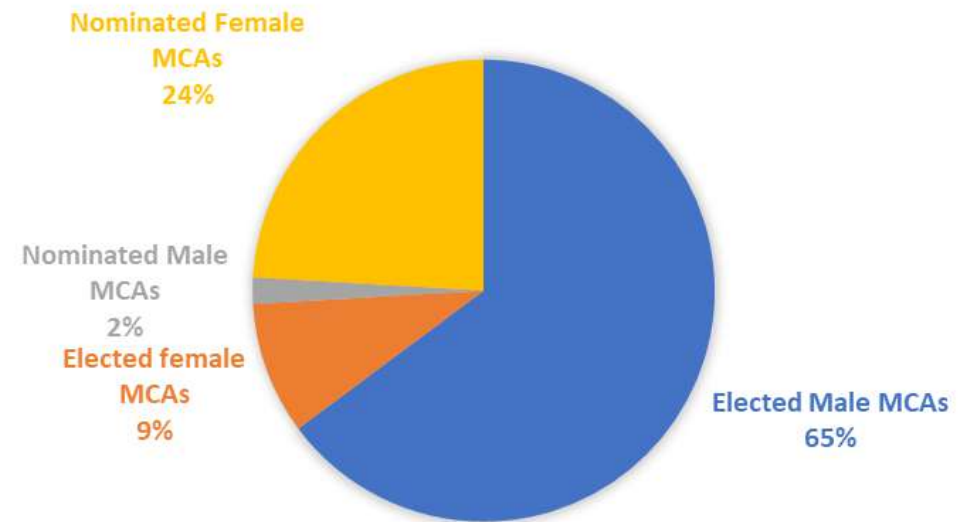
3.4.1.7 Kitui

Kitui County occupies an area of 30,429.5km² and is located in the former Eastern Province. It has a population of 1,136,187 persons with women outnumbering men (549,003 males, 587,151 females and 33 intersex).

Kitui County was one of three counties which elected its first female Governor, Hon. Charity Ngilu in the 2017 elections. Hon. Ngilu has a long and distinguished career in politics dating back to 1992, when she was first elected as an MP for Kitui Central. She made history as the first woman to vie for presidency in 1997 albeit unsuccessfully but was able to retain her seat as MP and was re-elected in 2002. She served as a Minister Health from 2003, Minister for Water and Irrigation from 2008 and Cabinet Secretary for Lands, Housing and Urban Development from 2013.

Kitui county is constituted of 40 wards. Out of the 40 elected Members of the County Assembly, 5 are women. The County nominated 14 other MCAs, out of which 13 are women, making the majority of women in the Kitui County Assembly.

COMPOSITION: KITUI COUNTY ASSEMBLY 2017-2022



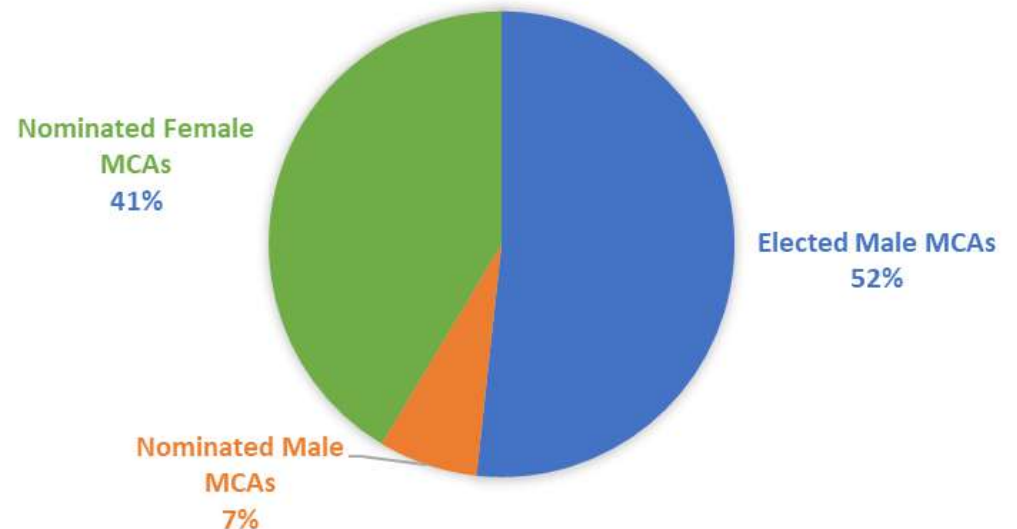
3.4.1.7 Samburu

Samburu County occupies the large area of 21,065.1km² and is located in the former Rift Valley Province in Kenya. It has a population of about 310,327 people with men numbering slightly more than women (156,774 males, 153,546 females and 7 intersex).

Hon. Naisula Lesuuda was the first woman to be competitively elected in Samburu County as an MP for Samburu West Constituency. She served as a Nominated Senator between 2013 and 2017. Before which she had a career in the media. Hon. Maison Leshoomo was elected as the Samburu Women's Representative in 2017.

Samburu County has 15 wards. All elected MCAs are male. 12 MCAs are nominated, with women accounting for 12 of these seats. In the Samburu County Executive, men are the far majority. With respect to the CECs, only 2 out of about 10 positions are held by women. Women are also given non-powerful dockets which have low budgets and minimal impact. This pattern is reflected in the offices of Chief Officers and Directors.

COMPOSITION: SAMBURU COUNTY ASSEMBLY 2017-2022



3.5 Patterns of Power and Decision Making

Women are more visible in public life now. This can be seen with the increased number of women who vied for a political seat in the 2017 General Elections as well as women currently in the public sphere; from the judiciary to parliament, from professional associations to the boardroom. However, this is not a uniform trend and women in positions of power in the country differ by region. There are factors that enable or constrain women's decision-making power and leadership and explain which women gain political power, when and how. Some of these are discussed below

3.5.1 Community and Culture

Respondents considered the impact that family and community have in the success or failure of female politicians. There was consensus that the support of family is central to the success of female politicians. Family is the primary agent of socialization and shapes how we define leadership. In addition, it is the socio-cultural aspect of our society, which is embedded from childhood, that elevates men's leadership over that of women. This was thought to be because societal structures are male dominated.

Respondents also considered that culturally, women play a significant role in the family and when combined with the political role, this has an impact. Families can destroy a candidate's political ambition, for example in-laws have publicly opposed certain candidates from vying for political office. They also noted that more women than men are registered voters and turn up to vote. This is a potential resource that needs to be made use of.

One of the elected respondents from Homabay County cited that she out male allies whom they use to lobby and negotiate with and also their inclusion in her campaign, and she actively worked with male community members. Respondents agreed that the challenges women face in political participation relate to lack of economic and financial ability, a patriarchal culture, lack of social capital. Respondents also submitted that geographic region and ethnicity can play a role on the successful bid of a female candidate. Some regions have a history of electing women thus it is easier to get elected there as certain social and cultural barriers have been erased over the years.

It was suggested that in order to counter some of the opposition to women in politics, there needs to be a study to consider the leadership of women as against that of men, to highlight their strengths and differences. There is also a need to conduct sensitization campaigns on the law requiring the participation of women in politics. This will highlight that the discrimination taking place in certain parts of the country is in fact illegal. A further suggestion was to involve political party leadership in promoting women in politics as where a party is dominant, people tend to respond to the directions of the party and the party leaders.

Respondents also made suggestions on how societal biases and stereotypes that hinder women's political participation and representation can be addressed. The included devolving and targeting civic education and collaboration with progressive male leaders to help deal with these stereotypes.

3.5.2 Enablers and Constraints to Women's Political Leadership

3.5.2.1 Enablers

3.5.2.1.1 Political Parties

One of the respondents identified political parties as an enabler to political leadership and participation. It was noted that leaders who received their party's nomination in a region which the party was dominant were more likely to have a successful bid. For this reason that there are higher odds of being elected on a party ticket, one Respondent discouraged women from vying for election as independent candidates. Additionally, women leaders who played an active role in the political party were rewarded with a nomination to political office. Nomination to the County Assembly was cited by one nominated MCA as an avenue to furthering the political ambitions of women as it was a platform to gain experience and political traction with the public.

3.5.2.1.2 Experience

Experience was considered an enabler because it allowed women to leverage their pre-existing network and skills to improve their visibility and electability.

The previous political experience was cited as one of the factors that enhanced women's political participation. This was cited in the case of Kitui and Kirinyaga where both Governors had a wealth of previous experience. The two governors were perceived to be visible and effective in their previous as MP and Minister. In Kilifi, the MP of Malindi was previously the women representative, while the current women representative was previously an MCA. Familiarity with legislative rules and procedures allowed them to fulfil their roles with confidence.

3.5.2.2 Constraints

3.5.2.2.1 Finances

This was raised and cited by all the respondents as a major hindrance for women participation in politics. Campaign finance was largely left to individual candidates, and men were much more likely to have access to the personal and professional networks needed for fundraising. Despite the big political parties having access to the Political Parties Funds, there were party policies cited for counteracting this imbalance and ensuring that female aspirants and politicians within the party accessed these funds.

"Finance is still a significant challenge to women aspirants as they have to cater for the logistics of their campaigns alone in most cases which is very expensive. This makes them not to even hire some of the vital personnel such as security personnel during their campaigns" (A member of County Assembly).

The issue of discrimination in property ownership and inheritance practices was also frequently cited as a barrier to women's leadership. While legal frameworks protect women's rights to property and inheritance, cultural norms often prevent women from exercising these rights. Without property in their name, women are less likely to be able to access bank loans, compounding financial inequalities

3.5.2.2.2 Violence

Gender-based violence is a manifestation of patriarchal attitudes. Violence against women in politics including verbal, physical, sexual, psychological, threats and coercion, and online violence. One woman representative of a CSO noted that "hate speech is the biggest barrier for women entering politics." This was reinforced by a nominated MCAs who noted that "women have to fight for their place. Psychological violence is more present towards women in politics." The Respondents also highlighted the role that the media plays in exacerbating and amplifying psychological violence against women in politics, noting that they "do it for likes. They can't wait for women to make a mistake and then talk about it for days."

3.5.2.1.1 Political Party Dynamics

Political parties play a major role in enabling women's access to politics. Despite the various ways in which women can capitalize on party affiliation, most respondents described parties and the men who wield power within them, as barriers to women's representation in politics. Lack of transparency in internal party processes meant that even though women held party positions, party decisions were dependent on patronage and key powerbrokers who are most often men acting as gatekeepers. Women's organizations within parties typically do not have dedicated budgets that they have the freedom to utilize. Women running for election also face difficulties fundraising for their campaigns due to their lack of access to potential donors. Further, the lack of free and fair nominations during party nominations was cited as another challenge women face while seeking political seats. One of the respondents notably said that "coalitions in Kenya do not favor female candidates".

3.5.2.1.2 Negative Portrayal of Women

Several respondents highlighted the media's focus on women's appearance as a significant barrier to being taken seriously as political leaders. One of the respondents noted that the "media's focus on women is more on what they wear, and this is very damaging". Majority of the respondents also noted the rise in hate speech directed towards women candidates, which often goes unchecked and this might have a ripple effect on other women aspirants. Besides the media, three respondents noted the derogatory names Women Representatives are called in parliament "flower girls".

3.5.2.1.3 Significant differences exist across ethnic communities and geographic locations

The focus groups and interviews revealed differences between ethnic communities. Several women from pastoral communities noted that the attitude towards women's participation in politics was more restrictive for them as compared to those more so from Central region. It was generally noted that communities that held strongly to their cultural beliefs were less likely to elect women than those who had a measure of exposure. This pattern replicated itself with respect to urban and rural areas, with women more likely to be elected in urban areas than the rural.

5.3 Equality of Leadership and Participation

This study established that though women held political office thanks to the gender top up mechanism, this has resulted in the majority of women in the county assemblies being nominated rather than elected. This has had drawbacks as unlike elected MCAs, nominated MCAs are not allotted a budget to implement their mandate. Nominated members are also expected to show loyalty to the party position on various issues arising at the floor of the Assembly. This has hampered the independence on nominated women MCAs, with those who act independently being punished by party machinery.

This study also identified patterns of discrimination and exclusion against nominated women MCAs in the 8 studied counties. All Respondents submitted that nominated women leaders are not treated as equal to those who are elected. This has been manifested in labelling them as 'flower girls' as well as in casting aspersions as to these leaders having personal relationships with members of the party leadership. In a more extreme case, in Homa Bay County, there was identified a systematic sidelining of the voices of nominated women MCAs by the elected MCAs (Club 40). This exclusion was effected through elected members having meetings and consensus outside the House and voting as a block. Nominated members are thus excluded from meaningful debate as when issues are raised in plenary, the direction is already decided by the majority elected members. This was not noted in the other counties in the study.

With respect to equality of leadership, in all studied counties, nominated and elected women MCAs actively participated in house committees. In some counties, women also chaired Assembly committees. However, in Elgeyo Marakwet no nominated female MCA chairs a committee.

Most of the counties have established a Women's Caucus within which they can pursue training and organize around a common agenda. These Women Caucuses however are allocated little if any resources, which has hampered their effective operation. While the Caucus has been recognized as a full committee in Homa Bay County, it is not recognized as so in the Kitui County Assembly.

Some counties experienced higher support of male elected MCAs such as in Kirinyaga and Kilifi counties. In Kilifi County, this resulted in critical motions by nominated women MCAs being able to pass i.e. that for the establishment of a gender-based violence rescue centre and to provide sanitary towels for primary and secondary schools. In Kitui and Samburu, however, the lack of male support in the assembly has made it difficult to bring any gender-related issues to the floor of the house

3.5.4 Best Practices

One of the notable best practices cited from the research was training offered by women MPs who are members of KEWOPA to nominated and elected MCAs of Homabay County. This training was on the formal rules, system and processes of the County Assembly thereby increasing their effectiveness and ability to wield influence within the Assembly.



RECOMMENDATIONS

There are several recommendations that are derived from the findings of this policy gap analysis report. Recommendations are targeted at multiple actors, to ensure that good practices can be applied within several political contexts.

4.1 Recommendations for Civil Society Organizations

Civil society organizations over the last couple of years have played a crucial role in advocating for gender equality. They however need to double their efforts in pushing back against sexism and misogyny in the media and strengthen their relationships with the women's structures of political parties to help them advocate for change from within. CSOs also play a great role in raising the capacities of women candidates and newly elected leaders. They further need to:

- Build alliances with men and other women's organizations to promote women's participation in public and political life
- Harmonize a training curriculum for women's political participation including clarifying the legislative work of policy and law development.
- Develop issue statements/ position papers on women's issues such as economic empowerment and reproductive rights through which women legislators can be guided.
- Conduct training on existing national and international legal norms to facilitate their implementation.
- Hold government, legislatures and political parties accountable for progress in increasing women's participation and representation
- Develop monitoring plans to evaluate and assess governments of their implementation of commitments related to gender equality
- Strengthen civic and citizenship training in schools and continuing adult education regarding gender equality and non-discrimination
- Facilitate women's education regarding new forms of communication technology such as the Internet and enable women in developing countries to have access to and use of new technologies, for their empowerment.
- Conduct gendered research at the counties or wards where women have been elected to find out how they serve their constituents. This would provide empirical evidence of women's leadership capacity.

4.2 Recommendations for Political Parties

Political parties need to address significant, persistent issues within their cultures, bylaws, and structures that impede women's equal participation. There is need to formalize and streamline party primary processes. More work is needed to level the playing field within parties and prepare women candidates for success both before and during the campaigning period and once they are elected. These can be achieved through:

- Developing mechanisms or special measures to increase the number of women in party leadership and decision-making positions.
- Implement effective gender quotas with the aim of achieving equitable representation of women in elected positions
- Allocate equal and adequate resources for women's political campaigns and electoral processes.
- Adopt clear and transparent rules to ensure internal democracy, with attention to gender equality.

4.3 Recommendations for Women leaders/legislators

Women political leaders need to play a crucial role in supporting other women and fostering a spirit of collaboration and mentorship within and across parties. Women political leaders can also unite with civil society leaders in this effort, as well. They can also:

- Advocate for change to all parties' culture, bylaws, and structure, in order to make the playing field more level for the next generation of women
- Lobby for improved compliance with existing legal and regulatory framework on electoral misconduct and violence against women.
- Encourage women's associations in the private sector to assist in the identification of candidates as well as strengthen women's networks.
- Target civic education to help the electorate understand the importance of women competing for the dual gender seats.
- Mobilize women to register as voters and to elect women into office. (Politicization of women)

4.4 Recommendations for the United Nations bodies and multilateral/bilateral donors

- Provide financial and technical support to build women's capacity for political participation
- Build partnerships with government, private sector and civil society to advance women's participation in public and political life
- Engage in information and data-collection efforts related to women's participation in public and political life at all levels
- Promote women's participation and interests at critical moments in political settlements, and at the highest levels of power.

4.5 Recommendations for Government

Government bodies, including legislative, executive, judicial bodies and other public institutions at the central and local level, should implement measures to ensure gender balance amongst leaders and place women in key and visible positions. They need to further.

- Enforce implementation of the Law on Gender Equality in all levels of decision-making bodies in political and public life.
- Improve training on gender equality for practitioners in the field of police, civil servants, and judiciary, and in national education curriculums.
- Ensure gender-responsive national budgets and development plans
- Ensure that women and men have equal opportunities during election campaigns, such as providing public funding, access to the state media, setting campaign spending limits, and ensuring that campaign finances and expenditures are disclosed

- Ensure that policies designed to promote women's participation include accountability measures
- Involve the media in promoting a culture of gender equality that combats gender-based stereotypes
- Adopt awareness-raising initiatives in the media to address prevailing gender-based social stereotypes
- Adopt educational strategies around women's human rights and women's role in public and political life
- Guarantee that women obtain an adequate legal remedy when their right to participate in public and political life free from discrimination is violated

4.6 Recommendations for the Media

- Media should partner with CSOs and take a proactive role to address its unequal and negative portrayal of women. This includes setting and implementing clear journalistic standards regarding the portrayal of women, implementing monitoring of their reporters' output, and carrying out training for their staff. To do these they need to
- Ensure fair coverage of women politicians
- Increase coverage of campaign financing, highlighting inequities and seeking to uncover the allocation of the funding parties receive from the state budget to women candidates
- Partner with CSOs for training on gender equity and importance of enhancing women political participation.
- Increased and fair reporting of cases of Gender Based Violence, particularly during elections.



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